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10–21–08 Tuesday
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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.

WHEN: Tuesday, October 28, 2008
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Presidential Documents

Title 3—

The President

Proclamation 8308 of October 16, 2008

National Character Counts Week, 2008

By the President of the United States of America

A Proclamation

The strength of our Nation is found in the character of our citizens. During National Character Counts Week, we recommit ourselves to instilling strong values in our youth and encourage all Americans to develop good character.

Parents and families can teach children the timeless principles of respect, responsibility, honesty, commitment, and compassion. In our communities, parents, mentors, clergy members, teachers, coaches, and neighbors serve as role models by dedicating their time and talents to help others. At home and abroad, members of our Armed Forces exemplify the true character of our Nation by bravely protecting our freedom and serving a cause greater than self.

The Helping America's Youth initiative, led by First Lady Laura Bush, connects young people with caring adults and community organizations that help them avoid risky behavior and achieve success. By becoming actively involved in the lives of children, we can help our young people make the right choices and lead lives of integrity and achievement.

National Character Counts Week is an opportunity for our citizens to reaffirm their responsibility to their communities and to recognize the importance of teaching strong values to our next generation of leaders. For more information on ways to set a positive example and make a lasting contribution to the future of our country, citizens can visit volunteer.gov.

NOW, THEREFORE, I, GEORGE W. BUSH, 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 19 through October 25, 2008, as National Character Counts Week. I call upon public officials, educators, librarians, parents, students, and all Americans to observe this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E8–25194
Filed 10–20–08; 8:45 am]
Billing code 3195–W9–P

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Presidential Documents

Title 3—

The President

Proclamation 8309 of October 16, 2008

National Forest Products Week, 2008

By the President of the United States of America

A Proclamation

During National Forest Products Week, we highlight our country's commitment to protect and wisely use America's forests for our Nation's prosperity and well-being.

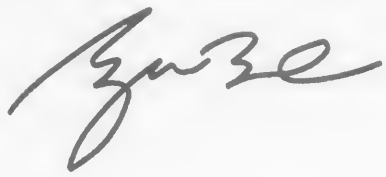
Across our country, citizens rely on forest products to meet their daily needs. Our forests enable us to produce goods such as paper and furniture, provide raw materials such as lumber for homes and buildings, and offer job opportunities that bring economic security for many Americans.

My Administration is steadfast in its commitment to protect our forests from both manmade and natural harm. It is vital that we continue to make progress in conserving our natural resources and using them responsibly. Since 2002, we have worked to restore our forests and protected them against catastrophic fires as part of the Healthy Forests Initiative. Americans take great pride in our country's natural splendor, and by working together to be good stewards of the environment, we can leave our children and grandchildren a healthy and flourishing land.

Recognizing the importance of our forests in ensuring our Nation's well-being, the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 19 through October 25, 2008, as National Forest Products Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.



[FR Doc. E8–25198
Filed 10–20–08; 8:45 am]
Billing code 3195–W9–P

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AB01

Swine Contractors

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adding "swine contractors" to the list of regulated entities subject to specific regulations issued under the Packers and Stockyards Act (P&S Act or Act) (7 U.S.C. 181–229). In 2002, Congress added swine contractors as entities regulated under the P&S Act. Specifically, we are amending the regulations to clarify that swine contractors are prohibited from knowingly circulating misleading reports about market conditions or prices; that they are required to provide business information to authorized USDA personnel; and, that they are required to permit authorized USDA personnel to inspect their business records and facilities. We are also amending the regulations to clarify that agents and USDA employees are prohibited from unauthorized disclosure of business information obtained from swine contractors. These changes will assist swine contractors and swine production contract growers with determining which regulations under the P&S Act apply to swine contractors. The inclusion of swine contractors will help us better enforce the provisions of the P&S Act.

DATES: *Effective Date:* November 20, 2008.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363.

SUPPLEMENTARY INFORMATION: This final rule is issued under authority of the Packers and Stockyards Act, 1921, (P&S Act or Act) (7 U.S.C. 181–229).

The Grain Inspection, Packers and Stockyards Administration (GIPSA) enforces the Packers and Stockyards (P&S) Act of 1921 (the P&S Act). Under authority granted the Secretary of Agriculture (Secretary) and delegated to us, we are authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the P&S Act.

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the P&S Act to define and add "swine contractors" as a regulated entity. A swine contractor is defined as "any person engaged in the business of obtaining swine under a swine production contract for the purpose of slaughtering the swine or selling the swine for slaughter, if (A) the swine is obtained by the person in commerce; or (B) the swine (including products from the swine) obtained by the person is sold or shipped in commerce." (7 U.S.C. 182 (12)).

Adding swine contractors to specific regulations under the P&S Act will assist swine contractors and swine production contract growers with determining which regulations apply to them. It will also make it easier for GIPSA to identify potential violations and enforce the provisions of the P&S Act and regulations.

Comments

We published a proposed rule in the **Federal Register** on February 8, 2008 (73 FR 7482), seeking to amend four sections of the P&S Act regulations (9 CFR 201), specifically sections 201.53, 201.94, 201.95 and 201.96, to add "swine contractors" to the list of entities subject to those regulations. The comment period for the proposed rule ended on April 8, 2008.

We received one comment on the proposed rule from Mr. Bryan Black, President of the National Pork Producers Council (NPPC), located in Washington, DC. Mr. Black pointed out that although NPPC was opposed to the inclusion of swine contractors as covered parties under the P&S Act in the 2002 Farm Bill, NPPC agrees with GIPSA's position that regulations are needed to clarify the positions of swine contractors and contract growers as they relate to the Act. Mr. Black further stated that having a clear set of rules will help all parties by delineating responsibilities and limitations, and that the proposed rule appears to fairly represent the 2002 law.

In his statement, however, Mr. Black urged USDA to define as clearly as possible those activities that violate the Act. He also recommended that any rules promulgated by USDA giving government agents access to business records and activities be made as narrow as possible and that access to records should be limited to those records and information that is specific to whatever claim is being investigated.

In response to Mr. Black's concern regarding GIPSA's access to swine contractors' business records, we point out that Section 6 of the Federal Trade Commission Act (7 U.S.C. 222), gives us broad authority to gather and compile information for various purposes under the P&S Act. Those purposes include, but are not limited to, conducting investigations into the organization, business, conduct, practices, and management of entities subject to the P&S Act. While the rule will provide our investigators broad access to swine contractors' records, it will also protect the information that is gathered from unauthorized release, except under the limited circumstances listed in 9 CFR 201.96. We are therefore making no change to the final rule based on Mr. Black's comments.

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget designated this rule as not significant for the purposes of Executive Order 12866.

We determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule will affect swine contractors. However, most of these entities are either slaughterers or processors of swine with more than 500 employees or producers with more than $750,000 in annual sales. Therefore, they do not meet the applicable size standards for small entities in the Small Business Act (13 CFR 121.201). A 2007 study of U.S. pork producers found that firms that market more than 50,000 head of swine per year

account for nearly all of contracted swine production in the U.S.

In accordance with 5 U.S.C. 605 of the Regulatory Flexibility Act, we are not providing a final regulatory flexibility analysis because this rule will not have a significant economic impact on a substantial number of small entities. We do expect that small swine production contract growers will benefit indirectly from the proposed amendments, which should provide fairness in the marketing of swine and swine products.

Executive Order 12988

This rule was reviewed under Executive Order 12988, Civil Justice Reform. We do not intend the rule to have retroactive effect. The rule will not pre-empt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It does not involve collection of new or additional information by the federal government.

E-Government Act Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Trade practices.

■ For reasons set forth in the preamble, we amend 9 CFR part 201 as follows:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

■ 1. Revise the authority citation for part 201 to read as follows:

Authority: 7 U.S.C. 182, 222, and 228, and 7 CFR 2.22 and 2.81.

■ 2. Revise § 201.53 to read as follows:

§ 201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.

No packer, swine contractor, live poultry dealer, stockyard owner, market agency, or dealer shall knowingly make, issue, or circulate any false or misleading reports, records, or representation concerning the market conditions or the prices or sale of any livestock, meat, or live poultry.

■ 3. Revise § 201.94 to read as follows:

§ 201.94 Information as to business; furnishing of by packers, swine contractors, live poultry dealers, stockyard owners, market agencies, and dealers.

Each packer, swine contractor, live poultry dealer, stockyard owner, market agency, and dealer, upon proper request, shall give to the Secretary or his duly authorized representatives in writing or otherwise, and under oath or affirmation if requested by such representatives, any information concerning the business of the packer, swine contractor, live poultry dealer, stockyard owner, market agency, or dealer which may be required in order to carry out the provisions of the Act and regulations in this part within such reasonable time as may be specified in the request for such information.

■ 4. Revise § 201.95 to read as follows:

§ 201.95 Inspection of business records and facilities.

Each stockyard owner, market agency, dealer, packer, swine contractor, and live poultry dealer, upon proper request, shall permit authorized representatives of the Secretary to enter its place of business during normal business hours and to examine records pertaining to its business subject to the Act, to make copies thereof and to inspect the facilities of such persons subject to the Act. Reasonable accommodations shall be made available to authorized representatives of the Secretary by the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer for such examination of records and inspection of facilities.

■ 5. Revise § 201.96 to read as follows:

§ 201.96 Unauthorized disclosure of business information prohibited.

No agent or employee of the United States shall, without the consent of the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer concerned, divulge or make known in any manner, any facts or information regarding the business of such person acquired through any examination or inspection of the business or records of the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer, or through any information given by the stockyard owner, market agency, dealer, packer, swine contractor, or live poultry dealer pursuant to the Act and regulations, except to such other agents or employees of the United States as may be required to have such knowledge in the regular course of their official duties or except insofar as they may be directed by the Administrator or by a court of competent jurisdiction, or except as they may be otherwise required by law.

Randall D. Jones,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8–24945 Filed 10–20–08; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 570

[BOP Docket No. 1151–I]

RIN 1120–AB51

Pre-Release Community Confinement

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: In this document, the Bureau of Prisons (Bureau) revises current regulations on pre-release community confinement to conform with the requirements of the Second Chance Act of 2007, approved April 9th, 2008 (Pub. L. 110–199; 122 Stat. 657) ("Second Chance Act").

DATES: This rule is effective October 21, 2008. Comments are due by December 22, 2008.

ADDRESSES: Submit comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at *http://www.regulations.gov*. You may also comment via the Internet to the Bureau at *BOPRULES@BOP.GOV* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and are available for public inspection online at *http://www.regulations.gov*. Such information includes personal identifying information (such as your name,

address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov*.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Changes Made by This Rule

In this document, the Bureau revises current regulations on pre-release community confinement in 28 CFR part 570, subpart B, to conform with the requirements of the Second Chance Act of 2007, approved April 9th, 2008 (Pub. L. 110–199; 122 Stat. 657) ("Second Chance Act").

The community confinement regulations currently implement the Bureau's categorical exercise of discretion for designating inmates to community confinement. The regulations state that the Bureau will designate inmates to community confinement only as a condition of pre-release custody and programming, during the last ten percent of the prison sentence being served, for a period not exceeding six months, unless specific Bureau programs allow greater periods of community confinement.

To conform these regulations to the language of the Second Chance Act, we make the following revisions:

Section 570.20 Purpose

In this regulation, we describe the Bureau's procedures for designating inmates to pre-release community confinement or home detention. We also provide a new definition of the term "community confinement." Section 231(f) of the Second Chance Act amended 18 U.S.C. 3621 by adding a new subsection (g). New 18 U.S.C. 3621(g)(2) defines the term "community confinement" for purposes of that subsection by adopting the meaning "given that term in application notes under section 5F1.1 of the Federal Sentencing Guidelines Manual" in effect on the date of enactment of the Act. On April 9, 2008, the application notes to United States Sentencing Guideline (USSG) § 5F1.1 read as follows:

"Community confinement" means residence in a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community facility; and participation in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours.

Although new subsection 18 U.S.C. 3621(g) relates on its face only to "continued access to medical care," we adopt the definition of community confinement given in this provision for the purposes of subpart B as amended. The Second Chance Act itself variously uses the terms "community confinement," "community corrections agencies," "community corrections facilities," and "community confinement facilities," but it does so in contexts that indicate that these terms are meant to refer to the concept of community confinement generally. We therefore adopt the definition in 18 U.S.C. 3621(g) for clarity and consistency, and to maintain uniformity in application of the Second Chance Act provisions, we adopt this definition of "community confinement" as applicable in the context of these regulations. For clarity, we also add a parenthetical that explains that the Bureau includes residential re-entry centers in the definition of "community confinement."

In this section, we also add a definition of "home detention." Section 231(g)(5)(B) of the Second Chance Act provides that "[t]he term 'home detention' has the same meaning given the term in the Federal Sentencing Guidelines as of the date of the enactment of this Act." Once more, although this reference to the Federal Sentencing Guidelines is articulated in a different context, we deem it prudent to model our definition on that given by the Federal Sentencing Guidelines, as suggested by the Second Chance Act, for clarity and consistency in application.

In this section, therefore, we include a definition of "home detention" which is derived from USSG 5F1.2. Specifically, we define "home detention" as a program of confinement and supervision that restricts the defendant to his place of residence continuously, except for authorized absences, enforced by appropriate means of surveillance by the probation office or other monitoring authority. We add the phrase "or other monitoring authority" to the definition given by USSG 5F1.2 to allow for the possibility that the function of monitoring may be accomplished by other federal government agencies, employees, or contractors.

Section 570.21 Time-Frames

Section 251(a) of the Second Chance Act amends 18 U.S.C. 3624(c) to require that the Director must, "to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community." Further, section 3624(c) is amended to state that "[t]he authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months."

In this section, we therefore make the following changes to conform to the specific language in section 251(a) of the Second Chance Act: Paragraph (a) of the revised § 570.21 states that inmates may be designated to community confinement as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed twelve months; and paragraph (b) of the revised § 570.21 states that inmates may be designated to home detention as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed the shorter of ten percent of the term of the inmate's imprisonment or six months.

Section 570.22 Designation

In this section, we inform inmates that they will be considered for pre-release community confinement in a manner consistent with 18 U.S.C.

3621(b), determined on an individual basis, and of duration sufficient to optimize the likelihood of successful reintegration into the community. This section reflects the requirements of the Second Chance Act regarding the promulgation of these regulations. Section 251(a)(6) of the Second Chance Act requires the Bureau to implement regulations that ensure that placements in community confinement as a condition of pre-release custody are:

- Conducted in a manner consistent with 18 U.S.C. 3621(b);
- Determined on an individual basis; and
- Long enough "to provide the greatest likelihood of successful reintegration into the community."

Section 570.22 reflects the three factors listed above.

With regard to the requirement that determinations regarding pre-release community confinement are "conducted in a manner consistent with 18 U.S.C. 3621(b)," the Bureau will ensure that the following factors listed in section 3621(b) will be considered in making such determinations:

- The resources of the facility contemplated;
- The nature and circumstances of the offense;
- The history and characteristics of the prisoner;
- Any statement by the sentencing court concerning the purpose for which the sentence was imposed or recommending a specific type of institution; and
- Any pertinent policy statements issued by the United States Sentencing Commission.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for "(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

18 U.S.C. 3624(c)(6) is a new provision that requires the Bureau to issue regulations reflecting these provisions "not later than 90 days after the date of the enactment of the Second Chance Act of 2007, which shall ensure that placement in a community correctional facility by the Bureau of Prisons is—(A) conducted in a manner consistent with section 3621(b) of this title; (B) determined on an individual basis; and (C) of sufficient duration to provide the greatest likelihood of successful reintegration into the community." Therefore, these regulations are required to be promulgated no later than July 8, 2008, which was 90 days after the date of enactment of the Second Chance Act, April 9, 2008.

The current regulations on community confinement are not only inconsistent with regard to the time-frames articulated by the Second Chance Act, but also conflict with the goals of the new law by articulating a categorical exclusion that would preclude individual determinations.

Adopting these rules through the normal notice-and-comment procedures would not be consistent with the short statutory time-frame provided for implementing these regulatory changes. Requiring formal notice-and-comment procedures would be contrary to the public interest in this case, particularly because the revision of these regulations will provide a greater benefit for inmates, through the possibility of a greater community confinement time-frame than that contemplated under the current regulations. Because this change is responsive to mandates in legislation and is interpretive in nature, we find that normal notice-and-comment rulemaking is unnecessary and contrary to the public interest.

Therefore, to best comply with Congress's mandate that the revised regulations be timely issued, we issue these changes revising subpart B of 28 CFR part 570 as an interim final rule. We will accept comments to this interim final rule and consider and discuss comments received during the comment period in our final rule document.

Further, we forgo the requirement under 5 U.S.C. 552(d) which provides for regulations to go into effect 30 days after the date of publication for the reasons stated above. In particular, a delayed effective date would be inconsistent with regard to the time-frames articulated by the Second Chance Act and rapid implementation would benefit inmates.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute a "significant regulatory action" under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of eliminating confusion in the courts that has been caused by the changes in the Bureau's statutory interpretation, while allowing us to continue to operate in compliance with the revised statute. There will be no new costs associated with this rulemaking.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. section 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 570

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 570 as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 570—COMMUNITY PROGRAMS

■ 1. Revise the authority citation for 28 CFR part 570 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Revise subpart B to read as follows:

Subpart B—Pre-Release Community Confinement

Sec.
570.20 Purpose.
570.21 Time-frames.
570.22 Designation.

§ 570.20 Purpose.

The purpose of this subpart is to provide the procedures of the Bureau of Prisons (Bureau) for designating inmates to pre-release community confinement or home detention.

(a) *Community confinement* is defined as residence in a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers); and participation in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours.

(b) *Home detention* is defined as a program of confinement and supervision that restricts the defendant to his place of residence continuously, except for authorized absences, enforced by appropriate means of surveillance by the probation office or other monitoring authority.

§ 570.21 Time-frames.

(a) *Community confinement.* Inmates may be designated to community confinement as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed twelve months.

(b) *Home detention.* Inmates may be designated to home detention as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed the shorter of ten percent of the inmate's term of imprisonment or six months.

(c) *Exceeding time-frames.* These time-frames may be exceeded when separate statutory authority allows greater periods of community confinement as a condition of pre-release custody.

§ 570.22 Designation.

Inmates will be considered for pre-release community confinement in a manner consistent with 18 U.S.C. section 3621(b), determined on an individual basis, and of sufficient duration to provide the greatest likelihood of successful reintegration into the community, within the time-frames set forth in this part.

[FR Doc. E8–24928 Filed 10–20–08; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

RIN 0596–AB63

Administration; Cooperative Funding; Correction

AGENCY: Forest Service, USDA.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulations, which were published in the **Federal Register** of November 8, 1999 (64 FR 60678). The regulations established the minimum requirements applicable to written agreements between the Forest Service and cooperators, such as individuals, States and local governments, and other non-Federal entities. Additionally, this rulemaking implemented amendments to the Act of June 30, 1914, which expanded the basis for accepting contributions for cooperative work, allows reimbursable payments by cooperators, and adequately protects the Government's interest.

DATES: Effective on October 21, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia S. Palmer, Washington Office Grants and Agreements, (703) 605–4776 or Ken Kessler, Office of Tribal Relations, (202) 205–4972.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections implemented amendments to the Act of June 30, 1914 (16 U.S.C. 498). This Act authorizes the Secretary of Agriculture to receive and subsequently use money as contributions toward cooperative work in forest investigations or for the protection and improvement of the national forests. The rule implemented amendments the Act of June 30, 1914, (16 U.S.C. 498) by: (1) Providing for the use of contributions for cooperative work on the entire National Forest System; (2) Adding "management" to the list of activities for which contributions for cooperative work may be accepted; and (3) Providing specific authority to accomplish cooperative work using Forest Service funds prior to reimbursement by the cooperator pursuant to a written agreement.

Need for Correction

As published, the final regulations do not define adequately the term non-Government cooperator. This term is defined so that non-Government entities can obtain a bond to protect the agency should the non-Government entity owe money to the agency for work performed on their behalf. Non-Government is defined in the negative by listing government entities and making all other entities non-Government. Omitted from the government list are federally recognized Indian tribes which means any Indian Tribe, band, nation, or other organized group or community, and other organizations funding a Forest Service agreement with pass through funding from an entity that is a member, division, or affiliate of a Federal, State, local government, or federally recognized Indian Tribe. This omission leads to inconsistent interpretation and, therefore, requires correction.

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, Fire prevention, Intergovernmental relations, National forests.

■ Accordingly, 36 CFR part 211 is corrected by making the following correcting amendments:

PART 211—ADMINISTRATION

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

Authority: 16 U.S.C. 472, 498, 551.

Subpart A—Cooperation

■ 2. Revise § 211.6 paragraph (c) to read as follows:

§ 211.6 Cooperation in forest investigations or the protection, management, and improvement of the National Forest System.

* * * * *

(c) *Bonding.* Each written agreement involving a non-Government cooperator's total contribution of $25,000 or more to the Forest Service on a reimbursable basis, must include a provision requiring a payment bond to guarantee the cooperator's reimbursement payment. Acceptable security for a payment bond includes Department of the Treasury approved corporate sureties, Federal Government obligations, and irrevocable letters of credit. For the purposes of this section, a non-Government cooperator is an entity that is not a member, division, or affiliate of a Federal, State, local government, a federally recognized Indian Tribe (as defined by the Federally Recognized Indian Tribe List Act of 1994 [25 U.S.C. 479a]), or other organizations funding a Forest Service agreement with pass through funding from an entity that is a member, division, or affiliate of a Federal, State, local government, or federally recognized Indian Tribe.

* * * * *

Dated: September 24, 2008.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. E8–25068 Filed 10–17–08; 11:15 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1051

Control of Emissions From Recreational Engines and Vehicles

CFR Correction

In title 40 of the Code of Federal Regulations, part 790 to end, revised as of July 1, 2008, on page 797, in § 1051.315, reinstate paragraph (a) introductory text to read as follows:

§ 1051.315 How do I know when my engine family fails the production-line testing requirements?

* * * * *

(a) Calculate your test results. Round them to the number of decimal places in the emission standard expressed to one more decimal place.

* * * * *

[FR Doc. E8–25114 Filed 10–20–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 080310411–8949–02]

RIN 0648–AU14

Pacific Halibut Fisheries; Subsistence Fishing; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the **Federal Register** on September 24, 2008, amending the subsistence fishery rules for Pacific halibut. This correcting amendment corrects the headings in two tables.

DATES: Effective on October 24, 2008.

FOR FURTHER INFORMATION CONTACT: Becky Carls, 907–586–7228.

SUPPLEMENTARY INFORMATION: The final rule that is the subject of these corrections was published on September 24, 2008 (73 FR 54932), and implemented amendments to the subsistence fishery rules for Pacific halibut in waters in and off Alaska.

Need for Corrections

The regulations at § 300.65 provide for a catch sharing plan and for domestic management measures for Pacific halibut fisheries in waters in and off Alaska. Among other regulatory actions, the final rule converted the gear and harvest restrictions from text to table format. This action amends § 300.65(h)(1)(i) table heading by replacing "Retention limits" with "Gear restrictions" and amends § 300.65(h)(2) table heading by replacing "Gear restrictions" with "Retention limits."

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries finds good cause to waive prior notice and opportunity for public comment otherwise required by the section. NOAA finds that prior notice and opportunity for public comment are unnecessary because the editorial changes made by this rule are non–substantive. The need to immediately correct the published headings for two in–text tables for this regulation will eliminate a potential source of confusion and constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment, as such procedures would be unnecessary and contrary to the public interest. Notice and comment is unnecessary because this action makes only minor, non–substantive changes to 50 CFR 300.65 to correct the headings of two tables. The rule does not make any substantive change in the rights and obligations of subsistence fishermen managed under the subsistence halibut regulations. No aspect of this action is controversial and no change in operating practices in the fishery is required.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Correction

■ Accordingly, the final rule, FR Doc. E8–22411, published on September 24, 2008, at 73 FR 54932, to be effective October 24, 2008, is corrected as follows:

■ 1a. In § 300.65, on pages 54940 and 54941, the headings to the table under paragraph (h)(1)(i) are corrected to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(h) * * *

(1) * * *

(i) * * *

Regulatory Area	Permit Type	Gear Restrictions
* * * * * * *		

* * * * *

■ 1b. In § 300.65, on pages 54941 and 54942, the headings to the table under paragraph (h)(2) are corrected to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(h) * * *

(2) * * *

Regulatory Area	Permit Type	Retention Limits
* * * * * * *		

* * * * *

Dated: October 15, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–25021 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060418103–6181–02]

RIN 0648–XL29

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Period 2 Quota Harvested

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of spiny dogfish fishery.

SUMMARY: NMFS announces that the spiny dogfish commercial quota available to the coastal states from Maine through Florida for the semi-annual quota period, November 1, 2008—April 30, 2009, has been harvested and will not open for the Period 2 fishery. Therefore, effective 0001 hours, November 1, 2008, federally permitted spiny dogfish vessels may not fish for, possess, transfer, or land spiny dogfish until May 1, 2009, when the Period 1 quota becomes available. Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing spiny dogfish in these states. This action is necessary because the fishery has exceeded its annual quota.

DATES: Quota Period 2 for the spiny dogfish fishery is closed effective at 0001 hr local time, November 1, 2008, through 2400 hr local time April 30, 2009. Effective November 1, 2008, federally permitted dealers are also advised that they may not purchase spiny dogfish from federally permitted spiny dogfish vessels.

FOR FURTHER INFORMATION CONTACT: Jamie Goen at (978) 281–9220, or Jamie.Goen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages specified in the fishery management plan. The commercial quota is distributed to the coastal states from Maine through Florida, as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2008 fishing year is 4 million lb (1.81 million kg) (71 FR 40436, July 17, 2006). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30). Vessel possession limits are intended to preclude directed fishing, and they are set at 600 lb (272 kg) for both Quota Periods 1 and 2. Quota Period 1 is allocated 2.3 million lb (1.05 million kg)), and Quota Period 2 is allocated 1.7 million lb (763,849 kg) of the commercial quota. The total quota cannot be exceeded, so landings in excess of the amount allocated to Period 1 have the effect of reducing the quota available to the fishery during Period 2.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data, and other available information, determines when the total commercial quota will be harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the Federal spiny dogfish commercial quota has been harvested and no Federal commercial quota is available for landing spiny dogfish for the remainder of that quota period.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota has been harvested and that no commercial quota for the spiny dogfish fishery is available. The Period 1 fishery was closed on August 20, 2008, for vessels issued Federal permits. However, landings by state waters vessels continued because the states have set a higher commercial quota. NMFS data available through October 8, 2008, estimates the commercial harvest of spiny dogfish to be at 4,800,374 lb (2.18 million kg), well over the 4 million lb (1.81 million kg) quota for the 2008 fishery. Therefore, effective 0001 hr local time, November 1, 2008, landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits will continue to be prohibited through April 30, 2009, 2400 hr local time. The 2009 Period 1 quota will be available for commercial spiny dogfish harvest on May 1, 2009. Effective November 1, 2008, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued Federal spiny dogfish permits that land in coastal states from Maine through Florida.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 15, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–25077 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 204
Tuesday, October 21, 2008

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AB00

USDA's Role in Differentiating Grain Inputs for Ethanol Production and Standardizing Testing of Co-Products of Ethanol Production

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on July 20, 2007 (72 FR 39762), inviting comments from interest persons regarding the appropriate government role in differentiating grain attributes for ethanol conversion, as well as standardizing the testing of co-products of ethanol production. The original notice provided an opportunity for interested parties to comment until September 18, 2007. In response to a request from the grain industry, on October 5, 2007 (72 FR 56945), we reopened the comment period until December 4, 2007, to provide interested parties with additional time in which to comment. The commenters overwhelmingly agreed that GIPSA should not intervene in standardizing testing of ethanol inputs and outputs. Accordingly, we will not initiate any rulemaking action at this time related to the matters presented in the ANPR.

FOR FURTHER INFORMATION CONTACT: Ross D. Heiman at USDA, GIPSA, FGIS, Market and Program Analysis Staff, Beacon Facility, STOP 1404, P.O. Box 419205, Kansas City, Missouri 64141; Telephone (816) 823–2580; Fax Number (816) 823–4644; e-mail *Ross.D.Heiman@usda.gov*.

SUPPLEMENTARY INFORMATION: We published an ANPR in the **Federal Register** on July 20, 2007, inviting comments from interested persons regarding the appropriate government role in differentiating grain attributes for ethanol conversion, as well as standardizing the testing of co-products of ethanol production. The initial comment period closed on September 18, 2007, but due to a request from the National Grain and Feed Association, the closing date for comments was extended through December 4, 2007, as published in the **Federal Register**.

We received 29 comments from individuals and organizations across the marketing chain. Overall, respondents do not want GIPSA to assist in the revision of existing definitions for ethanol co-products, establish standards for the co-products, or offer standardized tests for grain going into ethanol production or the resulting co-products, with one exception. Some commenters recommended that GIPSA's expertise in verifying the performance of commercial test kits might be applied to the marketing of the co-products. Commenters presented an overriding theme that the perceived needs of the ethanol industry will be best met by the various industry participants. One final observation was a recurring comment that the ethanol industry is relatively young, and because of this youth, GIPSA involvement (i.e., standardizing testing of ethanol inputs and outputs) may hinder its progress.

In view of the comments received, we will not initiate any rulemaking action related to the matters presented in the ANPR. We will continue to monitor developments and remain actively engaged with the ethanol and co-products markets and will support the industry, as appropriate, in its efforts to successfully market ethanol co-products.

Authority: (7 CFR 71–87k).

Randall D. Jones,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8–24946 Filed 10–20–08; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

RIN 0580–AA96

United States Standards for Soybeans

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: On May 1, 2007, the Grain Inspection, Packers and Stockyards Administration (GIPSA) published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** seeking public comment on the effectiveness of the soybean standards. We asked for input on factors used in the current standards and grading procedures, whether changes in soybean processing practices and technology merited changes in the standards, and whether any other changes were needed to ensure that the standards remain relevant to market needs. Because the comments that we received did not indicate a consensus concerning changes to the standards, we will not proceed with rulemaking in this matter.

FOR FURTHER INFORMATION CONTACT: Ross D. Heiman at USDA, GIPSA, FGIS, Market and Program Analysis Staff, Suite 180, STOP 1404, 6501 Beacon Drive, Kansas City, Missouri 64133; Telephone (816) 823–2580; Fax Number (816) 823–4644; e-mail *Ross.D.Heiman@usda.gov*.

SUPPLEMENTARY INFORMATION: GIPSA published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on May 1, 2007 (72 FR 23775), initiating a review of the United States Standards for Soybeans to determine their effectiveness and responsiveness to current grain industry needs. The original notice provided an opportunity for interested parties to comment until July 2, 2007. In response to a request from the soybean industry, on July 20, 2007 (72 FR 39764), GIPSA reopened the comment period until August 20, 2007, to provide interested parties with additional time in which to comment. We received 17 comments from producers, handlers, international associations and companies, and an academic. The comments that we

received did not indicate a consensus concerning changes to the standards.

The one issue that merits further review is amending grading limits for soybean foreign material (FM). Based on the lack of consensus and, at times, conflicting information provided by some commenters, GIPSA has determined that we need to enhance our understanding of the soybean marketing/processing system and collect additional data about the quality of soybeans. GIPSA will use data from its ongoing 5-year farm-gate assessment before considering further rulemaking related to FM grading limits. The assessment will provide first-point-of-sale data related to soybean FM content and composition across the United States, providing an FM range that can be used to formulate new FM grade limits, if appropriate. Accordingly, we will not proceed with rulemaking in this matter.

Authority: (7 U.S.C. 87k).

Randall D. Jones,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8–24944 Filed 10–20–08; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0947; Directorate Identifier 2007–SW–46–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B and EC155B1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model EC 155B and EC155B1 helicopters that would supersede an existing AD. The airworthiness authority of France has issued a mandatory continuing airworthiness information (MCAI) AD that requires a 50 percent reduction in the life of each affected main rotor blade (blade). The MCAI also requires, for each affected blade, initial and repetitive inspections for correct alignment of the tip cap, correct tenon filler wedge (wedge) position, a crack in the tenon, and erosion in a specified zone in the end of the leading edge. Also, the MCAI requires measuring the vertical clearance between each blade assembly and a straight edge at the blade-to-tip cap junction and replacing any blade that has a cracked tenon. This proposal contains those same requirements as described in the MCAI and requires replacing any blade with a measured vertical clearance exceeding a certain limit. A misalignment, crack, or erosion in a blade could lead to failure of the blade and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by November 20, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (972) 641–3460, fax (972) 641–3527, or at *http://www.eurocopter.com*.

Examining the AD Docket: You may examine the AD docket on the Internet at *http://www.regulations.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0112, telephone (817) 222–5126, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0947; Directorate Identifier 2007–SW–46–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On June 1, 2004, we issued AD 2004–12–06, Amendment 39–13665 (69 FR 32857, June 14, 2004). That AD was issued based on MCAI AD F–2003–418 and required inspecting each blade for a crack in the blade tip cap mounting bracket (tenon), measuring the vertical clearance between each blade assembly and a straight edge at the blade-to-tip cap junction, and replacing the blade if a crack is found or if the measured distance is not within certain specifications.

The Direction Generale de L'Aviation Civile (DGAC), which is the aviation authority for France, has issued AD No. F–2004–106, dated July 7, 2004 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified French-certificated helicopters. The MCAI states: "Airworthiness Directive (AD) F–2003–418 was issued following the discovery of a crack in the main rotor blade tip cap attachment tenon. AD F–2003–418 required operators to make sure that there is no crack in the affected zone, and to monitor the blade in operation. Crack growth can lead to the loss of the blade tip cap and make it impossible to control the helicopter."

The DGAC canceled AD F–2003–418 on July 7, 2004, by issuing AD F–2003–418R1 and AD F–2004–106 on the same day. AD F–2004–106 covers the requirements of AD F–2003–418; reduces the service life of each blade from 20,000 flying hours to 10,000 flying hours; renders certain checks and corrective actions mandatory, and refers to Eurocopter Alert Service Bulletin (ASB) No. 62A006, dated May 18, 2004, which superseded Alert Telex No. 05A004, dated November 3, 2003.

You may obtain further information by examining the MCAI and service information in the AD docket.

Since we issued AD 2004–12–06, after further investigations and tests and based on MCAI AD F–2004–106, we have determined that an additional

inspection for correct position of the wedge of the tenon at the blade tip and erosion in a specific zone at the end of the leading edge of the blade and a reduction in service life for certain serial-numbered blades are necessary.

Relevant Service Information

Eurocopter has issued ASB No. 62A006, dated May 18, 2004. This ASB forms the basis for issuing MCAI AD F–2004–106 and supersedes Alert Telex No. 05A004, which was the basis for MCAI AD F–2003–418. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

This product has been approved by the aviation authority of France, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design, we have been notified of the unsafe condition described in the MCAI. We are proposing this AD because we evaluated all pertinent information provided by France and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs. We have determined an additional inspection for correct position of the wedge of the tenon at the blade tip and erosion in a specific zone at the end of the leading edge of the blade and a reduction in service life for certain serial-numbered blades are necessary.

Differences Between This AD and the MCAI

We have reviewed the MCAI and related service information and, in general, agree with their substance. The following are the differences between the AD and the MCAI:

- We refer to the actions proposed by this AD by using the word "inspect" rather than "check" to indicate that the actions are done by a mechanic rather than a pilot.
- The AD would not require you to contact the manufacturer as specified in the service information.
- We use the words "time-in-service" rather than "flight hours."
- We do not use the compliance date of September 30, 2004 to remove affected blades because that date has passed.

These differences are highlighted in the "Differences Between This AD and the MCAI" section of this proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect about 6 helicopters of U.S. registry. We also estimate that it would take about 1.5 work-hours to do the initial inspection and about 0.5 work hours to do the repetitive inspection. The average labor rate is $80 per work-hour. Required parts would cost about $97,000 per blade. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $587,520 for the first year and $586,800 each subsequent year, assuming one blade per helicopter will need to be replaced each year and 20 repetitive inspections will be needed per helicopter each year.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. 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.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13665 (69 FR 32857, June 14, 2004) and adding the following new AD:

Eurocopter France: Docket No. FAA–2008–0947; Directorate Identifier 2007–SW–46–AD.

Comments Due Date

(a) We must receive comments by November 20, 2008.

Other Affected ADs

(b) This proposed AD would supersede AD 2004–12–06, Amendment 39–13665, Docket No. 2004–SW–05–AD.

Applicability

(c) This AD applies to Model EC 155B and B1 helicopters, with main rotor blade (blade), part number (P/N) 365A11–0080–00, installed, certificated in any category.

Reason

(d) Based upon further review, investigation, and fatigue tests, the Direction Generale de L'Aviation Civile (DGAC), France, has cancelled its AD F–2003–418, which formed the basis for our AD 2004–12–06, which was prompted by the discovery of cracks in a blade tip cap attachment tenon. In these further reviews prompted by the findings related to the tip cap area after a tip cap was removed because of abnormal tilt in the flapping direction, in addition to a crack in the tenon, some blades were found to have incorrect tenon filler wedge (wedge) positioning and erosion in the zone of the tenon leading edge. All these findings constitute unsafe conditions that could result in failure of the blade and subsequent loss of control of the helicopter.

Actions and Compliance

(e) Required as indicated, unless already done, do the following:

(1) Before further flight, reduce the blade service life from 20,000 to 10,000 hours time-in-service (TIS).

(2) For a blade with a Serial Number (S/N) 808 or less:

(i) Before the first flight of each day and on or before reaching each 10 hour TIS

interval during the day, inspect for correct alignment of the blade tip cap junction in the flapping direction as shown in Figure 3 and by following the Accomplishment Instructions, paragraph 2.B.4., Eurocopter France Alert Service Bulletin 62A006, dated May 18, 2004 (ASB), except this AD does not require you to contact the manufacturer.

(A) During the initial alignment inspection, mark the position of the ruler and record the initial clearance value of "DO" by following the Accomplishment Instructions, paragraph 2.B.3.a)3. through 2.B.3.a)6. of the ASB. The initial clearance distance between the lower edge of the 24 inch (500mm) straight edge ruler and the upper surface of the blade assembly at the blade-to-tip cap junction is called "DO."

(B) If the measured clearance as determined by paragraph 2.B.4. of the ASB is equal to or greater than "DO" + 2mm, replace the blade with an airworthy blade before further flight.

(ii) Within the next 3 months, remove and inspect each blade for the correct wedge position, a crack in the tenon, correct alignment of the blade tip cap, and erosion in the leading edge in Zone 1 by following the Accomplishment Instructions, paragraph 2.B, of the ASB except this AD does not require you to contact the manufacturer.

(A) If the wedge is incorrect (dissymmetrical position) as shown in Figure 2 of the ASB, using a 10x or higher magnifying glass and a light, inspect the imbedded portion of the tenon as shown in Figure 5 of the ASB for a crack by following the Accomplishment Instructions, paragraph 2.B.3., of the ASB.

(1) If a crack is found in the tenon, before further flight, replace the blade with an airworthy blade.

(2) If no crack is found in the tenon, inspect the end of the leading edge of the blade for erosion in Zone 1 as shown in Figure 7 of the ASB.

(B) If the wedge position is correct (symmetrical position) as shown in Figure 1 of the ASB, inspect the end of the leading edge of the blade for erosion in Zone 1 as shown in Figure 7 of the ASB.

(C) Thereafter, on or before 660 hours TIS and at intervals not to exceed 660 hours TIS, remove the blade and the blade tip cap, scrap the 35 attachment screws, and inspect the end of the leading edge of the blade for erosion in Zone 1 as shown in Figure 7 of the ASB.

(3) For a blade with a S/N of 809 or greater:

(i) For a blade that has less than 660 hours TIS, on or before 660 hours TIS and thereafter, at intervals not to exceed 660 hours TIS, remove the blade and the blade tip cap, scrap the 35 attachment screws, and inspect the end of the leading edge of the blade for erosion in Zone 1 as shown in Figure 7 of the ASB.

(ii) For a blade that has 660 or more hours TIS, on or before 100 hours TIS and thereafter, at intervals not to exceed 660 hours TIS, remove the blade and the blade tip cap, scrap the 35 attachment screws, and inspect the end of the leading edge of the blade for erosion in Zone 1 as shown in Figure 7 of the ASB.

(4) If any inspection of the end of the leading edge of a blade in Zone 1, as shown in Figure 7 of the ASB, results in:

(i) Erosion in Zone 1—clean and caulk the eroded zone by following the Accomplishments Instructions, paragraph 2.B.6., of the ASB, and reinstall the blade tip cap and caulk the gap in accordance with the Accomplishment Instructions, paragraph 2.B.7, of the ASB.

(ii) No Erosion in Zone 1—reinstall the blade tip cap and caulk the gap in accordance with the Accomplishment Instructions, paragraph 2.B.7., of the ASB.

Differences Between This AD and the MCAI

(f) We have identified the following differences:

(1) We refer to the actions required by this AD by using the word "inspect" rather than "check" to indicate that the actions are done by a mechanic rather than a pilot.

(2) We do not require you to contact the manufacturer as specified in the service information.

(3) We use the words "hours time-in-service" rather than "flight hours."

(4) We did not use the compliance date of September 30, 2004 to remove affected blades because that date has passed.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, ATTN: Jim Grigg, Aviation Safety Engineer, Fort Worth, Texas 76193–0112, telephone (817) 222–5126, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

Related Information

(h) MCAI Airworthiness Directive AD No. F–2004–106, Revision A, dated July 7, 2004, contains related information.

Air Transport Association of America (ATA) Tracking Code

(i) ATA Code 6210: Rotor(s).

Issued in Fort Worth, Texas, on October 1, 2008.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–24986 Filed 10–20–08; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Advanced notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Mine Safety and Health Review Commission (the "Commission") previously published, on September 2, 2008, an advanced notice of proposed rulemaking seeking suggestions for improving its procedures for processing requests for relief from default. The notice provided that the comment period would end on November 3, 2008. A request was made that the comment period be extended to November 17, and the Commission has agreed to do so.

DATES: Comments must be submitted on or before November 17, 2008.

ADDRESSES: Comments and questions may be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202–434–9944.

FOR FURTHER INFORMATION CONTACT: Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; fax 202–434–9944.

SUPPLEMENTARY INFORMATION: On September 2, 2008, the Commission published an advanced notice of proposed rulemaking seeking suggestions for improving its procedures for processing requests for relief from default and reducing the number of cases in which a party seeks relief before the Commission after default. 73 FR 51256. The notice provided that the comment period would end on November 3, 2008. The Commission received a request that the comment period be extended to November 17. The Commission has agreed to extend the comment period in order to increase the opportunity of the interested public to provide any comments or suggestions on the Commission's procedures for processing requests for relief from default. Comments on the proposed rules must be submitted on or before November 17, 2008.

Dated: October 15, 2008.

Michael F. Duffy,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. E8–24994 Filed 10–20–08; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2008–0256]

RIN 1625–AA09

Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA, Schedule Change

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking concerning drawbridge operations for the Spokane Street Bridge across the Duwamish Waterway, mile 0.3, in Seattle, Washington. The proposed rule would have established two daily closed draw periods Monday through Friday to help alleviate road traffic, with the proviso that openings would be provided at any time for vessels of 5000 gross tons or more. The proposed rule is being withdrawn because Spokane Street Bridge draw records along with road traffic counts conducted after the notice of proposed rulemaking was published indicate that the number of draw openings and the amount of traffic using the Spokane Street Bridge are not sufficient to warrant the negative impact that the proposed rule would have on commercial maritime traffic using the waterway under the bridge.

DATES: The notice of proposed rulemaking is withdrawn on October 21, 2008.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m, Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Austin Pratt, Chief, Bridge Section, Waterways Management Branch, 13th Coast Guard District, at 206–220–7282. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, at 202–366–9826

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2008, we published a notice of proposed rulemaking entitled "Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA, Schedule Change" in the **Federal Register** (73 FR 29723). The proposed rule would have established two daily closed draw periods for the Spokane Street Bridge across the Duwamish Waterway, mile 0.3, in Seattle, Washington, Monday through Friday to help alleviate road traffic, with the proviso that openings would be provided at any time for vessels of 5000 gross tons or more.

Withdrawal

The notice of proposed rulemaking is being withdrawn because the Spokane Street Bridge draw records along with road traffic counts conducted after the notice of proposed rulemaking was published indicate that the number of draw openings and amount of traffic using the Spokane Street Bridge are not sufficient to warrant the negative impact that the proposed rule would have on commercial maritime traffic using the waterway under the bridge.

Specifically, draw records indicate that the Spokane Street Bridge is opened an average of only two to three times per week during each of the proposed closed periods. While these openings halt traffic, the amount of traffic affected is much lower than other drawbridges in Seattle. Traffic counts on Spokane Street during the subject periods were also much lower than arterials like 15th Avenue and Montlake Avenue, which also cross drawbridges in Seattle.

The maritime traffic that would be affected by the proposed rule includes oceangoing ships, container barges, derrick barges, and other large vessels that require the drawspan to open. Tidal fluctuations are critical for many of these vessels to move in the waterway under the Spokane Street Bridge. The proposed closed periods would delay this maritime traffic as a result of the bridge being closed as well as the effect of the closures on the ability of the vessels to transit at the appropriate tide elevation. Such delays have a substantial negative effect on maritime commerce due to the necessity of timely transit and delivery of the cargo being carried.

The availability of a nearby alternate route was also considered. The West Seattle Bridge is a multi-lane, fixed, high-structure bridge immediately adjacent to the Spokane Street Bridge that can easily be used to transit to and from downtown Seattle instead of the Spokane Street Bridge, especially for that traffic which does not have a local destination at Harbor Island.

The Coast Guard received 80 total responses to the notice of proposed rulemaking. 18 were from commercial maritime entities with an interest in using the waterway under the bridge. All of these responses rejected the proposed change due to delays in the movement of maritime traffic that would result from the proposed rule. The remaining responses were from individual commuters, many of which were bicyclists, with an interest in using the Spokane Street Bridge itself. All of these responses endorsed the proposal in order to facilitate commuting to and from downtown Seattle. At least one response objected to the exemption for vessels of 5000 gross tons or greater and another suggested that the closure proposed for the morning hours was more vital than the afternoon.

Authority

This action is taken under the authority of 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

Dated: October 8, 2008.

J.P. Currier,

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

[FR Doc. E8–24985 Filed 10–20–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–0026; 92210–1117–0000–B4]

RIN 1018–AV78

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx (Lynx canadensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period and announcement of public hearings, notice of availability of draft economic analysis, amended required determinations, and draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period and the scheduling of public hearings on the proposed revised designation of critical habitat for the contiguous

United States distinct population segment of the Canada lynx (*Lynx canadensis*) (lynx) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability for public comment of the draft economic analysis (DEA), an amended required determinations section of the proposal, and the draft environmental assessment for the proposed revised critical habitat designation. We also seek comment on draft conservation agreements that cover lands in Maine (Unit 1) and in the northern Rockies (Unit 3) that could result in exclusions from the final critical habitat designation under section 4(b)(2) of the Act. We also seek public comment on whether lands entered in to the Healthy Forest Reserve Program are appropriate for exclusion. In addition, we propose to refine boundary descriptions for two critical habitat units: Unit 3 (Northern Rockies) and Unit 5 (Greater Yellowstone Area) based upon more detailed information we have obtained about lynx habitat in these areas. If you submitted comments previously, then you do not need to resubmit them because we have already incorporated them into the public record and we will fully consider them in preparation of our final determination.

DATES: *Written Comments:* We will accept public comments received on or before November 20, 2008.

Public Hearings: We announce two public hearings, to be held on November 7, 2008, at Red Lion Hotel, 20 N. Main Street, Kalispell, MT 59901 and on November 13, 2008 at Cody Auditorium, 1240 Beck Avenue, Cody, WY 82414. Both hearings, open to all who wish to provide formal, oral comments regarding the proposed revised critical habitat, will be held from 6 to 8 p.m., mountain time, with an open house from 5 to 6 p.m., mountain time.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R6–ES–2008–0026; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.
- *Public Hearings:* Public hearings will be held (see **DATES**) at Red Lion Hotel, 20 N. Main Street, Kalispell, MT 59901, and at Cody Auditorium, 1240 Beck Avenue, Cody, WY 82414.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Mark Wilson, Field Supervisor, U.S. Fish and Wildlife Service, Montana Ecological Services Office, 585 Shepard Way, Helena, MT 59601; telephone 406–449–5225. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept comments and information during this reopened comment period on our proposed revision to critical habitat for the Canada lynx published in the **Federal Register** on February 28, 2008 (73 FR 10860), the DEA of the proposed revised designation, the amended required determinations provided in this document, the draft environmental assessment, and information related to potential exclusions. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The distribution of the Canada lynx,
- The amount and distribution of Canada lynx habitat, and
- Which habitat contains the necessary features (primary constituent elements) essential to the conservation of these species and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible impacts on this species or proposed revised critical habitat.

(4) Whether we could improve or modify our approach to designating critical habitat to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(5) Any foreseeable environmental impacts directly or indirectly resulting from the proposed designation of critical habitat.

(6) Any foreseeable economic, national security, or other potential impacts of designating areas that may be included in the final designation. We are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(7) Information on whether the DEA identifies all Federal, State, and local costs and benefits attributable to the proposed revision of critical habitat, and information on any costs that have been inadvertently overlooked.

(8) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that likely may occur if we designate revised critical habitat.

(9) Information on the accuracy of our methodology in the DEA for distinguishing baseline and incremental costs, and the assumptions underlying the methodology.

(10) Information on whether the DEA correctly assesses the effect on regional costs associated with land use controls that may result from the revised designation of critical habitat.

(11) Information on whether the critical habitat designation will result in disproportionate economic impacts to specific areas or small businesses that should be evaluated under 4(b)(2) for possible exclusion from the final designation.

(12) Information on whether the DEA identifies all costs that could result from the critical habitat designation.

(13) Information on whether the benefit of an exclusion of any particular area outweighs the benefit of inclusion under section 4(b)(2) of the Act, in particular for those draft conservation agreements covering specified lands in Maine and Montana submitted to the Service for further evaluation and consideration.

(14) Information on any economic impacts associated with implementing the draft conservation agreements covering specified lands in Maine and Montana submitted to the Service for further evaluation and consideration.

(15) Any foreseeable impacts on energy supplies, distribution, and use resulting from the proposed designation and, in particular, any impacts on mining and oil and gas projects, and the benefits of including or excluding areas that exhibit these impacts.

(16) Information on the refined mapping techniques we are considering using to delineate critical habitat units based on public comments we received.

Regarding the proposed revised critical habitat rule, we specifically request information on potential critical habitat exclusions. Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the

benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact, including but not limited to the value and contribution of continued, expanded, or newly forged conservation partnerships.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; and/or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide. In the case of Canada lynx, the benefits of critical habitat include public awareness of lynx presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for lynx due to the protection from adverse modification or destruction of critical habitat. In practice, a Federal nexus exists primarily on Federal lands or for projects undertaken by Federal agencies. Since lynx were listed in 2000, we have had few projects on privately owned lands that had a Federal nexus to trigger consultation under section 7. On Federal lands we have been consulting with Federal agencies on their effects to lynx since lynx were listed. These consultations have resulted in a series of comprehensive conservation plans for Federal lands over much of the range of the DPS. These plans provide for sufficient lynx habitat protection for recovery of the DPS.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weight the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If we determine that they do, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will be evaluating whether certain lands in proposed critical habitat Unit 1 (Maine) and private lands in unit 3 (Montana and Idaho) are appropriate for exclusion from the final revised designation. We received a Draft Conservation Agreement from the Maine Forest Products Council that proposes a continued lynx conservation partnership between the private forest products industry and State and Federal wildlife agencies. As will be described, this draft agreement focuses heavily on the continuation of land access, research, information sharing, and education. We also received a single Draft Conservation Agreement from three private timberlands owners in Montana, including Plum Creek Timber, F.H. Stoltze Land and Lumber, and Stimson Lumber, who wish to foster partnerships between industrial forestry landowners and the Service to promote lynx conservation through cooperative conservation and education. Additionally, we are evaluating whether lands enrolled in the Healthy Forest Reserve Program (HFRP) in Maine are appropriate for exclusion. We will assess the benefits of excluding Maine and Montana lands included in these agreements and the HFRP and consider these lands for exclusion from the revised critical habitat final rule under section 4(b)(2) of the Act. If our analysis results in a determination that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then we will exclude the lands from the revised final designation.

You may obtain a copy of draft conservation agreements for lands in Maine and Montana or the HFRP documents for lands in Maine by visiting the Federal eRulemaking Portal at *http://www.regulations.gov*, or our Web site *http://mountain-prairie.fws.gov/species/mammals/lynx/criticalhabitat/htm* or by requesting copies of these documents by mail from the Montana Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

If you submitted comments or information on the proposed revised rule (73 FR 10860) during the initial comment period from February 28, 2008, to April 28, 2008, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed revised rule, DEA, or environmental assessment by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as selected supporting documentation we used in preparing this revised proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Montana Ecological Services Office (*see* **FOR FURTHER INFORMATION CONTACT**). Maps of the proposed revised critical habitat also are available on the Internet at *http://mountain-prairie.fws.gov/species/mammals/lynx/*.

You may obtain copies of the proposed revision of critical habitat, the associated DEA, and the environmental assessment on the Internet at *http://www.regulations.gov* (*see* Docket Number FWS–R6–ES–2008–0026), or by

mail from the Montana Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Background

For more information on previous Federal actions concerning the Canada lynx, refer to the proposed revised designation of critical habitat published in the **Federal Register** on February 28, 2008 (73 FR 10860). On January 15, 2008, the U.S. District Court for the District of Columbia issued an order stating the Service's deadlines for a proposed rule for revised critical habitat by February 15, 2008, and a final rule for revised critical habitat by February 15, 2009. On February 28, 2008, we published a proposed revised rule (73 FR 10860) designating approximately 42,753 square miles (110,727 square kilometers) of land in northern Maine, northeastern Minnesota, the Northern Rocky Mountains (northwestern Montana/northeastern Idaho), the North Cascades (north-central Washington), and the Greater Yellowstone Area (southwestern Montana, northwestern Wyoming) as critical habitat.

Section 3 of the Act defines critical habitat as 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 essential to the conservation of the species and that may require special management considerations or protection, and 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. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

Section 7 of the Act will prohibit destruction or adverse modification of any designated critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Public Hearings

Section 4(b)(5)(E) of the Act requires a public hearing be held if any person requests it within 45 days of the publication of a proposed rule. In response to requests from the public, the Service will conduct two public hearings for this proposed revision to critical habitat on the dates and times and at the addresses identified in the **DATES** and **ADDRESSES** sections above.

People wishing to make an oral statement for the record are encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing, please contact the Montana Ecological Services Office (*see* **FOR FURTHER INFORMATION CONTACT**).

People needing reasonable accommodations in order to attend and participate in the public hearings should contact Shawn Sartorius, Montana Ecological Services Office, at (406) 449–5225, extension 208, as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this notice is available in alternative formats upon request.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We have prepared a DEA of our February 28, 2008 (73 FR 10860), proposed revised rule to designate critical habitat for the contiguous United States distinct population segment of the Canada lynx.

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised critical habitat designation for the Canada lynx. The DEA quantifies the economic impacts of all potential conservation efforts for the lynx; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed revised critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed revised critical habitat.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed revised critical habitat designation for the lynx over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects (e.g., development, mining, recreation projects) beyond a 20-year timeframe. Where information was available to reliably forecast activities beyond the 20-year timeframe, we incorporated it into the analysis. For example, timber harvests are typically on a 40- to 80-year rotation within the study area allowing us to address forest management impacts over a longer time period.

The current DEA estimates the foreseeable economic impacts of the proposed revised critical habitat designation. The economic analysis identifies potential incremental costs as a result of the proposed revised critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of lynx conservation efforts associated with the following activities: (1) Timber activities, (2) development, (3) recreation, (4) mining and oil and gas activities, (5) fire management, (6) wind energy developments, (7) transportation and utilities projects, (8) livestock

grazing, and (9) species research and active management.

The pre-designation impacts associated with species conservation activities for the lynx in areas proposed as critical habitat are approximately $25.7 million applying a 3 percent discount rate and $30.1 million applying a 7 percent discount rate. The post-designation impacts associated with species conservation were estimated over the period 2009 to 2028. The quantified post-designation baseline impacts (those estimated to occur regardless of the critical habitat designation) are $9.4 to $10.3 million on an annualized basis applying a 3 percent discount rate, or $11.6 to $12.8 million on an annualized basis applying a 7 percent discount rate. Because these costs are projected to occur whether critical habitat is designated or not, they are not considered in our determination of whether the benefits of including an area as critical habitat outweigh the benefits of excluding the area.

The majority of the post-designation, baseline impacts are associated with proposed, single, large-scale development project in Maine (Unit 1), for which the proponent has sought state-approved rezoning. Subsequent development of the rezoned lands may require the implementation of avoidance, minimization, or mitigation measures to conserve lynx. Elsewhere, additional post-designation, baseline impacts are associated with adherence to existing lynx management plans, which direct lynx conservation efforts for activities such as timber management, recreation, and mining.

The only incremental identified and quantified in the analysis are administrative costs of actions taken under section 7 of the Act associated with the geographic area proposed as revised critical habitat for the lynx. The DEA forecasts these incremental impacts associated with the proposed rulemaking to be $142,000 on an annualized basis using a 3 percent discount rate, and $141,000 on an annualized basis using a 7 percent discount rate.

Only the incremental costs that may result from the designation of critical habitat, over and above the costs associated with species protection under the Act more generally, may be considered in designating critical habitat; therefore, the methodology for distinguishing these two categories of costs is important. In the absence of critical habitat, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered species or threatened species—costs associated with such actions are considered baseline costs. Once an area is designated as critical habitat, proposed actions that have a Federal nexus in this area also will require consultation and potential modification to ensure that the action does not result in the destruction or adverse modification of designated critical habitat—costs associated with these actions are considered incremental costs. Incremental consultation that takes place as a result of critical habitat designation may fall into one of three categories: (1) Additional effort to address adverse modification in a new consultation; (2) re-initiation of consultation to address effects to critical habitat; and (3) incremental consultation resulting entirely from critical habitat designation (i.e., where a proposed action may affect unoccupied critical habitat). However, because no unoccupied habitat is being proposed for designation, no consultations in category 3 are projected.

We request comment on the accuracy of our methodology for distinguishing baseline and incremental costs, and the assumptions underlying the methodology. The DEA considers the potential economic effects of actions relating to the conservation of the lynx, including costs associated with sections 4, 7, and 10 of the Act, as well as costs attributable to the designation of revised critical habitat.

We are soliciting comments from the public on the DEA, and on the proposed revised rule and environmental assessment. We may revise the proposed rule or supporting documents to incorporate or address information we receive during this comment period. In particular, we may exclude areas from revised critical habitat if we determine that the benefits of excluding an area outweigh the benefits of including it as revised critical habitat, provided the exclusions will not result in the extinction of the species.

Areas Considered for Exclusion Under Section 4(b)(2) of the Act

Northern Maine Unit 1: Maine Forest Products Council

We have received a draft Conservation Partnership Agreement for the Benefit of Canada Lynx in Maine from the Maine Forest Products Council (MFPC) and Maine Department of Inland Fisheries and Wildlife (Maine DIFW). As drafted, MFPC has identified the Service as a signatory to the agreement. The MFPC is a trade organization representing the Maine forest products community, whose members include landowners, loggers, truckers, paper mills, and lumber processors. Approximately 74 percent of the lands proposed for lynx critical habitat designation in Maine are private commercial forest lands owned by members of the MFPC.

The MFPC and its landowner members have been contributing to lynx conservation since the 1990s by funding lynx and snowshoe hare research through the University of Maine's Cooperative Forestry Research Unit (UMaine CFRU). Additionally, MFPC landowners have supported lynx research and monitoring by allowing researchers from Maine DIFW, the Service, University of Maine and others access to their private property to conduct lynx surveys and research and by providing logistical assistance (lodging, field maps, etc.) to the lynx researchers.

In summary, the draft conservation agreement proposes a framework for, among other things, funding of landscape-level habitat mapping using satellite imagery and state-of-the art lynx and snowshoe hare habitat models; assistance from MPFC landowners to supplement the mapping analyses with information and data owned by the companies; continued funding of lynx research and monitoring and logistical assistance; professional education, information dissemination, and training of landowners, forest managers, loggers, and others on lynx habitat requirements; development of multi-species landscape-scale planning guidelines to balance the needs of lynx with other species in the northern forest; lynx workshops to discuss lynx research, management challenges, opportunities, land management tools, and forest practices trends; and annual reporting. This agreement does not prescribe specific land management actions to be taken by landowners. We are currently reviewing the context of this draft agreement, including MFPC's explanations of the above proposed commitments and its treatment of our roles and responsibilities as a signatory.

Northern Maine Unit 1: Lands Subject to the Healthy Forest Restoration Act

In 2003, Congress passed the Healthy Forest Restoration Act. Title V of the Act designates an HFRP with objectives to (1) promote the recovery of threatened and endangered species, (2) improve biodiversity, and (3) enhance carbon sequestration. In 2006, Congress provided the first funding for the HFRP, and three States, Maine, Arkansas, and Mississippi, were chosen as pilots to receive funding through their respective Natural Resources Conservation Service (NRCS) State offices. The NRCS and the

Service determined that the most efficient way to complete consultations under section 7 of the Act and to deliver the Safe Harbor-like assurances that the Healthy Forest Restoration Act both defines and requires was by developing programmatic biological opinions for each of the participating States. The program underwent formal consultation under section 7 of the Act. The resulting programmatic biological opinion provides a framework for determining incidental take, baseline conditions, and terms and conditions when reviewing projects selected for future funding. The Service completed the biological opinion for Maine in 2006; this document is available on *www.regulations.gov* with the other documents announced in this reopening notice.

The NRCS and the Service offered the HFRP to landowners in the proposed Canada lynx critical habitat unit to promote development of lynx forest management plans to achieve important objectives for lynx recovery. Five landowners were enrolled in the HFRP—the Passamaquoddy Tribe, The Nature Conservancy, the Forest Society of Maine (as a conservation easement holder for the Merriweather LLC-West Branch Project), Katahdin Forest Products, and Elliotsville Plantation Company. Lynx forest management plans will be developed for about 680,000 acres (275,186 hectares) within the 6.8 million-acre (2.75 million-hectare) proposed revised critical habitat. Tiered section 7 consultations will occur under the programmatic opinion for each of the five projects. The tiered consultations will document the environmental baseline and incidental take for each project. If additional HFRP funding is made available to Maine in the future, this programmatic biological opinion will guide the consultation between NRCS and the Service. New projects will be tiered under this programmatic opinion. The programmatic opinion will be revised as new information is obtained or if new rare, threatened, or endangered species are considered for Healthy Forest Reserve funding.

Landowner forest management plans will be based on the Service's *Canada Lynx Habitat Management Guidelines for Maine* (McCollough 2007). These guidelines were based on the best available science on lynx management and have been revised as new research results become available. The guidelines are:

1. Avoid upgrading or paving dirt or gravel roads traversing lynx habitat. Avoid construction of new high-speed/high-traffic volume roads in lynx habitat. Desired outcome: Avoid fragmenting potential lynx habitat with high-traffic/high-speed roads.

2. Maintain through time at least one lynx habitat unit of 35,000 acres (14,164 hectares) (~1.5 townships) or more for every 200,000 acres (80,937 hectares) (~9 townships) of ownership. At any time, about 20 percent of the area in a lynx habitat unit should be in the optimal mid-regeneration conditions (see Guideline 3). Desired outcome: Create a landscape that will maintain a continuous presence of a mosaic of successional stages, especially mid-regeneration patches that will support resident lynx.

3. Employ silvicultural methods that will create regenerating conifer-dominated stands 12–35 feet (3.7–10.7 meters) in height with high stem density (7,000–15,000 stems/acre) (17,290–37,050 stems/hectare) and horizontal cover above the average snow depth that will support (0.44 hares/acre) >1.1 hares/hectare. Desired outcome: Employ silvicultural techniques that create, maintain, or prolong use of stands by high populations of snowshoe hares.

4. Maintain land in forest management. Development and associated activities should be consolidated to minimize direct and indirect impacts. Avoid development projects that occur across large areas, increase lynx mortality, fragment habitat, or result in barriers that affect lynx movements and dispersal. Desired outcome: Maintain the current amount and distribution of commercial forest land in northern Maine. Prevent forest fragmentation and barriers to movements. Avoid development that introduces new sources of lynx mortality.

5. Encourage coarse woody debris for den sites by maintaining standing dead trees after harvest and leaving patches (at least 0.75 acre (0.30 hectare)) of windthrow or insect damage. Desired outcome: Retain coarse woody debris for denning sites.

The HFRP forest management plans must provide a net conservation benefit for lynx, employ the lynx guidelines, identify baseline habitat conditions and meet NRCS standards for forest plans. Plans must be developed for an entire forest rotation (70 years) and include a decade-by-decade assessment of where lynx habitat will be located on the ownership. Some landowners are developing plans exclusively for Canada lynx, whereas others are combining lynx management with pine marten (*Martes americana*) (an umbrella species for mature forest) or biodiversity objectives. Most landowners are writing their own plans, however, The Nature Conservancy contracted with the University of Maine Department of Wildlife Ecology to develop a lynx-pine marten umbrella species model that will serve as a model that will be made available to other northern Maine landowners.

Landowners have two years from enrollment to complete their lynx forest management plans. Plans must be reviewed and approved by NRCS with assistance from the Service. The first plans will be completed in fall, 2009. By year seven, there must be demonstrated harvest schedule and on-the-ground implementation of the plan. Safe Harbor Agreements or similar assurances, as defined by the Healthy Forest Restoration Act, will be made available to landowners enrolled in the program at the conclusion of the 10-year cost-share agreement.

Northern Rocky Mountains Unit 3: Private Timber Lands

We have also received a draft conservation agreement from three timber products companies in Montana: Plum Creek Timber, F.H. Stoltze Land and Lumber, and Stimson Lumber (forest products companies). These three companies are the largest individual private timberland-owners in Unit 3 of the proposed critical habitat designation. This agreement proposes to form a conservation partnership to preserve habitat and protect the Canada lynx by implementing the following actions:

1. Landowners and forest products companies would distribute lynx habitat management information developed collaboratively with the USFWS and supporting agencies and organizations to a variety of forest landowners and contractors in the geographic area currently contained in proposed critical habitat not currently engaged with the USFWS or informed about Canada lynx habitat management measures.

2. The forest products companies would contact forest products mills within the geographic area currently contained in proposed critical habitat to enlist their support of the Agreement. Supporting mills would distribute habitat management and other lynx information to landowners and log sellers as part of their fiber procurement programs. This action, combined with the actions of the Agreement signatories, would inform the vast majority of private landowners in Unit 3 who undertake forest management activities and sell their products on lynx habitat management to guide their on-the-ground activities for the benefit of lynx.

3. The Parties would collaborate to encourage private landowners and forest

product companies to pursue funding for conservation efforts, *e.g.*, cost-share, incentive programs, or grants for the purpose of Canada lynx habitat conservation.

4. Landowners and forest product companies would develop new Canada lynx habitat management training for private field-level forest managers and contractors.

5. Landowners and forest product companies would host annual workshops that include the USFWS to discuss recent research outcomes and management recommendations, identify collaborative adaptive management opportunities, and/or identify further research opportunities for lynx conservation.

6. Landowners and forest product companies would develop, in collaboration with the Service, voluntary landscape-level management priorities and guidelines for private lands in Montana. These guidelines will be incorporated into the education and outreach efforts in 1, 3, and 4 above.

7. Landowners and forest product companies would support Canada lynx research and monitoring through encouraging participating landowners and forest product companies to voluntarily provide reasonable access to their lands to conduct research, logistical and material support, financial support, and/or dissemination and implementation of the research results.

The agreement is designed to strengthen partnerships among the three industrial timberland owners and State and Federal agencies. This agreement does not prescribe specific land management actions to be taken by landowners.

Draft Environmental Assessment; National Environmental Policy Act

The draft environmental assessment (EA) presents the purpose of and need for critical habitat designation, the Proposed Action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) as implemented by the Council on Environmental Quality regulations (40 CFR 1500, *et seq.*) and according to the Department of the Interior's NEPA procedures.

The EA will be used by the Service to decide whether or not critical habitat will be designated as proposed, if the Proposed Action requires refinement or if another alternative is appropriate, or if further analyses are needed through preparation of an environmental impact statement (EIS). If the Proposed Action is selected as described (or is changed minimally) and no further environmental analyses are needed, then a Finding of No Significant Impact (FONSI) would be the appropriate conclusion of this process. A FONSI would then be prepared for the EA.

Proposed Changes to Boundaries of Canada Lynx Revised Critical Habitat Units 3 and 5

Following publication of our proposed critical habitat rule on February 28, 2008 (73 FR 10860), we received comments from the U.S. Forest Service, Montana Department of Natural Resources and Conservation (Montana DNRC), Plum Creek Timber Company, and others providing information that large areas of the proposed revised critical habitat designation did not contain the essential physical and biological feature described in the rule and should not be included in the final designation. In response to those comments, we solicited updated lynx habitat mapping data from the U.S. Forest Service, National Park Service, Montana DNRC, U.S. Bureau of Land Management, and Plum Creek Timber Company to confirm the proposed boundaries or make corrections to those boundaries where they either include significant areas of non-lynx habitat or leave out significant areas of lynx habitat that may contribute to lynx conservation. As a result of this inquiry, we identified several areas on the periphery of Units 3 and 5 that contain features essential to the conservation of lynx and may warrant inclusion inside the final critical habitat boundary, and areas that do not contain essential feature and may have been inappropriately included inside the boundary of the proposed revision. In general, where mapped lynx habitat corresponds to U.S. Forest Service lynx analysis units (LAU), we are considering the use of LAU boundaries to define the final designation. Where LAUs do not include significant lynx habitat or where they include large areas that are not mapped lynx habitat, we may use other landscape features such as roads, watershed boundaries, or contour lines to incorporate mapped lynx habitat into the final rule. LAUs are areas identified by the U.S. Forest Service that have significant lynx habitat and are delineated at the scale of the area required for a female home range. Because LAU boundaries are based on mapped lynx habitat as well as landscape features, we believe that the most important lynx habitat is generally found within LAUs. The following is a summary of specific changes to the proposal that we are considering that result in significant changes to the aerial extent of the proposed designation. The numbers reported below do not sum to the final size of the unit due to small changes to the boundary when fitting the boundary line to LAU boundaries.

Significant mapped lynx habitat exists on Montana DNRC lands between subunits 11 and 12. Including these lands in the designation would link the subunits into one and increase the area of the two subunits by approximately 60 square miles (155 square kilometers). Also, outside the eastern boundary of subunit 12 along the North Fork of the Flathead River, mapped lynx habitat extends east of the line identified in the February 2008 proposed revision, and we are considering changing the boundary to correspond to the Forest Service Lynx Analysis Unit (LAU) boundary there, incorporating an estimated 70 square miles (181 square kilometers) of additional area to subunit 12.

For subunit 16 we are considering, based on the comments received, to change the subunit's boundaries such that the subunit's eastern boundary follow the eastern boundary of Glacier National Park south (as it does in the February 2008 proposed revision) and then follow the eastern boundaries of U.S. Forest Service LAUs to the south to U.S. Highway 12. This would result in a reduction of approximately 124 square miles (321 square kilometers). The valley bottom areas of the southeastern portion of Unit 3 contains very little mapped lynx habitat and we are considering removing approximately 865 square miles (2,240 square kilometers) from the area north of Highway 12. This area is a mix of Helena National Forest, BLM, private, and Montana DNRC land. Based on the new information received, we would leave the mapped lynx habitat on BLM and private lands in the Garnet Mountain Range as separate critical habitat subunits.

Also in Unit 3, in the Swan/Clearwater River Valleys along the U.S. Highway 83 corridor, there is mapped lynx habitat both east and west of the Highway that occurs outside of the February 28, 2008, proposal. We are considering extending the boundary of critical habitat on both sides of the highway to incorporate mapped lynx habitat in this area, a change that would result in an increase of 104 square miles (269 square kilometers).

The changes being considered, based on information received, would result in a net decrease in the size of Unit 3 of approximately 833 square miles (2,157 square kilometers) leaving

approximately 10,471 square miles (27,120 square kilometers) in Unit 3.

In Unit 5, mapped lynx habitat indicates a lack of lynx habitat on much of the Custer National Forest that was included in the February 28, 2008, proposal. We are considering amending the northeastern boundary to more closely reflect the lack of mapped lynx habitat by using the northeastern LAU boundaries on the Custer National Forest as the critical habitat boundary there. This change would result in a net reduction of critical habitat area of approximately 705 square miles (1,826 square kilometers). In addition, on the east side of Unit 5, we are considering the use of Forest Service LAU boundaries to define the critical habitat boundary in this area, however, information submitted by the Forest Service indicates that much of the mapped lynx habitat in this area is insufficient to support snowshoe hares in the numbers required for lynx survival and reproduction. For this reason, we would not incorporate all mapped lynx habitat in this unit, but instead include only those LAUs that include the most important lynx habitat and also recent lynx records. This change would result in a net decrease in the area of the designation of 130 square miles (337 square kilometers). We also are considering amending the boundaries of critical habitat within Yellowstone National Park in the Area of the Lamar Valley and the Northern Range south of Gardiner to reflect the lack of mapped lynx habitat in this area. We would potentially use Yellowstone National Park LAU boundaries to describe the critical habitat boundary in this area for a net reduction of 546 square miles (1,414 square kilometers) in the designation. The above changes would result in a net decrease of 1,867 square miles (4,836 square kilometers) from Unit 5, leaving 8,723 square miles (22,592 square kilometers) in Unit 5.

We request comments and additional information on the mapping techniques that we are considering using to delineate critical habitat units.

Required Determinations—Amended

In our February 28, 2008, proposed revised rule (73 FR 10860), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document we affirm the information in our proposed rule concerning Executive Orders (E.O.) 13132, E.O. 12988, the Paperwork Reduction Act, the National Environmental Policy Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we revise our required determinations concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act, and E.O. 12630 (Takings).

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this proposed rule is significant and has reviewed the proposed revised rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

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

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

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

(d) Whether the rule raises novel legal or policy issues. OMB has determined that this rule is significant because it raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. This determination is subject to revision based on comments received from the public.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed revised designation of critical habitat for the Canada lynx would affect a substantial number of small entities, we considered the number of affected small entities within particular types of economic activities (*e.g.*, timber harvesting, livestock grazing, residential and related development, recreation activities, mining, and transportation). We considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

In our DEA of the proposed revised critical habitat designation, we evaluated the potential economic effects on small business entities from conservation actions related to the listing of the Canada lynx and proposed revised designation of the species' critical habitat. The activities affected by Canada lynx conservation efforts may include land development, transportation and utility operations, and conservation on public and tribal lands. The following is a summary of the information contained in the draft economic analysis:

(a) Development

According to the draft economic analysis, Canada lynx development-related costs account for less than 1 percent of forecast incremental costs, and is estimated at $8,130 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on development projects. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant economic impact on a substantial number of small businesses with respect to development activities.

(b) Forest Management

Potential costs to forest management in habitat proposed for designation account for another 16 percent of forecast costs. Undiscounted costs are estimated at $233,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on forest management. These costs are expected to be borne by Federal and State governments, private timber landowners, tribal landowners, and other private landowners across the units of the designation. The administrative costs would be divided among many entities and projects over a 20-year period. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant economic impact on small forest management businesses.

(c) Recreation

Future costs associated with managing recreation account for an additional 19 percent of forecast costs. Costs are estimated to be $285,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act associated with managing recreation (*i.e.*, reductions of snowmobile opportunities) in Unit 4 (North Cascades). Incremental costs would be incurred by State and Federal agencies. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant economic impact on a substantial number of small recreation businesses.

(d) Lynx Management Plans

Future costs associated with development of lynx management plans account for approximately one percent of forecast costs. Costs are estimated to be $12,300 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on lynx management plans by Federal agencies. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant economic impact on a substantial number of small businesses.

(e) Mining/Oil and Gas

Future costs associated with mining and oil and gas exploration and development activities account for an additional 8 percent of forecast costs. Costs are estimated at $115,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on mining and oil and gas projects by Federal agencies in Units 2, 4, and 5. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant economic impact on a substantial number of small mining or oil and gas businesses.

In summary, we have considered whether the proposed revised rule would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, this proposed revised rule would not have a significant impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211: Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As described above, this proposed rule is considered a significant regulatory action under E.O. 12866 due to potential novel legal and policy issues. OMB's guidance in M–01–27 for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. The DEA finds that none of these outcomes will result from the critical habitat designation for lynx (refer to Appendix B of the draft economic analysis). Thus, based on the information in the draft economic analysis, no energy-related incremental impacts associated with Canada lynx proposed revised critical habitat are expected other than administrative costs. Costs are estimated at $115,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on mining and oil and gas projects by Federal agencies in Units 2, 4, and 5. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with the following two exceptions: It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule would significantly or uniquely affect small governments. The draft economic analysis discusses potential impacts of critical habitat designation for the Canada lynx on timber management, recreation, land development, mining, oil and gas development, and the development of management plans. The analysis estimates costs of the rule to be $2.11 million at present value over a 20-year period ($142,000 annualized) assuming a 3 percent discount rate, and $1.49 million ($141,000 annualized) assuming a 7 percent discount rate. Most of the impacts are expected to affect Federal agencies through administrative costs associated with consultations under section 7 of the Act. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. The SBA does not consider the Federal Government to be a small governmental jurisdiction or entity. Consequently, we do not believe that the designation of critical habitat for the Canada lynx will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630: Takings

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing revised critical habitat for the Canada lynx in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for lynx does not pose significant takings implications.

Authors

The primary authors of this notice are the staff members of the Division of Endangered Species, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 9, 2008.

Mitchell Butler,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–24827 Filed 10–20–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 224 and 226

RIN 0648–XJ93; RIN 0648–AW77

Endangered and Threatened Species; Proposed Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon; Proposed Critical Habitat for the Gulf of Maine Distinct Population Segment of Atlantic Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of two public hearings; notice of extension of public comment period.

SUMMARY: We (NMFS) will hold two public hearings in Maine in November 2008 for the purposes of answering questions on the proposal to list the Gulf of Maine (GOM) Atlantic salmon distinct population segment (DPS) as endangered under the Endangered Species Act of 1973, as amended (ESA) and the NMFS proposal to designate critical habitat for the GOM DPS of Atlantic salmon. NMFS also extends the public comment period for the proposed critical habitat designation.

DATES: The hearings will be held on November 5, 2008, from 7 to 9 p.m. in Augusta, ME, and on November 6, 2008, from 7 to 9 p.m. in Brewer, ME. Informational sessions will be held prior to each hearing from 6 to 7 p.m.

NMFS extends the due date for public comments on the proposal to designate critical habitat for the GOM DPS of Atlantic salmon by 30 days, from November 4, 2008, to December 5, 2008. Comments must be received by December 2, 2008, for the proposed rule to list the GOM DPS as endangered under the ESA and December 5, 2008, for the proposal to designate critical habitat for the GOM DPS.

ADDRESSES: The November 5, 2008, hearing will be held at the Augusta Civic Center, 76 Community Dr., Augusta, ME, and the November 6, 2008, hearing will be held at Jeff's Catering, 15 Littlefield Way, Brewer, ME.

You may submit comments, identified by the RIN 0648–XJ93 (proposed listing rule) or RIN 0648–AW77 (proposal to designate critical habitat), by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Mail:* Assistant Regional Administrator, NMFS, Northeast Regional Office, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930
- *Fax:* For proposed listing decision fax comments to the attention of Jessica Pruden at (978) 281–9394; for proposal to designate critical habitat fax comments to the attention of Dan Kircheis at (207) 866–7342.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The proposed rule and status review report are also available electronically at the NMFS website at *http://www.nero.noaa.gov/prot_res/altsalmon/.*

FOR FURTHER INFORMATION CONTACT: For the proposal to list the GOM DPS as endangered, Rory Saunders, NMFS, at (207) 866–4049; or Jessica Pruden, NMFS, at (978) 281–9300 ext. 6532. For the proposal to designate critical habitat for the GOM DPS, Dan Kircheis, NMFS, at (207) 866–7320.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2008, we published a proposed rule (73 FR 51415) to list an expanded GOM DPS of Atlantic salmon as endangered under the Endangered Species Act of 1973 (ESA), as amended. On September 5, 2008, NMFS published a proposed rule (73 51747) to designate critical habitat for this expanded GOM DPS of Atlantic salmon. We stated that we would hold public hearings on these proposals. NMFS will accept oral comment regarding the proposed listing decision and critical habitat designation for the GOM DPS of Atlantic salmon at two public hearings.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jessica Pruden at (978) 281–9300 ext 6532 at least 7 working days prior to the hearing date.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 16, 2008.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–25076 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 73, No. 204
Tuesday, October 21, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Ochoco National Forest, Deschutes National Forest; Invasive Plant Treatment Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The USDA Forest Service will prepare a Supplemental Environmental Impact Statement (SETS) to document and disclose the potential environmental effects of proposed invasive plant treatment activities on the Deschutes National Forest, Ochoco National Forest and the Crooked River National Grassland. An FEIS was made available in January 2008. A Record of Decision was signed in January 2008 and subsequently withdrawn. This project evaluates site-specific treatments of invasive plants; including manual, mechanical, cultural, biological and herbicide treatment methods as well as the use of prescribed fire. Forest Plan direction, including amendments identified in the Pacific Northwest Region Invasive Plant Program Environmental Impact Statement, will be incorporated into all alternatives, including the Proposed Action.

DATES: A Draft SEIS is expected to be available in February of 2009, and a Final SEIS in May 2009.

ADDRESSES: Send written comments (*i.e.,* letter or fax) to Beth Peer, Invasive Plant Team Leader, Bend/Ft. Rock Ranger District, 1230 NE. 3rd, Suite A–262, Bend, OR 97701. The FAX number is 541–383–4700. Submit e-mail comments to: *comments-pacificnorthwest-deschutes-bend-ftrock@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Beth Peer, Environmental Coordinator and Invasive Plant Team Leader, Bend/Ft. Rock Ranger District, 1230 NE. 3rd St., Suite A–262, Bend, Oregon 97701, phone (541) 383–4769. E-mail *bpeer@fs.fed.us.* Maps of proposed treatment sites and other information about the project are available on the Internet at *http://www.fs.fed.us/r6/invasiveplant-eis/sitespecific/DES/.*

Approximately 52,000 acres of the total 3 million acres of forests and grasslands on the Ochoco National Forest, Deschutes National Forests and Crooked River National Grassland are degraded by infestations of invasive, non-native plants. These infestations have been identified on approximately 1,900 individual locations or sites. These infestations have a high potential to expand and further degrade forests and grasslands. Infested areas represent potential seed sources for further invasion onto neighboring lands.

Invasive plants create a host of adverse environmental effects which are harmful to native ecosystem processes. Examples of these effects include: Displacement of native plants; reduction in functionality of habitat and forage for wildlife and livestock; loss of threatened, endangered, and sensitive species; increased soil erosion and reduced water quality; alteration of physical and biological properties of soil, including reduced soil productivity; changes to the intensity and frequency of wildfires; budget impacts that limit or reduce land management opportunities due to high costs or dollars spent for controlling invasive plants; and loss of recreational opportunities. Without action, invasive plant populations will continue to grow; compromising our ability to manage for healthy functioning ecosystems.

Proposed Action

The USDA Forest Service; Deschutes National Forest, Ochoco National Forest, and Crooked River National Grassland propose to treat areas currently identified with invasive plant infestations and to provide timely treatments for expanded and newly identified invasive plant sites. Treatments, depending upon the species of invasive plants and site characteristics, would include the use of prescribed fire; manual, mechanical, cultural, chemical and biological control methods. The proposed treatments would enhance our ability to protect native ecosystems from invasive, non-native plants. Some of the infested areas are small in size, while others are extensive.

Invasive plant treatments are proposed on approximately 15,000 acres that are known to be infested by invasive plants. The Proposed Action will also analyze treatments for the likely expansion of these existing sites, and for new (unidentified) invasive plant sites in areas most susceptible to new introductions.

Treatment methods are based upon information such as the biology of a particular invasive plant species, invasive plant site location, site type, and size of the infestation. Long-term site goals would be established for infested areas. Site goals are based upon treatment options, monitoring and revegetation potential. Prescriptions are based upon Integrated Pest Management principles. Integrated Pest Management (IPM) is a process by which one selects and applies a combination of management techniques (Example: Prevention then manual or mechanical treatments, followed by biological treatments) that, together, control a particular invasive plant species or infestation efficiently and effectively. IPM seeks to combine two or more management techniques which interact to provide better control than any one of the actions might provide alone. It is typically species-specific, site-specific and designed to be practical; with minimum risk to nontarget species or the surrounding environment, including wildlife species and human health.

The proposal also includes an Early Detection/Rapid Response strategy to timely identify and treat new sites. Actual annual treatment acres associated with future sites would likely vary because of variations in invasive plant spread and occurrence of new invasive plant introductions. Actual annual treatment will likely decline over the life of this plan because of the effectiveness of these treatment actions.

Based upon currently known sites with weed infestations, the Proposed Action includes approximately 25 acres of biological control treatment, approximately 400 acres of herbicide only treatment, approximately 14,000 acres of herbicide plus one or more of the following: Manual, biological, cultural, mechanical, fire.

Scoping

The Forest Service conducted scoping for this project in 2005. The information

was used in development of the DEIS. CEQ NEPA regulations exclude scoping from the procedures for supplementing environmental impact statements (40 CFR 1 502.9(c)(4)).

In addition to inviting public comments on the DSEIS, the public may visit Forest Service officials familiar with this project, at any time during the analysis and prior to the decision. To facilitate public participation, additional opportunities may include public meetings and/or field trips. Dates of meetings and field trips are yet to be determined.

Responsible Official

The responsible officials will be John Allen, Forest Supervisor, Deschutes National Forest, 1230 NE. 3rd, Suite A–262, Bend, OR 97701 and Jeff Walter, Forest Supervisor, Ochoco National Forest, 3160 NE. 3rd Street, Prineville, OR 97754.

Comments

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful, and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC.* 435 U.S. 519. 553 [1978]). Also, environmental objectives that could be raised at the draft EIS stage but that are not raised until after the completion of the final EIS may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritage, Inc.* v. *Harris*, 490 F. Supp. 1334 [E.D.Wis. 1980]). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period, so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if the comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provision of the National Environmental Policy Act (40 CFR 1503.3) in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR Part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Comments on the draft SEIS will be analyzed, considered, and responded to by the Forest Service in preparing the final SEIS. The final SEIS is scheduled to be completed in May 2006. There will be two responsible officials for this multi-Forest SEIS. Duties of the Responsible Official will be shared between John Allen, Forest Supervisor of the Deschutes National Forest, and Jeff Walter, Forest Supervisor of the Ochoco National Forest. They will consider comments, responses, and environmental consequences discussed in the final SEIS, and applicable laws, regulations, and policies in making a decision regarding this proposed action. The responsible officials will document the decision and rationale for the decision in the Record of Decision. It will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: October 2, 2008.

John Allen,

Deschutes National Forest Supervisor.

Dated: October 14, 2008.

Jeff Walter,

Ochoco National Forest Supervisor.

[FR Doc. E8–24841 Filed 10–20–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Pacific Northwest Region, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Pacific Northwest Recreation Resource Advisory Committee will meet in Portland, OR. The purpose of the meeting is to review and provide recommendations on recreation fee proposals for facilities and services offered on lands managed by the Forest Service and Bureau of Land Management in Oregon and Washington, under the Federal Lands Recreation Enhancement Act of 2004.

DATES: The meeting will be held on October 30, 2008 from 8:30 a.m.–5 p.m. and October 31, 2008 from 8:30 a.m.–4 p.m. A public input session will be provided at 10:30 a.m. on both days of the meeting. Comments will be limited to three minutes per person. The Designated Federal Official has discretion to not convene the committee on October 31, 2008, if necessary.

ADDRESSES: The meeting will be at the Residence Inn by Marriott, Lloyd Center, 1710 NE. Multnomah St., Portland, Oregon 97232. Send written comments to Dan Harkenrider, Designated Federal Official for the Pacific Northwest Recreation RAC, 902 Wasco Street, Suite 200, Hood River, OR 97031, 541–308–1700 or *dharkenrider@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Dan Harkenrider, Designated Federal Official, 902 Wasco Street, Suite 200, Hood River, OR 97031, 541–308–1700.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Recreation RAC discussion is limited to Forest Service and Bureau of Land Management staff and Recreation RAC members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: October 10, 2008.

Calvin N. Joyner,

Acting Regional Forester, Pacific Northwest Region, USDA Forest Service.

[FR Doc. E8–24810 Filed 10–20–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC45

Stewardship Contracting, FSH 2409.19, Chapter 60

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of final directive; response to comment.

SUMMARY: The Forest Service is issuing a final directive to Forest Service Handbook 2409.19, chapter 60, Stewardship Contracting. The directive provides direction to implement the provisions as authorized in the Tribal Forest Protection Act (TFPA) of 2004 (25 U.S.C. 3115a). On December 26, 2006, the Forest Service published in the **Federal Register** for public notice and comments an interim directive regarding guidance for, TFPA proposals. The agency considered all the comments and made a number of changes to the final directive in response.

DATES: Final directive 2409.19_60 is effective October 21, 2008.

ADDRESSES: The full text of the final directive is available electronically on the World Wide Web at *http://www.fs.fed.us/im/directives.* The administrative record for this final directive is available for inspection and copying at the office of the Director, Office of Tribal Relations, USDA Forest Service, 2nd Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, from 8:30 a.m. to 4 p.m., Monday through Friday, except holidays. Those wishing to inspect the administrative record are encouraged to call Marsha Butterfield at (202) 205–4095 beforehand to facilitate access to the building.

FOR FURTHER INFORMATION CONTACT: Marsha Butterfield, Office of Tribal Relations, USDA Forest Service, (202) 205–4095.

SUPPLEMENTARY INFORMATION: The Forest Service Directive System consists of the Forest Service Manual (FSM) and the Forest Service Handbook (FSH), which contain the Agency's policies, practices, and procedures and serve as the primary basis for the internal management and control of programs and administrative direction to Forest Service employees. The directives for all agency programs are set out on the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.*

The FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff to plan and execute programs and activities, while the FSH is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM.

On December 26, 2006, the Forest Service published an interim directive in the **Federal Register** (71 FR 247) for 60-day public notice and comment. The Forest Service received six letters in response to the interim directive. Comments received were from Tribes or Tribal Organizations. A summary of comments received and the agency's responses follow:

General Comments

The Forest Service appreciates the comments that were provided. Generally, respondents like and support the policy. Respondents strongly supported the availability of sole source contracting authorities and the section giving clear direction that the agency may provide advice and information to Indian tribes in advance of tribes' submitting TFPA proposals. Several respondents felt partnerships and trust obligations seem to be what is missing from the draft policy. Forest Service Manual 1563.04g (FSM) directs Forest Supervisors to seek opportunities to develop partnerships with Tribes under all appropriate Forest Service authorities.

Comment. Several respondents felt the policy was difficult to figure out without the benefit and context of the surrounding provisions into which the new provisions are being inserted.

Response. The complete text of chapter 60, FSH 2409.19 was available for review. The agency did not receive any requests for the complete text.

Comments on Specific Sections of the TFPA

Section 60.3 Policy. This section adds new direction for preliminary collaboration and evaluations for a potential Tribal Forest Protection Act project.

Comment. Respondents strongly supported clear direction that the Forest Service may provide advice and information to Indian Tribes in developing TFPA proposals.

Response. The agency is committed to implementation of the TFPA and providing assistance and advice in potential TFPA proposals.

Section 60.4 Responsibility. This section updates responsibilities of the Regional Foresters, Forest Supervisors, District Rangers, Director of Forest Management, and Director of Office of Tribal Relations.

Comment. Respondents appreciated the policy including agency consultation with a potential applicant tribe before it develops and submits its application.

Response. The agency is committed to the implementation of the TFPA and consultation with Tribes.

Section 60.5 Definitions. This section adds definitions for Bordering on and Adjacent to, Indian Forest Land and Rangeland, Indian Tribe, National Forest System Lands, Public Lands, Secretary and Tribal Community.

Comment. Concerns were expressed regarding the word "proximity" used in the definition of "bordering on or adjacent to." There was concern that it may be too restrictive for appropriate implementation of the TFPA. Respondents said there must be flexibility in the definition so that TFPA projects are not rejected based upon narrow interpretations because of the use of the word "proximity." The word "proximity" is not used in the Act.

Response. The definition for bordering on or adjacent to has been removed from the final directive. Section 60.4 Responsibilities provides direction on determination of what borders on or is adjacent to after consultation with the Indian tribe.

Section 61.18 Response to Tribal Requests Made Under the Tribal Forest Protection Act. This section provides direction for handling responses to tribal requests made under the Tribal Forest Protection Act.

Comment. Respondents were concerned that other options available for implementing TFPA projects, in addition to stewardship contracting, need to be included along with stewardship contracting. Respondents requested that "or other instrument" be added after "stewardship contracting" throughout the policy. Respondents said stewardship contracting will most likely not be the only means by which TFPA projects will be carried out.

Response. The words "or other instrument" was added after "stewardship contracting" where applicable throughout the policy.

Section 61.7 Notice of Denial Under the Tribal Forest Protection Act. This section provides direction for notice of denial for projects submitted under the Tribal Forest Protection Act.

Comment. Respondents requested "stewardship" be removed from Section 61.7—Notice of Denial. Respondents expressed that Tribes enter into agreements other than just stewardship contracts and agreements.

Response. The word stewardship was removed from the text.

Comment. Respondents wanted "pursuant to the TFPA" added after "with the FS" to clarify the point.

Response. "Pursuant to the TFPA" was added after "proposal" for clarification.

Section 62.14 Contract Type Under the Tribal Forest Protection Act.

Comment. Respondents strongly supported the availability of sole source contracting authorities.

Response. Under the Tribal Forest Protection Act of 2004 the Forest Service has the authority to consider a request made by a tribe to protect Indian forest or range lands by resource type projects on adjacent Federal lands. If the proposal holds merit, the Forest Service may award without further competition as long as the procedures under this authority are used.

General Response

Developing and sustaining partnerships is a fundamental action which facilitates the fulfillment of the Federal trust responsibility. The trust responsibility is a legally enforceable obligation, a duty, on the part of the U.S. Government to protect the rights of Federally Recognized Indian Tribes and Alaska Natives.

The United States Government has a unique legal and governmental relationship with American Indian tribes as set forth in the U.S. Constitution, treaties, statutes and Federal court decisions. The Forest Service shares in the Federal government's overall trust responsibility to Indian tribes. The primary step in fulfilling agency responsibilities is for line officers to contact Indian tribal governments through their elected officials and consult with them on proposed actions that may have an effect on tribal rights, resources or general interests.

Regulatory Certifications

Regulatory Impact

This final directive has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. This final directive would not have an annual effect of $100 million or more on the economy, nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local Governments. This final directive would not interfere with an action taken or planned by another agency, nor raise new legal or policy issues. Finally, this final directive would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final directive is not subject to OMB review under Executive Order 12866.

Proper Consideration of Small Entities

This final directive has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this final directive would not have a significant economic impact on a substantial number of small entities as defined by SBREFA.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions" that do not significantly affect the quality of the human environment. This final directive sets forth administrative procedures for implementation of the TFPA and, as such, has no direct effect on Forest Service decisions for land management activities.

No Takings Implications

This final directive is limited to establishment of administrative procedures to respond to American Indian and Alaska Native proposed work projects to enter into contracts and/or agreements with the Forest Service. Projects would conduct land management activities on Forest Service and BLM lands adjacent to Indian trust land and Indian communities.

This final directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the final directive does not pose the risk of a taking of private property.

Federalism

Executive Order 13132, Federalism, requires consultation with State and local officials when planned regulations and other policies have substantial direct effects on the States. This final directive establishes procedures for the TFPA which will be administered by the Forest Service and implemented by participating Indian tribes. Therefore, the agency has determined that there are no direct effects on the States and no further assessment of federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

In accordance with Forest Service policy and Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, formal consultation was conducted with Indian tribes on development of this new policy in 2005. The draft TFPA policy was sent to regional FS offices, where it was then sent to tribes in their respective regions that have tribal land, rangeland, or tribal communities bordering on or adjacent to NFS land, for consultation with those tribes. A 60-day comment period was provided for the consultation and comment.

Energy Effects

This final directive has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed guideline does not constitute a significant energy action as defined in the Executive order.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this final directive on Tribal governments and the private sector. This final directive does not compel the expenditure of $100 million or more by any Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Civil Justice

This final directive has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this final directive as final, (1) All State and local laws and regulations that conflict with this policy or that would impede full implementation of this policy will be preempted (2) no retroactive effect would be given to this final directive; and (3) this final directive would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Conclusion

This final directive implements the provisions of the Tribal Forest Protection Act which provides a tool for Indian tribes, as defined by the Act, to propose work and enter into contracts and agreements with the Forest Service (FS) or Bureau of Land Management (BLM) to restore land under the

jurisdiction of either agency, or to reduce threats, including from fire or disease, on FS or BLM-administered lands adjacent to or bordering on Indian trust land and Indian communities.

The full text of this handbook is available on the World Wide Web at *http://www.fs.fed.us./im/directives.* Single paper copies are available upon request from the address and telephone numbers listed earlier in this notice as well as from the nearest regional office, the location of which are also available on the Washington Office headquarters homepage on the World Wide Web at *http://www.fs.fed.us.*

Dated: October 9, 2008.

Charles Myers,

Associate Deputy Chief, National Forest System.

[FR Doc. E8–25066 Filed 10–17–08; 11:15 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Membership of the Economic Development Administration Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of Membership on the Economic Development Administration's Performance Review Board.

SUMMARY: In accordance with 5 U.S.C., 4314(c)(4), Department of Commerce (DOC) announce the appointment of persons to serve as members of the Economic Development Administration's (EDA) Performance Review Board (PRB). The EDA PRB is responsible for reviewing performance ratings, pay adjustments and bonuses of Senior Executive Service (SES) members, Presidential Rank Awards. The appointment of these members will be for a period of twenty-four (24) months.

DATES: *Effective Date:* The effective date of service of appointees to the Economic Development Administration Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Deborah Martin, Director, Office of Executive Resources—Operations, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–3600.

SUPPLEMENTARY INFORMATION: The names, position titles, and type of appointment of the members of the EDA/PRB are set forth below:

Department of Commerce, Economic Development Administration, 2008–2010 Performance Review Board Membership

Department of Commerce/Economic Development Administration

Lisa Casias, Director for Financial Management and Deputy Chief Financial Officer (Chairperson).

Deborah Jefferson, Director for Human Resources Management.

Otto Barry Bird, Chief Counsel for Economic Development.

Matthew Crow, Deputy Assistant Secretary for External Affairs.

Dated: October 15, 2008.

Deborah Martin,

Director, Office of Executive Resources—Operations.

[FR Doc. E8–24942 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

Membership of the National Telecommunications and Information Administration Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of Membership on the National Telecommunications and Information Administration's Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), Department of Commerce (DOC) announce the appointment of persons to serve as members of the National Telecommunications and Information Administration's (NTIA) Performance Review Board (PRB). The NTIA PRB is responsible for reviewing performance ratings, pay adjustments and bonuses of Senior Executive Service (SES) members, and Presidential Rank Awards. The appointment of these members will be for a period of twenty-four (24) months.

DATES: *Effective Date:* The effective date of service of appointees to the National Telecommunications and Information Administration Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Deborah Martin, Director, Office of Executive Resources—Operations, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–3130.

SUPPLEMENTARY INFORMATION: The names, position titles, and type of appointment of the members of the NTIA/PRB are set forth below:

Department of Commerce, National Telecommunications and Information Administration 2008–2010 Performance Review Board Membership

Department of Commerce/National Telecommunications and Information Administration

Daniel C. Hurley, Director, Communications and Information Infrastructure Assurance Program (Chairperson).

Bernadette McGuire-Rivera, Associate Administrator for Telecommunications and Information Applications.

Renee Macklin, Chief Information Officer, International Trade Administration.

Alan W. Vincent, Associate Administrator for Telecommunications Sciences and Director, Institute for Telecommunication Sciences.

Michael J. Crison, Director, Requirements, Planning and Systems Integration Division.

Karl B. Nebbia, Associate Administrator for Spectrum Management.

Dated: October 15, 2008.

Deborah Martin,

Director, Office of Executive Resources—Operations.

[FR Doc. E8–24943 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–847)

1–Hydroxyethylidene–1, 1–Diphosphonic Acid from India: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that 1–hydroxyethylidene–1, 1–diphosphonic acid (HEDP) from India is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to requests from interested parties, we are postponing for 60 days the final

determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

EFFECTIVE DATE: October 21, 2008.

FOR FURTHER INFORMATION CONTACT: Brian Smith and Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1766 and (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 2008, the Department initiated an antidumping duty investigation of HEDP from India. *See 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from the Republic of India and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 20023 (April 14, 2008) (*Initiation Notice*). The petitioner in this investigation is Compass Chemical Co. (the Petitioner).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. *See Initiation Notice*, 73 FR at 20023; *see also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

On May 12, 2008, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of HEDP from India are materially injuring the U.S. industry and the ITC notified the Department of its findings. *See 1–Hydroxyethylidene–1, 1–Diphosphonic Acid (HEDP) from China and India Investigation Nos. 731–TA–1146–1147 (Preliminary)*, 73 FR 28507 (May 16, 2008).

On May 6, 2008, we selected Aquapharm Chemicals Private Limited (Aquapharm) as the mandatory respondent in this proceeding. *See* Memorandum from James Maeder, Office Director, to Stephen J. Claeys, Deputy Assistant Secretary, entitled: "Antidumping Duty Investigation of 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from India—Selection of Respondents for Individual Review," dated May 6, 2008. We subsequently issued the antidumping questionnaire to Aquapharm on May 9, 2008.

On June 16, 2008, Aquapharm submitted its response to section A of the questionnaire (*i.e.*, the section involving general information). On July 15, 2008, Aquapharm responded to sections B and C of the questionnaire (*i.e.*, the sections involving sales to the home and U.S. markets, respectively).

On July 30, 2008, the petitioner made a timely request pursuant to 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination in this investigation. On August 22, 2008, pursuant to section 733(c)(1)(A) of the Act, the Department postponed the preliminary determination until no later than October 15, 2008. *See 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from the Republic of India and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 73 FR 49646 (August 22, 2008).

During August and September 2008, the Department requested additional information from Aquapharm regarding its responses to sections A through C of the questionnaire. Aquapharm provided this information in September and October 2008.

On October 1, 2008, Aquapharm requested that in the event of an affirmative preliminary determination in this investigation, the Department: 1) postpone its final determination by 60 days in accordance with 19 CFR 351.210(2)(ii) and 735(a)(2)(A) of the Act; and 2) extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period.

On October 6, 2008, the petitioner requested that in the event of a negative preliminary determination in this investigation, the Department postpone the final determination by 60 days in accordance with 19 CFR 351.210(b)(2)(i) and section 735(a)(2)(B) of the Act.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters, who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 1, 2008, Aquapharm requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Aquapharm requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The period of investigation (POI) is January 1, 2007, to December 31, 2007. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.

Scope of Investigation

The merchandise covered by this investigation includes all grades of aqueous, acidic (non–neutralized) concentrations of 1–hydroxyethylidene–1, 1–diphosphonic acid[1], also referred to as hydroxethlylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809–21–4. The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to

[1] $C_2H_8O_7P_2$ or $C(CH_3)(OH)(PO_3H_2)_2$

submit comments within 20 calendar days of publication of the *Initiation Notice*. No parties submitted scope comments in this proceeding.

Fair Value Comparisons

To determine whether sales of HEDP from India to the United States were made at LTFV, we compared the export price (EP) or constructed export price (CEP) to normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1) of the Act, we compared POI weighted–average EPs and CEPs to POI weighted–average NVs. *See* discussion below.

U.S. Date of Sale

It is the Department's normal practice to use the date of invoice as the date of sale. The Department's regulations provide that the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (e.g., price and quantity). *See* 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–92 (CIT 2001). Aquapharm reported invoice date as its date of sale for its home market sales during the POI. However for its U.S. sales during the POI, Aquapharm reported either the invoice date, the date of what it claimed was a "long–term contract," or purchase order date as the date of sale. For its sales of HEDP in drums made to one U.S. customer (hereafter referred to as "Customer A") during the POI and sales of HEDP in bulk form made to the same customer after February 2, 2007, Aquapharm used the date of an email acceptance of its price/quantity offer from the customer (which Aquapharm refers to as a "long–term contract" in its questionnaire responses) as the date of sale, claiming that the essential terms of sale did not change after the email acceptance.[2] For its sales of HEDP in bulk form made to Customer A before February 2, 2007, Aquapharm based the date of sale on the date of the sales invoice issued at the time the HEDP was shipped from India, because it did not have a "long–term contract" in place with Customer A for HEDP in bulk form before February 2, 2007. For its POI HEDP sales to another U.S. customer (hereafter referred to as "Customer B"), Aquapharm used the date of the purchase order from the customer as the date of sale, claiming that the essential terms of sale did not change after receipt of the customer's purchase order.

In this case, our examination of the submitted sample sales documentation relevant to Customer A indicates that the "long–term contract" referred to by Aquapharm is actually an exchange of emails with its customer conveying the RFP, RFP offer and acceptance of the RFP offer. This email exchange is not clear with respect to certain terms of sale (*e.g.*, payment terms), and there is no evidence on the record to suggest that it was binding on the parties. With respect to the submitted sales documentation relevant to Customer B, the purchase order does not appear to establish all essential terms of sale (*e.g.*, payment terms). Moreover, the respondent has not sufficiently demonstrated that material changes to the purchase order and/or "long–term contract" were not possible. In addition, with respect to the sales made to Customer A, the respondent has not sufficiently demonstrated that changes to the material terms of sale between the issuance of the invoice at the time of shipment of the subject merchandise from India ("first invoice") and the invoice to the customer were not possible.

Therefore, for purposes of the preliminary determination, we have used the date of the sales invoice issued to the U.S. customer as the date of sale for all of the respondent's POI U.S. sales of HEDP. As discussed above, the terms of the purchase order or "long–term contract" did not appear to be binding on the parties, nor did it appear to establish all essential terms of sale. Furthermore, the respondent has not sufficiently demonstrated its claim that in the normal course of business no changes to the material terms of sale are possible between the date of "long–term contract" or purchase order, and the date of invoice to the customer.

U.S. Sales Type Designation

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) *before the date of importation* by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States ." (Emphasis added.) Section 772(b) defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States *before or after the date of importation* by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter ." (Emphasis added.)

Aquapharm characterized its U.S. sales to Customer A as EP sales, and its sales to Customer B as both EP and CEP depending on the sales/distribution channel.[3] With respect to its sales to Customer A, Aquapharm claims that because the essential terms of sale are set by it in India on the date of "long–term contract" (or date of "first invoice" in the case of sales of HEDP in bulk form before February 2, 2007) prior to importation of the subject merchandise into the United States, these sales should be classified as EP sales. However, only after the merchandise enters the United States, is placed in an unaffiliated warehouse and is released for delivery to Customer A does Aquapharm issue the sales invoice to Customer A.

Given that we have preliminarily determined that the date of the sales invoice issued to the U.S. customer is the appropriate basis for the U.S. date of sale, Aquapharm's EP sales classification with respect to Customer A no longer holds because the invoice is issued to the customer, and thus the sale is made, after the merchandise is imported into the United States. Therefore, for the preliminary determination, we are treating all of Aquapharm's U.S. sales to Customer A as CEP sales transactions, consistent with the definition of CEP under section 772(b) of the Act, because the sales were made after importation of the subject merchandise into the United States.

[2] The sales process associated with Customer A is as follows: Customer A sends a request for proposal (RFP) to Aquapharm via email for certain projected annual quantities of HEDP. Aquapharm emails its RFP price offer for the stated quantities back to the customer. Aquapharm claims that the terms of sale do not change after the customer has accepted Aquapharm's offer via email. Customer A requires that Aquapharm maintain inventory in the United States at an unaffiliated warehouse for logistical convenience. Aquapharm issues two invoices for sales made to Customer A: it issues the first invoice upon shipment of the subject merchandise to the unaffiliated U.S. warehouse (this invoice does not go to the U.S. customer) and then issues a corresponding invoice to the customer at the time of delivery of the subject merchandise from the U.S. warehouse to the customer.

Irrespective of its date of sale claims with respect to sales made to Customer A, Aquapharm initially reported all U.S. sales made to Customer A pursuant to invoices issued at the time of shipment from India which fell within the POI, not invoices actually issued to the customer at the time of delivery which fell within the POI. Pursuant to the Department's request, Aquapharm subsequently revised its U.S. sales reporting to also include any sales of subject merchandise made to Customer A for which the date of the sales invoice issued to the customer fell within the POI.

[3] We have accepted Aquapharm's sales type designation for sales made to Customer B for purposes of the preliminary determination.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, we calculated EP for those sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States. We based EP on the packed price to unaffiliated purchasers in the United States. Where appropriate, we adjusted prices for billing adjustments. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from plant to the port of exportation, foreign inland insurance, foreign brokerage and handling, U.S. brokerage and handling, international freight, U.S. inland freight to customer, marine insurance, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees).

Pursuant to section 772(b) of the Act, we calculated CEP for those sales where the subject merchandise was sold in the United States after the date of importation by or for the account of the producer or exporter to a purchaser not affiliated with the producer or exporter.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. When appropriate, we adjusted prices for billing adjustments. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from plant to the port of exportation, foreign inland insurance, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and warehouse expenses. Consistent with the U.S. date of sale determination discussed above, we treated warehouse expenses as pre–sale expenses associated with the movement of the subject merchandise to the U.S. market. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, credit expenses, commissions, and bank charges), and indirect selling expenses (including inventory carrying costs). We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. *See* Calculation Memorandum dated October 15, 2008, for further discussion of the CEP profit calculation.

Normal Value

A. Home Market Viability and Comparison Market Selection

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Aquapharm'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. Based on this comparison, we determined that Aquapharm had a viable home market during the POI. Consequently, we based NV on home market sales.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is that of the starting–price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses, and profit. For EP, the U.S. LOT is also the level of the starting–price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In this investigation, we obtained information from Aquapharm regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution.

As discussed above in the "U.S. Date of Sale" and "U.S. Sales Type Designation" sections of this notice, for purposes of this preliminary determination, we relied on the sales invoice issued to the U.S. customer for determining the U.S. date of sale and Aquapharm's U.S. sales reporting requirement. As a result of relying on the sales invoice to the U.S. customer as the basis for determining the date of sale, we also designated all of Aquapharm's sales to Customer A as CEP sales. Therefore, we have taken this sales reclassification determination into account in our preliminary LOT analysis below.

Aquapharm had CEP sales in the U.S. market through the following channel of distribution: sales through an unaffiliated U.S. selling agent to two unaffiliated U.S. distributors of HEDP maintained in inventory at an unaffiliated U.S. warehouse (Channel 1). In addition, Aquapharm had EP sales in the U.S. market through the following channel of distribution: direct sales/shipments to an unaffiliated U.S. distributor (Channel 2).

We examined the selling activities performed for both U.S. sales channels and found that Aquapharm performed the following selling functions for each channel: sales forecasting, order input/processing, direct sales personnel, packing, freight and delivery services, inventory maintenance, technical assistance, warranty service, and after–sales service. These selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) warehousing and inventory; and 4) warranty and technical support. Accordingly, based on the four selling function categories, we find that Aquapharm performed sales and marketing, freight and delivery services, and warranty and technical services for U.S. sales. Although Aquapharm performed additional freight and delivery functions (such as repacking) and warehousing functions for its sales through Channel 1, we did not find these differences to be material selling function distinctions which are significant enough to warrant a separate LOT in the U.S. market. Therefore, we preliminarily determine that there is one LOT in the U.S. market because Aquapharm performed essentially the same selling functions for all U.S. sales.

With respect to the home market, Aquapharm made sales through the following channels of distribution: 1) sales to unaffiliated end–users (Channel 1); and 2) sales to unaffiliated distributors (Channel 2). We examined the selling activities performed for each home market sales channel and found that Aquapharm performed the following selling functions for sales made through both channels: sales forecasting, order input/processing, advertising, direct sales personnel, sales/marketing support, market research, packing, freight and delivery services, inventory maintenance, technical assistance, and warranty service. Accordingly, based on the four selling function categories, we find that Aquapharm performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services in the home market. Moreover, we did not find any significant distinctions between the selling functions Aquapharm performed in each home market channel to warrant a separate LOT in the home market. Therefore, we preliminarily determine that there is one LOT in the home market because Aquapharm performed essentially the same selling functions for all home market sales.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for home market sales are either performed at the same degree of intensity as, or vary only slightly from, the selling functions performed for U.S. sales. Specifically, we found that with respect to the four selling function categories, there are only slight differences in the level of intensity between the home and U.S. markets which are not a sufficient basis to determine separate LOTs between the two markets. Therefore, we find that the single NV LOT and single U.S. LOT are the same. Accordingly, we matched U.S. and home market sales at the same LOT.

C. Calculation of Normal Value Based on Comparison Market Prices

We based NV for Aquapharm on delivered prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for inland freight expenses and inland insurance expenses, under section 773(a)(6)(B)(ii) of the Act. Where appropriate, we also added freight and insurance revenue to the starting price.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance–of-sale adjustments for imputed credit expenses and bank charges. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, for comparisons to CEP, we made an adjustment to NV for home market indirect selling expenses and inventory carry costs to offset U.S. commissions. We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we intend to verify all information relied upon in making our final determination for Aquapharm.

Preliminary Determination

The weighted–average dumping margins in the preliminary determination are as follows:

Manufacturer/Exporter	Weighted–Average Margin (percent)
Aquapharm Chemicals Pvt. Ltd.	3.91
All Others	3.91

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all entries of HEDP from India as described in the "Scope of Investigation" section that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margins, as indicated above. These suspension–of-liquidation instructions will remain in effect until further notice.

All Others Rate

Section 735(c)(5)(4) of the Act provides that the estimated "All Others" rate shall be an amount equal to the weighted average of the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Aquapharm is the only respondent in this investigation for which the Department calculated a company–specific rate. Therefore, for purposes of determining the "All Others" rate and pursuant to section 735(c)(5)(4) of the Act, we are using the weighted–average dumping margin calculated for Aquapharm, as referenced above. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30755 (June 8, 1999); *Final Affirmative Countervailing Duty Determination: Pure Magnesium From Israel*, 66 FR 49351, 49353 (September 27, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007).

Disclosure

We will disclose the calculations performed in connection with our preliminary determination to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, pursuant to section 735(b)(2) of the Act, 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 imports of HEDP from India are materially injuring, or threaten material injury to, the U.S. industry. Because we have postponed the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination within 45 days of our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the verification report in this proceeding. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and

rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 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. At the hearing, oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 15, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–25026 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–934]

1-Hydroxyethylidene-1,1-Diphosphonic Acid From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

DATES: *Effective Date:* October 21, 2008.

SUMMARY: The Department of Commerce (the "Department") preliminarily determines that 1-hydroxyethylidene-1, 1-diphosphonic acid ("HEDP") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The estimated dumping margins are shown in the "Preliminary Determination Margins" section of this notice.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor or Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5831 and (202) 482–0679, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 2008, the Department received a petition concerning imports of HEDP from the PRC filed in proper form by Compass Chemical International LLC ("Petitioner"). *See* "Request for the Imposition of Antidumping Duties on Imports of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China and Republic of India," dated March 19, 2008 ("Petition"). The Department initiated an antidumping duty investigation of HEDP from the PRC on April 8, 2008. *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the Republic of India and the People's Republic of China: Initiation of Antidumping Duty Investigations,* 73 FR 20023 (April 14, 2008) ("*Initiation Notice*").

On April 9, 2008, the Department requested quantity and value ("Q&V") information from the 10 companies that are identified in the Petition as potential producers or exporters of HEDP from the PRC. *See* Exhibit AD–3 of the Petition. The Department received timely responses to its Q&V questionnaire from the following companies: Changzhou Wujin Fine Chemical Factory Co., Ltd. ("Wujin Fine Chemical"), Changzhou Kewei Fine Chemical Factory ("Kewei"), BWA Water Additives U.S. LLC ("BWA"), Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd. ("Wujin Water"), and Jiangsu Jianghai Chemical Group Co., Ltd ("Jiangsu Jianghai").[1] Six companies to which the Department sent the Q&V questionnaire received the questionnaire but did not respond. These non-responsive companies were Kelien Chemical Co., Ltd., Cathay Pigments/Advanced Chemical Ltd., Jiangyin Boxin Chemical Co., Ltd., Changzhou Kejia Chemical Co., Ltd., Shandong Taihe Water Treatment Co., Ltd., and Hebei Fuhui Water Treatment Co., Ltd. ("Non-Responsive Companies").

On May 2, 2008, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of HEDP from the PRC. *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From China and India, Investigation Nos. 731-TA–1146 and 731–TA–1147 (Preliminary),* 73 FR 28507 (May 16, 2008).

On May 30, 2008, the Department selected Wujin Water and Kewei as mandatory respondents and issued antidumping questionnaires to the companies. *See* Memorandum regarding "Selection of Respondents in the Antidumping Investigation of 1-Hydroxyethylidene, 1-Diphosphonic Acid from the People's Republic of China," dated May 30, 2008 ("Respondent Selection Memorandum"). *See also* letter regarding "Public Treatment of BWA's Supplier," dated April 14, 2008. Wujin Water submitted timely responses to the Department's antidumping questionnaire on June 23, 2008, and July 25, 2008. On June 10, 2008, the Department received separate-rate applications from Jiangsu Jianghai, Wujin Fine Chemical, and Kewei. On June 25, 2008, Kewei notified the Department that it decided to no longer participate in this investigation, and did not intend to submit responses to the Department's antidumping questionnaire. *See* memorandum regarding "Phone Conversation with Counsel to Changzhou Kewei Fine Chemical Factory Co., Ltd.," dated June 30, 2008 ("Kewei Withdrawal Memorandum").

The Department issued supplemental questionnaires to, and received responses from, Wujin Water, Wujin Fine Chemical, and Jiangsu Jianghai from June through October 2008. Petitioner submitted comments to the Department regarding Wujin Water's responses to sections C and D of the antidumping questionnaire in August and September 2008.

On June 17, 2008, the Department released a memorandum to interested parties which listed potential surrogate countries and invited interested parties to comment on surrogate country and surrogate value selection. From June through September 2008, Petitioner and Wujin Water submitted comments on the appropriate surrogate country and surrogate values.

[1] Because Jiangsu Jianghai was not identified in the Petition as a potential producer or exporter of HEDP from the PRC, the Department did not send Jiangsu a Q&V questionnaire publicly available on our Web site for producers and exporters of HEDP from the PRC that were not named in the Petition.

On July 30, 2008, the Petitioner made a request for a 50-day postponement of the preliminary determination. On August 22, 2008, the Department extended this preliminary determination by fifty days. *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the Republic of India and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 73 FR 49646 (August 22, 2008).

Period of Investigation

The period of investigation ("POI") is July 1, 2007, through December 31, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, *i.e.*, March 2008. *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by each of these investigations includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid,[2] also referred to as hydroxethylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809–21–4. The merchandise subject to these investigations is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of these investigations is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice*. We received no comments regarding the scope of this investigation.

Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy ("NME") country. In accordance with section 771(18)(c)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof (TRBs), Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *TRBs, Finished and Unfinished, From the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). The Department has not revoked the PRC's status as an NME country. Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Selection of a Surrogate Country

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base normal value ("NV") on the value of the NME producer's factors of production. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of merchandise comparable to the subject merchandise. The Department has determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries that are at a level of economic development comparable to that of the PRC. *See* memorandum regarding "Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Request for a List of Surrogate Countries," dated June 10, 2008 ("Policy Memorandum").

As noted above, during June through September, Petitioner and the respondent, Wujin Water, submitted comments on the appropriate surrogate country. Petitioner argues that India is the most appropriate surrogate country because the PRC and India share comparable levels of economic development and that India is a significant producer of merchandise comparable to HEDP. *See* Petitioner's July 15, 2008, submission at 2.

The respondent agreed that India satisfies the statutory criteria for surrogate country selection because it is at a comparable level of economic development with the PRC and it is a significant producer of HEDP. *See* the respondent's July 15, 2008, submission at 2. However, the respondent asserts that there are also several potential flaws in using India as the surrogate country in this investigation. Specifically, the respondent states that there are complications associated with deriving surrogate values from an industry subject to an ongoing companion antidumping duty investigation, *i.e.*, the antidumping duty investigation of HEDP from India. *Id.* at 2–3. In addition, the respondent contends that India imports highly specialized chemicals that are not representative of the overall prices of phosphate-based chemicals in India.[3] *Id.* at 3. Further, the respondent argues that the Indian electricity surrogate value obtained from the International Energy Agency, which is based upon data from the year 2000, used by the Department in PRC antidumping cases should not be used in this investigation because it is outdated and based on a single examination of the Indian market prior to a restructuring of the sale and distribution of electricity in India. *Id.* The respondent states that because of the issues discussed above, the Department should review alternate surrogate countries to determine if they present fewer problems. *Id.* Regarding Indonesia, the Philippines, Colombia, and Thailand, the respondent states that these countries do not satisfy the statutory criteria because, although they are at a comparable level of economic development with the PRC, they are not significant producers of HEDP. *Id.* at 3–5. However, the respondent contends that these countries do possess other large and/or developing chemical industries. *Id.* Therefore, the respondent asserts that if India were to be precluded, the use of Indonesia, the Philippines, Colombia, or Thailand, and a similar, but not identical, chemical production industry, would satisfy section 773(c)(4) of the Act. *Id.*

After evaluating interested parties' comments, the Department selected India as the surrogate country for this investigation. *See* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to Abdelali Elouaradia, Office Director, "Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Selection of a Surrogate Country," dated August 22, 2008. The Department determined that: (1) India is at a level of economic development comparable to that of the PRC; and (2)

[2] $C_2H_8O_7P_2$ or $C(CH_3)(OH)(PO_3H_2)_2$.

[3] Phosphate-based chemicals are a major component of the chemical make-up of HEDP. *See* Petition at 12.

India is a significant producer of merchandise comparable to subject merchandise. Furthermore, on numerous occasions and without complication, the Department has selected India as the surrogate country when there have been companion antidumping duty investigations from the PRC and India. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997, 71001 (December 8, 2004). Additionally, the respondent neither identified nor provided: (1) Evidence to demonstrate any complications that would arise from selecting India as the surrogate country in this investigation; and (2) an alternative Indian electricity source or a more suitable electricity source from Indonesia, the Philippines, Colombia, or Thailand. Moreover, the record indicates that India has readily-available and sufficient data which will allow the Department to use contemporaneous publicly-available data to value the factors of production.

Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME investigations. *See Initiation Notice*, 73 FR at 20026. The process requires exporters and producers to submit a separate-rate status application. *See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries*, (April 5, 2005), ("*Policy Bulletin 05.1*") available at *http://ia.ita.doc.gov*.[4]

However, the standard for eligibility for a separate rate, which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities, has not changed.

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of 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*"). In accordance with the separate-rate criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

In this case, Kewei submitted a separate rate response on June 10, 2008. However, as noted above, on June 25, 2008, Kewei notified the Department that it would no longer participate in the investigation. Since Kewei's withdrawal prevented the Department from asking additional supplemental questions on its separate rate status, and prevents the Department from verifying its response, the Department has no basis upon which to grant Kewei a separate rate. Although Kewei remains a mandatory respondent, the Department considers Kewei part of the PRC-wide entity because it failed to demonstrate that it qualifies for a separate rate.

The other mandatory respondent, Wujin Water, and both separate rate applicants, Jiangsu Jianghai and Wujin Fine Chemical, stated that they are wholly Chinese-owned companies. Therefore, the Department must analyze whether the respondent and separate rate applicants can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. Each company provided company-specific information to demonstrate that it operates free from *de jure* and *de facto* government control, and therefore, is entitled to a separate rate.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by Wujin Water, Jiangsu Jianghai, and Wujin Fine Chemical indicates that there are no restrictive stipulations associated with their exporter and/or business licenses and that there are legislative enactments decentralizing control of the companies. The Department's analysis of the record evidence supports a preliminary finding of absence of *de jure* control. *See* "Separate Rate Application from Jiangsu Jianghai Chemical Group Co., Ltd.," dated June 10, 2008 ("Jiangsu Jianghai SRA"); "Separate Rate Application from Changzhou Wujin Fine Chemical Factory Co., Ltd.," dated June 10, 2008 ("Wujin Fine Chemical SRA"); and "Response to Section A by Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory," dated June 21, 2008 ("Wujin Water Section A").

Absence of De Facto Control

Typically the Department 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 are subject to the approval of a governmental agency; (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*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an

[4] *Policy Bulletin 05.1* states: "While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." *See Policy Bulletin 05.1* at 6.

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.

In this case, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of governmental control with respect to Wujin Water, Jiangsu Jianghai, and Wujin Fine Chemical based on record statements and supporting documentation showing that the companies: (1) Set their own export prices independent of the government and without the approval of a government authority; (2) retain their proceeds from sales and make independent decisions regarding disposition of profits or financing of losses; (3) have the authority to negotiate and sign contracts and other agreements; and (4) have autonomy from the government regarding the selection of management. *See* Jiangsu Jianghai SRA; Wujin Fine Chemical SRA; and Wujin Water Section A.

The evidence placed on the record of this investigation by Wujin Water, Jiangsu Jianghai, and Wujin Fine Chemical demonstrates an absence of *de jure* and *de facto* government control with respect to these exporters' exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we have granted a separate rate to all three exporters. Specifically, Wujin Water will receive its own calculated weighted-average margin. For Jiangsu Jianghai and Wujin Fine Chemical, we have granted these exporters a weighted-average margin based on the experience of mandatory respondents and excluding any *de minimis* or zero rates or rates based on total adverse facts available ("AFA") for the purposes of this preliminary determination. Since Wujin Water is receiving a calculated margin above *de minimis*, and Kewei is receiving a margin based upon total AFA, *see* "Adverse Facts Available" section below, we have assigned Wujin Water's margin to the separate rate companies. Therefore, we have assigned 24.30 percent as the rate applicable to Jiangsu Jianghai and Wujin Fine Chemical.

Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party: (A) Withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On June 25, 2008, Kewei informed the Department that it would no longer participate in the instant investigation. *See* Kewei Withdrawal Memorandum. Because Kewei failed to submit a response to sections A, C, and D of the Department's antidumping duty questionnaire, it failed to provide information requested by the Department. Furthermore, by ending its participation, Kewei denied the Department the ability to ask supplemental questions and conduct its verification of responses. Verification is integral to the Department's analysis because it allows the Department to validate that it is relying upon accurate and complete information, and calculating dumping margins as accurately as possible. By refusing to provide requested information and withdrawing from the investigation, Kewei significantly impeded the proceeding. Moreover, by not allowing verification, Kewei failed to demonstrate that it operates free of government control and that it is entitled to a separate rate. Therefore, we find that Kewei has not demonstrated its entitlement to a separate rate, and consequently, we are treating it as part of the PRC-wide entity. Moreover, because Kewei, which is part of the PRC-wide entity, failed to respond to our questionnaire, we find that the use of facts available, pursuant to sections 776(a)(2)(A), (C), and (D), is appropriate in determining the applicable dumping margin for the PRC-wide entity.

Although PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.[5] Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports of subject merchandise from the PRC made during the POI. We have treated the non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate.

As noted above, the PRC-wide entity, including Kewei and the Non-Responsive Companies, withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC-wide dumping margin on facts available. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); *see also Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. I at 843 (1994) ("*SAA*"), reprinted in 1994 U.S.C.C.A.N. 4040 at 870. Because the PRC-wide entity did not respond to the Department's request

[5] Of the 10 Q&V questionnaires the Department sent to potential exporters identified in the petition, the Department received only four timely responses. The record indicates the questionnaires were received by the Non-Responsive Companies. *See* Respondent Selection Memorandum and "Background" section above.

for information, the Department has concluded that the PRC-wide entity, including Kewei and the Non-Responsive Companies, failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available: (1) Information derived from the petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of: (a) The highest margin alleged in the petition or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decisions Memorandum at "Facts Available." In this case, the dumping margin alleged in the petition, as adjusted by the Department for initiation, is 72.42 percent. Since the dumping margin derived from the Petition, as revised by the Department, is higher than the calculated weighted-average margin for mandatory respondent Wujin Water, we examined whether it was appropriate to base the PRC-wide dumping margin on the secondary information in the Petition.

When the Department relies on secondary information, rather than information obtained in the course of an investigation, section 776(c) of the Act requires it to, to the extent practicable, corroborate that information from independent sources reasonably at its disposal.[6] The SAA also states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* SAA at 870.

The SAA also clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

To corroborate the Petition margin, we compared the U.S. prices and normal values calculated for Wujin Water to the U.S. prices and normal values alleged in the Petition. Based on this comparison, we have preliminarily corroborated the 72.42 percent dumping margin derived from information contained in the Petition. *See* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, "Corroboration of the PRC-Wide Facts Available Rate for the Preliminary Determination in the Antidumping Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China," dated concurrently with this notice. The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of subject merchandise from Wujin Water, Jiangsu Jianghai, and Wujin Fine Chemical.

Fair Value Comparisons

To determine whether Wujin Water sold HEDP to the United States at LTFV, we compared the weighted-average export price ("EP") of the HEDP to the NV of the HEDP, as described in the "U.S. Price," and "Normal Value" sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, we based the U.S. price of sales on EP because the first sale to unaffiliated purchasers was made prior to importation and the use of constructed export price methodology was not otherwise warranted.

In accordance with section 772(c) of the Act, we calculated EP by deducting, where applicable, the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: Foreign movement expenses, marine insurance, international freight, and foreign brokerage and handling expenses. For details regarding our EP calculation, *see* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China—Preliminary Analysis Memorandum for Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd.," dated concurrently with this notice.

We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi ("RMB").[7] We valued foreign inland truck freight expenses using a per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm*. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is from a time period after the POI, we deflated the rate using the Indian Wholesale Price Index ("WPI").[8] *See* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, "Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Surrogate Values Selected for Wujin Water," dated concurrently with this notice ("Surrogate Value Memorandum").

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in the antidumping duty investigation of HEDP from India. Specifically, we averaged the public brokerage and handling expenses reported by Aquapharm Chemicals Pvt. Ltd. ("Aquapharm") on September 19, 2008. *See* Surrogate Value Memorandum at 7–8, containing the public summary of Aquapharm's September 19, 2008, response at 1. Since the resulting value is contemporaneous with the POI, we did not inflate the rate using the WPI.

[6] Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870.

[7] Wujin Water reported that it purchased no transportation or movement services from market economy suppliers during the POI.

[8] WPI Web site available at *http://eaindustry.nic.in*.

Similarly, we valued international freight and marine insurance using a simple average of these costs as reported by Aquapharm. *Id.* We used Aquapharm's data for surrogate value purposes in this case given that Aquapharm is a respondent in the contemporaneous companion HEDP from India antidumping investigation and sold identical merchandise.

Normal Value

In accordance with section 773(c) of the Act, we constructed NV from the factors of production employed by Wujin Water to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the value of the factors of production, general expenses, profit, and packing costs, as well as an adjustment for byproducts. We valued the factors of production using prices and financial statements from India, the surrogate country selected for this investigation.[9] In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing values which are non-export average values, product-specific, tax-exclusive, and contemporaneous with, or closest in time to, the POI. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values.

We valued material inputs and packing materials by multiplying the amount of the factor consumed in producing subject merchandise by the average unit value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401, 1407 (Fed. Cir. 1997). Where we could only obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using the WPI.

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, South Korea, and Thailand because in other proceedings the Department found that these countries maintain broadly available, non-industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1; *see also Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004).[10] Thus, we have not used prices from these countries in calculating the Indian import-based surrogate values.

We valued raw materials and packing materials using Indian import statistics. *See* Surrogate Value Memorandum. We valued water using data from the Maharashtra Industrial Development Corporation [11] because it includes a wide range of industrial water tariffs. This source provides 378 industrial water rates within the Maharashtra province from July 2007: 189 for the "inside industrial areas" usage category, and 189 for the "outside industrial areas" usage category. *See* Surrogate Value Memorandum.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Surrogate Value Memorandum.

The Department valued steam using a surrogate value for natural gas obtained from the Web site of the Gas Authority of India Ltd., a supplier of natural gas in India. We used natural gas because there is no surrogate value for steam on the record of this investigation. The Department has used natural gas to value steam in past cases. *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485, 40486 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 11; *see also Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77380 (December 26, 2006). The natural gas value relates to the period February 2005. Therefore, we inflated the value using the WPI. *See* Surrogate Value Memorandum.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the most recently calculated regression-based wage rate, which relies on 2005 data. This wage rate can be found on the Import Administration's home page. *See* "Expected Wages of Selected NME Countries," *available at http://ia.ita.doc.gov/wages/index.html* (revised May 2008). The source of these wage rate data on the Import Administration's Web site is the International Labour Organization, Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. Since this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by Wujin Water. *See* Surrogate Value Memorandum.

As noted above, we valued inland truck freight expenses using a deflated per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm*. *See* Surrogate Value Memorandum.

We valued factory overhead, selling, general, and administrative ("SG&A") expenses, and profit, using a simple average of the financial ratios calculated from the 2007–2008 audited financial statements of two Indian producers of HEDP: Excel Industries Limited and United Phosphorus Limited. *See* Surrogate Value Memorandum.

[9] Wujin Water reported that it purchased no factors of production from market economy suppliers during the POI.

[10] In addition, we note that legislative history explains that the Department is not required to conduct a formal investigation to ensure that such prices are not subsidized. *See Omnibus Trade and Competitiveness Act of 1988*, Conference Report to Accompanying H.R. Rep. 100–576 at 590 (1988). As such, it is the Department's practice to base its decision on information that is available to it at the time it makes its determination.

[11] Web site available at *http://www.midcindia.org*.

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information with which to value factors of production in the final determination within 40 days after the date of publication of the preliminary determination.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*. This change in practice is described in *Policy Bulletin 05.1*, which states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin 05.1.

Preliminary Determination Margins

The Department has determined that the following weighted-average dumping margins exist for the POI:

Manufacturer/Exporter	Weighted-Average margin (percent)
Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd.[12]	24.30
Changzhou Wujin Fine Chemical Factory Co., Ltd.[13]	24.30
Jiangsu Jianghai Chemical Group Co., Ltd.[14]	24.30
PRC-wide Entity (including Kewei)	72.42

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of HEDP from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of HEDP, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs. *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties that 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 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

[12] Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd. manufactures and exports subject merchandise.

[13] Changzhou Wujin Fine Chemical Factory Co., Ltd. manufactures and exports subject merchandise.

[14] Jiangsu Jianghai Chemical Group Co., Ltd. manufactures and exports subject merchandise.

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on September 23, 2008, Wujin Water requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days.[15] At the same time, Wujin Water agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) Our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 15, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–25032 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–836

Certain Cut–to–Length Carbon–Quality Steel Plate Products from the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: October 21, 2008.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5287 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain cut–to–length carbon–quality steel plate products from the Republic of Korea for the period February 1, 2007, through January 31, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 16837 (March 31, 2008). The preliminary results of this administrative review are currently due no later than October 31, 2008.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month. See also 19 CFR 351.213(h).

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of October 31, 2008, for several reasons. Specifically, the Department has granted the respondent, Dongkuk Steel Mill Co., Ltd. (DSM), several extensions to respond to the original and supplemental questionnaires.[1] Thus, the Department requires additional time to review and analyze the sales and cost responses submitted by DSM. Further, the Department requires additional time to review issues such as corporate affiliations and to analyze the changes in DSM's product–coding system as it will affect the Department's matching methodology in this case. Therefore, we are extending the time period for issuing the preliminary results of this review by 45 days until December 15, 2008.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

Dated: October 14, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration

[FR Doc. E8–25033 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On April 17, 2008, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan. The period of review is May 1, 2006, through April 30, 2007. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. The final weighted-average dumping margin for Far Eastern Textile Limited is listed below in the "Final Results of the Review" section of this notice.

DATES: *Effective Date:* October 21, 2008.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0410 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2008, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber (PSF) from Taiwan for the period May 1, 2006. through April 30, 2007. See Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 20907 (April 17, 2008).

On June 2, 2008, we extended the deadline for the final results of review. See Polyester Staple Fiber from Taiwan: Extension of Time Limit for the Final Results of Antidumping Duty

[15] On October 6, 2008, Petitioner requested that in the event that the Department issues a negative preliminary determination in this investigation, it postpone the final determination until not later than 135 days after the publication of the preliminary determination in the **Federal Register**.

[1] See, e.g., letter to Dongkuk Steel Mill Co., Ltd., from Laurie Parkhill, dated August 28, 2008.

Administrative Review, 73 FR 31433 (June 2, 2008).

We conducted a verification of Far Eastern Textile Limited's (FET) home-market and U.S. sales from June 16 through 19, 2008, and we issued a verification report on July 11, 2008. We invited interested parties to comment on the preliminary results and our verification findings.

We received case and rebuttal briefs from Weliman, Inc., and Invista, S,a.r.1. (collectively, the petitioners), and FET. The period of review (POR) is May 1, 2006, through April 30, 2007. We have conducted this review in accordance with section 75 1(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the order is certain polyester staple fiber (PSF). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 5503.20.00.25[1] is specifically excluded from the order. Also specifically excluded from the order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from the order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the October 14, 2008, "Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from Taiwan" (Decision Memorandum), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room 1117 of the main Department building (CRU). In addition, a complete version of the Decision Memorandum can be accessed directly on the Web. The paper copy and electronic version of the Decision Memorandum are identical in content.

Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the cost of production (COP), we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in "substantial quantities." See section 773(b)(2)(C) of the Act. The sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act because we examined below-cost sales occurring during the entire POR. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of the respondent's home-market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time and in substantial quantities. See section 773(b)(2)(C)(i) of the Act. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. See section 773(b)(2)(D) of the Act. Therefore, we excluded these sales and used the remaining sales, if any, as the basis for determining normal value, in accordance with section 773(h)(1) of the Act.

Final Results of the Review

We find that a dumping margin of 1.72 percent exists for FET for the period May 1, 2006, through April 30, 2007.

Assessment of Duties

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Although FET indicated that it was not the importer of record for any of its sales to the United States during the POR, it reported the name of the importers of record for all of its U.S. sales. Because FET reported the entered value for all of its U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins we calculated for all U.S. sales to each importer and dividing this amount by the total entered value of those sales.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see Antidumping and Countervailing Duty Proceedings Assessment of Antidumping Duties, 68 FR23954 (May 6, 2003). The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review.

Cash-Deposit Requirements

The following deposit requirements are effective for all shipments of PSF from Taiwan entered or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rate for FET will be 1.72 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or previous reviews, 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 investigation but the manufacturer is, the cash-deposit rate

[1] The most current edition of the Harmonized Tariff Schedule of the United States (2006)—Supplement I (Rev 1) (August 1, 2006) incorporates the revision of HTSUS number 5503.20.00.20 to 5503.20.00.25.

will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash-deposit rate will be 7.31 percent, the all-others rate established in Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan, 65 FR33807 (May 25, 2000). These cash-deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: October 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX I

List of Comments in the Decision Memorandum

Comment 1: Date of Sale

Comment 2: Classification of Sales

Comment 3: Grade Designations

Comment 4: Home-Market Credit Expenses

Comment 5: Verification Findings

Comment 6: U.S. Actual Credit Expenses

[FR Doc. E8–24903 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–803

Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value

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

EFFECTIVE DATE: October 21, 2008.

SUMMARY: The Department of Commerce ("the Department") determines that imports of uncovered innerspring units from the Socialist Republic of Vietnam ("Vietnam") are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The final weighted–average dumping margins are listed below in the section entitled "Final Determination of Investigation."

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0414 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2008, the Department published the preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of uncovered innerspring units from Vietnam. *See Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45738 (August 6, 2008) ("*Preliminary Determination*"). We invited parties to comment on the *Preliminary Determination*. We did not receive any case or rebuttal briefs from any interested parties.

Period of Investigation

The POI is April 1, 2007, through September 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was December 2007. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.*, twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in this scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non–pocketed innerspring units are included in this definition. Non–pocketed innersprings are typically joined together with helical wire and border rods. Non–pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a "pocket" or "sock" of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.00.70, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this proceeding is dispositive.

Scope–Clarification Request

Caye Home Furnishings LLC (Caye Furnishings), a U.S. manufacturer of living room furniture, requested that we clarify the scope language of the antidumping duty investigations on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. See August 25, 2008, letter from Caye Furnishings. Specifically, Caye Furnishings requested that we modify the scope of the investigations to exclude springs and individually

wrapped pocket coils for upholstery seating that are not suitable for mattresses or mattress supports.

Caye Furnishings asserted that the reference to mattresses in the scope language makes clear that the petitioner intended to cover innersprings that are used in the manufacture of innerspring mattresses and did not intend to cover innersprings that are not suitable for use in mattresses or mattress supports. Caye Furnishings asserted that innersprings and individually wrapped pocket coils that it imports for use in upholstery seating in the manufacture of living room furniture are not suitable for mattresses or mattress supports. Caye Furnishings also explained that, although the products it imports are normally classified under subheading 7320.20.5020 of the HTSUS, which is not one of the HTSUS subheadings covered by the scope of the investigations, the scope description as written could result in the treatment of its imports as subject merchandise.

In its September 11, 2008, comments on the issue, the petitioner stated that it believes the scope language is clear and that the merchandise described by Caye Furnishings is outside the scope of the investigations. The petitioner stated, however, that it does not object to the clarification of the scope for the reasons Caye Furnishings cited. In its September 17, 2008, comments, in response to the alternative versions of the scope–clarification language that we proposed, *See* Memorandum to the File, dated September 16, 2008. the petitioner stated that it does not object to amending the scope description of the investigations by excluding individual springs and individually wrapped pocket coils for upholstery seating (the petitioner stated that it objects to the proposed language which excludes any mention of end–use of the merchandise).

We have considered the various alternatives on the record for modifications of the scope language. In addition to the difficulties associated with administering antidumping duty orders with end–use as a basis for whether certain products may be considered subject merchandise, we agree with the petitioner that the merchandise Caye Furnishings described in its request is not within the scope of the investigations. Therefore, we have not modified the scope language as suggested by any of the parties.

Adverse Facts Available

As we explained in the *Preliminary Determination*, the Department issued a quantity and value ("Q&V") questionnaire (via DHL) to all exporters identified in the petition. Out of the eleven exporters to whom the Department issued its Q&V questionnaire, only three responded (*i.e.*, Yang Ching Enterprise Co., Ltd. ("Yang Ching"), Uu Viet Co., Ltd. ("Uu Viet"), and Dong Bang Stainless Steel Co. Ltd ("Dong Bang")). Each of the responding exporters stated that they did not export innersprings to the United States during the POI. Also, according to DHL's tracking system the remaining eight exporters received the Department's Q&V questionnaire. Record evidence indicates there were imports into the United States of innersprings from Vietnam. Based on the above facts, we have determined that there were exports of the subject merchandise under investigation from Vietnamese producers/exporters that did not respond to the Department's questionnaire, and we are treating these Vietnamese producers/exporters as part of the countrywide entity. Additionally, because we have determined that the non–responding companies are part of the Vietnam–wide entity, the Vietnam–wide entity is under investigation. Further, pursuant to section 776(a)(2) of the Act, we find that because the Vietnam–wide entity (including the eight companies discussed above) failed to respond to the Department's Q&V questionnaire, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, and otherwise impeded the proceeding, it is, therefore, appropriate to apply a dumping margin to the Vietnam–wide entity using the facts otherwise available on the record pursuant to section 776(a)(2) of the Act. *See Preliminary Determination*, 73 FR at 45740. Additionally, because these parties failed to respond to our requests for information and did not act to the best of their ability, we find an adverse inference is appropriate, pursuant to section 776(b) of the Act.

As we explained in the *Preliminary Determination*, the rate of 116.31 percent that we selected as the adverse facts–available rate for the Vietnam–wide entity is the margin alleged in the petition. *See Petitions on Uncovered Innerspring Units from China, South Africa, and Vietnam*, dated (December 31, 2007) ("*Petition*"); Supplement to the *Petition* (January 11, 2008); and *Antidumping Investigation Initiation Checklist: Uncovered Innerspring Units from South Africa*, (January 22, 2008), which is on file in Import Administration's Central Records Unit, Room 1117, of the main Department of Commerce building. *See also Uncovered Innerspring Units From the People's Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 73 FR 4817 (January 28, 2008). Further, as discussed in the *Preliminary Determination*, we corroborated the adverse facts–available rate pursuant to section 776(c) of the Act. *See Preliminary Determination*, 73 FR at 45741.

Final Determination

The weighted–average dumping margin is as follows:

Manufacturer/exporter	Margin (percent)
Vietnam–Wide Rate	116.31

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act and 19 CFR 351.211(b), we will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after August 6, 2008, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average margin, as follows: the rate for all producers or exporters will be 116.31 percent. These suspension–of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2)(B) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: October 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–25027 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–791–821

Notice of Final Determination of Sales at Less Than Fair Value: Uncovered Innerspring Units from South Africa

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

EFFECTIVE DATE: October 21, 2008.

SUMMARY: The Department of Commerce determines that imports of uncovered innerspring units from South Africa are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted–average dumping margins are listed below in the section entitled "Final Determination of Investigation."

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2008, the Department of Commerce (the Department) published the preliminary determination of sales at less than fair value (LTFV) in the antidumping investigation of uncovered innerspring units from South Africa. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Uncovered Innerspring Units from South Africa*, 73 FR 45741 (August 6, 2008) (*Preliminary Determination*). We invited parties to comment on the *Preliminary Determination*. We did not receive any case or rebuttal briefs from any interested parties.

Period of Investigation

The period of investigation (POI) is October 1, 2006, through September 30, 2007.

Scope of Investigation

The merchandise covered by this investigation is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.*, twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in this scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non–pocketed innerspring units are included in this definition. Non–pocketed innersprings are typically joined together with helical wire and border rods. Non–pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a "pocket" or "sock" of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.00.70, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this proceeding is dispositive.

Scope–Clarification Request

Caye Home Furnishings LLC (Caye Furnishings), a U.S. manufacturer of living room furniture, requested that we clarify the scope language of the antidumping duty investigations on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam.[1] Specifically, Caye Furnishings requested that we modify the scope of the investigations to exclude springs and individually wrapped pocket coils for upholstery seating that are not suitable for mattresses or mattress supports.

Caye Furnishings asserted that the reference to mattresses in the scope language makes clear that the petitioner intended to cover innersprings that are used in the manufacture of innerspring mattresses and did not intend to cover innersprings that are not suitable for use in mattresses or mattress supports. Caye Furnishings asserted that innersprings and individually wrapped pocket coils that it imports for use in upholstery seating in the manufacture of living room furniture are not suitable for mattresses or mattress supports. Caye Furnishings also explained that, although the products it imports are normally classified under subheading 7320.20.5020 of the HTSUS, which is not one of the HTSUS subheadings covered by the scope of the investigations, the scope description as written could result in the treatment of its imports as subject merchandise.

In its September 11, 2008, comments on the issue, the petitioner stated that it believes the scope language is clear and that the merchandise described by Caye Furnishings is outside the scope of the investigations. The petitioner stated, however, that it does not object to the clarification of the scope for the reasons Caye Furnishings cited. In its September 17, 2008, comments, in response to the alternative versions of the scope–clarification language that we proposed,[2] the petitioner stated that it does not object to amending the scope description of the investigations by excluding individual springs and individually wrapped pocket coils for upholstery seating (the petitioner stated that it objects to the proposed language which excludes any mention of end–use of the merchandise).

We have considered the various alternatives on the record for modifications of the scope language. In addition to the difficulties associated with administering antidumping duty orders with end–use as a basis for whether certain products may be considered subject merchandise, we

[1] See August 25, 2008, letter from Caye Furnishings.

[2] See Memorandum to the File, dated September 16, 2008.

agree with the petitioner that the merchandise Caye Furnishings described in its request is not within the scope of the investigations. Therefore, we have not modified the scope language as suggested by any of the parties.

Adverse Facts Available

For the final determination, we continue to find that, by failing to provide information we requested, Bedding Component Manufacturers (Pty) Ltd. (BCM), the mandatory respondent in this investigation, did not act to the best of its ability. Thus, the Department continues to find that the use of adverse facts available is warranted for this company under sections 776(a)(2) and (b) of the Act. See *Preliminary Determination*, 73 FR at 45743.

As we explained in the Preliminary Determination, the rate of 121.39 percent we selected as the adverse facts–available rate for BCM is the single margin alleged in the petition (see *Petitions on Uncovered Innerspring Units from China, South Africa, and Vietnam*, dated December 31, 2007 (*Petition*), and January 11, 2008, supplement to the Petition filed on behalf of Leggett and Platt, Incorporated, (the petitioner)), as recalculated in the January 22, 2008, *Antidumping Investigation Initiation Checklist: Uncovered Innerspring Units from South Africa*, on file in Import Administration's Central Records Unit, Room 1117, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. See, also, *Uncovered Innerspring Units From the People's Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 73 FR 4822 (January 28, 2008). Further, as discussed in the Preliminary Determination, we corroborated the adverse facts–available rate pursuant to section 776(c) of the Act. See Preliminary Determination, 73 FR at 45743, 45744.

All–Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted–average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all–others rate for exporters and producers not individually investigated. This provision contemplates that, if the data do not permit weight–averaging margins other than the zero, *de minimis*, or total facts–available margins, the Department may use any other reasonable method. See also *Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316, at 873 (1994).

As discussed above, BCM is the sole respondent in this investigation and has been assigned a margin based on total adverse facts available. Because the petition contained only one estimated dumping margin and because there are no other respondents in this investigation, there are no additional estimated margins available for purposes of establishing an all–others rate. See *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the Republic of South Africa*, 67 FR 71136 (November 29, 2002). Therefore, with this final determination we are establishing 121.39 percent as the all–others rate.

Final Determination of Investigation

We determine that the following weighted–average dumping margins exist for the period October 1, 2006, through September 30, 2007:

Manufacturer or Exporter	Margin (percent)
Bedding Component Manufacturers (Pty) Ltd.	121.39
All Others	121.39

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act and 19 CFR 351.211(b)(1), we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from South Africa entered, or withdrawn from warehouse, for consumption on or after August 6, 2008, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average margin as follows: (1) the rate for BCM will be 121.39 percent; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 121.39 percent. These suspension–of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: October 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–25028 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK73

Atlantic Highly Migratory Species; Advisory Panel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NMFS solicits nominations for the Atlantic Highly Migratory Species (HMS) Advisory Panel (AP). NMFS consults with and considers the comments and views of the AP when preparing and implementing Fishery Management Plans (FMPs) or FMP

amendments for Atlantic tunas, swordfish, sharks, and billfish. Nominations are being sought to fill one–third (10) of the seats on the HMS AP for a 3-year appointment. Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non–governmental organizations will be considered for membership in the AP.

DATES: Nominations must be received on or before November 20, 2008.

ADDRESSES: You may submit nominations and requests for the Advisory Panel Statement of Organization, Practices, and Procedures by any of the following methods:

- Email: *HMSAP.Nominations@noaa.gov.* Include in the subject line the following identifier: "HMS AP Nominations."
- Mail: Margo Schulze–Haugen, Chief, Highly Migratory Species Management Division, NMFS, 1315 East–West Highway, Silver Spring, MD 20910.
- Fax: 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Chris Rilling at (301) 713–2347 x109.

SUPPLEMENTARY INFORMATION:

Introduction

The Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of Advisory Panels to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment. The HMS AP has consulted with NMFS on the HMS FMP (April 1999), Amendment 1 to the Billfish FMP (April 1999), Amendment 1 to the HMS FMP (November 2003), the Consolidated HMS FMP (July 2006), and Amendments 1 and 2 to the Consolidated HMS FMP (April 2008 and September 2008, respectively).

Procedures and Guidelines

A. Nomination Procedures for Appointments to the Advisory Panel

Nomination packages should include:

1. The name of the applicant or nominee and a description of his/her interest in HMS or in particular species of sharks, swordfish, tunas, or billfish;
2. A statement of background and/or qualifications;
3. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP; and
4. A list of outreach resources that the applicant has at his/her disposal to communicate HMS issues to various interest groups.

Tenure for the HMS AP

Member tenure will be for 3 years (36 months), with approximately one–third of the members' terms expiring on December 31 of each year. Nominations are sought for terms beginning January 2009 and expiring December 2011.

B. Participants

Nominations for the AP will be accepted to allow representation from commercial and recreational fishing interests, the scientific community, and the conservation community who are knowledgeable about Atlantic HMS and/or Atlantic HMS fisheries. Current representation on the HMS AP, as shown in Table 1, consists of 12 members representing commercial interests, 12 members representing recreational interests, 4 members representing environmental interests, 4 academic representatives, and 1 International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee Chairperson. Each AP member serves a three-year term with approximately one–third (11) of the total number of seats (33) expiring on December 31 of each year. NMFS seeks to fill 1 academic, 4 commercial, 3 recreational, and 2 environmental vacancies by December 31, 2008. NMFS will seek to fill vacancies based primarily on maintaining the current representation from each of the sectors, and secondarily by species expertise and/or representation from the regions (Northeast, Mid–Atlantic, South Atlantic, Gulf of Mexico, and Caribbean). Table 1 includes the current representation on the HMS AP by sector and species. It does not necessarily indicate that NMFS will only consider persons who have expertise in the species that are listed.

TABLE 1. CURRENT REPRESENTATION ON THE HMS AP BY SECTOR AND SPECIES.

Terms that are expiring or vacant are in bold.

Sector	Species	Date Appointed	Date Term Expires
Academic	Tuna	1/1/2007	12/31/2009
Academic	Shark	1/1/2007	12/31/2009
Academic	**Billfish**	**1/1/2006**	**12/31/2008**
Academic	Tuna/Shark	1/1/2007	12/31/2009
Commercial	**HMS**	**1/1/2006**	**12/31/2008**
Commercial	Swordfish/Tuna	1/1/2007	12/31/2009
Commercial	Swordfish/Tuna	1/1/2008	12/31/2010
Commercial	**HMS**	**1/1/2003**	**12/31/2008**
Commercial	Tuna	1/1/2008	12/31/2010
Commercial	Shark	1/1/2007	12/31/2009
Commercial	HMS	1/1/2007	12/31/2009
Commercial	**HMS**	**1/1/2006**	**12/31/2008**
Commercial	HMS	1/1/2008	12/31/2010

TABLE 1. CURRENT REPRESENTATION ON THE HMS AP BY SECTOR AND SPECIES.—Continued

Terms that are expiring or vacant are in bold.

Sector	Species	Date Appointed	Date Term Expires
Commercial	Swordfish	1/1/2008	12/31/2010
Commercial	**Tuna**	**VACANT**	
Commercial	HMS	1/1/2008	12/31/2010
Environmental	**Shark**	**1/1/2006**	**12/31/2008**
Environmental	HMS	1/1/2008	12/31/2010
Environmental	HMS	1/1/2008	12/31/2010
Environmental	**HMS**	**VACANT**	
Recreational	HMS	1/1/2008	12/31/2010
Recreational	Swordfish	1/1/2007	12/31/2009
Recreational	HMS	1/1/2007	12/31/2009
Recreational	HMS	1/1/2007	12/31/2009
Recreational	Billfish	1/1/2007	12/31/2009
Recreational	**Tuna**	**1/1/2006**	**12/31/2008**
Recreational	HMS	1/1/2008	12/31/2010
Recreational	**HMS**	**1/1/2006**	**12/31/2008**
Recreational	HMS	1/1/2008	12/31/2010
Recreational	**HMS**	**1/1/2006**	**12/31/2008**
Recreational	HMS	1/1/2007	12/31/2009
Recreational	Billfish	1/1/2008	12/31/2010
ICCAT Chair	HMS		

Each sector must be adequately represented, and the intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of the AP. Criteria for membership include one or more of the following: (1) experience in the HMS recreational fishing industry; (2) experience in the HMS commercial fishing industry; (3) experience in fishery–related industries (e.g., marinas, bait and tackle shops); (4) experience in the scientific community working with HMS; and/or (5) representation of a private; non–governmental; regional, national, or international organization representing marine fisheries, environmental, governmental, or academic interests dealing with HMS.

Five additional members on the AP include one member representing each of the following Councils: New England Fishery Management Council, the Mid–Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The AP also includes 22 ex–officio participants: 20 representatives of the coastal states and two representatives of the interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for the AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the AP meetings.

C. Meeting Schedule

Meetings of the AP will be held as frequently as necessary but are routinely held twice each year in the spring and fall. The meetings may be held in conjunction with public hearings.

Dated: October 9, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–25078 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL37

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a joint meeting of the South Atlantic Fishery Management Council's Habitat and Environmental

Protection Advisory Panel and Coral Advisory Panel

SUMMARY: The South Atlantic Fishery Management Council will hold a joint meeting of its Habitat and Environmental Protection Advisory Panel and Coral Advisory Panel in Charleston, SC. See **SUPPLEMENTARY INFORMATION.**

DATES: The joint meeting will take place November 17, 2008. The Panels will meet individually on November 18 and 19, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Charleston Marriott Hotel, 170 Lockwood Boulevard, Charleston, SC; telephone: (800) 968–3569 or (843) 723–3000; fax: (843) 723–0276.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the Habitat Advisory Panel and Coral Advisory Panel will meet jointly from 1:30 p.m.–5:30 p.m. on November 17, 2008. The Habitat AP and Coral AP will reconvene individually and meet concurrently from 8:30 a.m.–5 p.m. on November 18, 2008, and the Coral Advisory Panel will reconvene and meet from 8:30 a.m.–12 noon on November 19, 2008.

The Advisory Panels will provide input and recommendations on the public hearing drafts of the Fishery Ecosystem Plan (FEP) and the Comprehensive Ecosystem-Based Amendment (CE–BA), updates from NOAA Fisheries' Habitat Conservation on proposed non-fishing activities that have the potential to impact habitat, and an update on live rock aquaculture activities in the South Atlantic region.

The development of a South Atlantic Council FEP provides the first regional opportunity to compile and review available habitat, biological, social, and economic fishery and resource information for fisheries in the South Atlantic Bight ecosystem and serves as a source document for the CE–BA.

Actions in the Comprehensive Ecosystem-based Amendment include: Establishment of deepwater Coral Habitat Areas of Particular Concerns (CHAPCs), establishment of a Shrimp Fishery Access Area for deepwater shrimp fisheries within the proposed CHAPCs, designation of Allowable Golden Crab Fishing Areas within the proposed CHAPCs where golden crab traps can continue to be used, a monitoring requirement for the golden crab fishery using available tools such as Vessel Monitoring System technology or electronic logbooks, and non-regulatory action addressing compliance with the spatial presentation requirements in the Essential Fish Habitat (EFH) Final Rule.

Agenda items for the Coral AP meeting include: discussion and recommendations regarding coral management issues to include in Comprehensive Ecosystem-based Amendment 2, the Deep-Sea Coral Research and Technology Program Draft Strategic Plan being developed by NOAA's National Undersea Research Program (NURP), NOAA's Coral Reef Conservation Program, and coral research priorities for 2009–10. The Coral AP will also receive updates and presentations on coral issues relevant to the South Atlantic region.

The Habitat and Environmental Protection AP meeting will involve four sessions as follows:

Session 1: Panel review and discussion of ecosystem interactions with a focus on predator prey relationships for managed species, present management authority and future management considerations;

Session 2: Panel review and discussion of habitat mapping and characterization as presented in the Councils' Regional Habitat and Ecosystem Internet Map Server and through regional programs including but limited to Southeast Area Monitoring and Assessment Program (SEAMAP), the Southeast Coastal Ocean Observing Regional Association (SECOORA), Southeast Aquatic Resource Partnership (SARP), the North Carolina Coastal Habitat Protection Plan (CHPPs) and the Southeast Partnership for Planning and Sustainability (SERPASS);

Session 3: Panel member review and discussion of place-based management in the region including but not limited to management in Grays' Reef National Marine Sanctuary and existing and proposed South Atlantic Council area management;

Session 4: Panel review and discussion of Habitat Policies and potential impacts from individual proposed permits.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: October 16, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–25011 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL35

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Texas Habitat Protection Advisory Panel (AP).

DATES: The meeting will convene at 9 a.m. on Thursday, November 6, 2008 and conclude no later than 4 p.m.

ADDRESSES: This meeting will be held at the Quality Inn Hobby Airport, 7775 Airport Blvd., Houston, TX 77061, telephone: (713) 644–3800.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Habitat Support Specialist, Gulf States Marine Fisheries Commission; telephone: (228) 875–5912.

SUPPLEMENTARY INFORMATION: At this meeting, the AP will tentatively discuss juvenile red snapper habitat utilization, the Coastal Bend Bays and Estuaries Program, issues facing the Texas oyster fishery, the spotted sea trout consumption advisory for Galveston Bay, Hurricane Ike impacts to habitat, an update on the deepening of the Matagorda Ship Channel, and the Old River Cove Restoration project.

The Texas group is part of a three unit Habitat Protection Advisory Panel (AP) of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and

other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

Although other issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

A copy of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 16, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–25009 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL39

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Louisiana/ Mississippi Habitat Protection Advisory Panel (AP).

DATES: The meeting will convene at 9 a.m. on Thursday, November 13, 2008 and conclude no later than 4 p.m.

ADDRESSES: This meeting will be held at the Hilton, 901 Airline Drive, Kenner, LA 70062.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Habitat Support Specialist, Gulf States Marine Fisheries Commission; telephone: (228) 875–5912.

SUPPLEMENTARY INFORMATION: At this meeting, the AP will discuss the Donaldsonville to the Gulf Levee Project, 2008 hurricane impacts on habitat, monitoring results from the 2008 Bonnet Carre Spillway opening, open water disposal of dredge material in Mississippi Sound, and an update on the Louisiana Coastal Protection and Restoration Project.

The Louisiana/Mississippi group is part of a three unit Habitat Protection AP of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

Although other issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

A copy of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 16, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–25013 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL36

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Committee, in November, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Friday, November 14, 2008, at 9 a.m.

ADDRESSES: This meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Skate Committee and Advisory Panel will review public comments on Skate Amendment 3 and recommend a final alternative for Council approval. Other skate management issues may be discussed as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 16, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–25010 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL34

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) ad hoc groundfish Essential Fish Habitat Review Committee (EFHRC) will hold a work session, which is open to the public, to develop terms of reference (TOR) for proposals to change areas closed to bottom contact fishing gear and for modifications to groundfish Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC).

DATES: The work session will be held Tuesday, December 9, 2008, from 9 a.m. to 5 p.m., and Wednesday, December 10, 2008, from 8 a.m. to 3 p.m.

ADDRESSES: The work session will be held at the Pacific Fishery Management Council Office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to develop TOR for proposed changes to areas closed to bottom contact gear and modifications to groundfish EFH and HAPC. The TOR will help guide prospective applicants in submitting proposals that are scientifically based and contain adequate information on which the Council can base a determination of merit. Recommendations for TOR are tentatively scheduled to be presented to the Council for approval at the March, 2009 Council meeting in Seattle, WA.

Although non-emergency issues not contained in the meeting agenda may come before the EFHRC for discussion, those issues may not be the subject of formal EFHRC action during this meeting. EFHRC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EFHRC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 16, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–25008 Filed 10–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL38

Western Pacific Regional Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Eight Regional Fishery Management Councils will convene a meeting of representatives of their respective Scientific and Statistical Committees (SSCs) in Honolulu, HI.

DATES: The meeting will be held on Wednesday, November 12, 2008 through Friday, November 14, 2008 from 8:30 a.m. to 5 p.m. on November 12 and 13 and 8.30 a.m. to 12 noon on November 14. See **SUPPLEMENTARY INFORMATION** for agenda items.

ADDRESSES: The meeting will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI, telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Magnuson Stevens Reauthorization Act (MSRA) requires that each Council maintain and utilize its Scientific and Statistical Committee (SSC) to assist in the development, collection, evaluation, and peer review of information relevant to the development and amendment of fishery management plans (FMPs). In addition, the MSRA mandates that each SSC shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

Some Councils have a long history of using their SSCs to provide recommendations on ABC limits and peer review of analytical documents for FMP/regulatory amendments; for other Councils this is a new requirement. Some SSCs also function as the scientific peer review process required by the Information Quality Act (PL 106–554). In addition, a proposed rule on implementing National Standard 1 is forthcoming, and will provide guidance for all SSCs with respect to requirements to establish fishing levels that prevent overfishing.

In 2005, the Managing Our Nations Fisheries II conference advisory panel, SSC, and main conference panel all recommended that national SSC meetings be held, where members from different regions could discuss best practices and seek to identify analytical and research needs. Given the new requirements of MSRA and the pending new guidelines for annual catch limits, the Regional Fishery Management Councils jointly believe that the time is right for a national SSC workshop.

Wednesday, November 12, 2008; 8:30 a.m.

1. Review of Agenda
2. Appointment of Council staff rapporteurs
3. Plan for preparation and review of final report
4. Review MSRA requirements regarding SSCs
5. Overview of 3-NMFS Working Groups
   a. Control Rules for fishing level calculations
   b. National Standard 2 Guidelines
   c. Species vulnerability evaluation
6. Presentations/Reports from each SSC on operating procedures, analytical document review and recommendations, and developing research priorities

Thursday, November 13, 2008; 8:30 a.m.

7. Using Stock Assessments and a Peer Review Process in SSC Determination of Fishing Level Recommendations (i.e. Acceptable Biological Catch)
8. Presentations/Reports from each SSC on setting catch limits including assessment, peer review process, and

determination of Overfishing Limits (OFL) and Annual Catch Limits (ACL)

9. Open discussion on catch limits and peer review issues

Friday, November 14, 2008; 8:30 a.m.

10. Discuss best practices relative to SSC peer review process and setting ACLs

11. Wrap-up and closing comments

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 16, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–25012 Filed 10–20–08; 8:45 am]

BILLING CODE 3510-22-S

COMMODITY FUTURES TRADING COMMISSION

Joint Audit Committee Operating Agreement

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening comment period.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is reopening the comment period for interested parties to comment on the Joint Audit Committee Operating agreement which was submitted to the Commission for approval pursuant to Commission Regulation 1.52.

DATES: Written comments must be received on or before November 13, 2008.

ADDRESSES: Interested persons should submit their views and comments to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Reference should be made to "Joint Audit Committee". This document also will be available for comment at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Deputy Director and Chief Accountant, or Jennifer Bauer, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, *jbauer@cftc.gov,* Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5472.

SUPPLEMENTARY INFORMATION: On September 11, 2008, the Commission published for public comment an amended operating agreement submitted by the Joint Audit Committee for approval under Commission Regulation 1.52.

The Commission established a 30-day period for submitting public comment on the proposed JAC agreement, ending October 14, 2008. By letter dated October 9, 2008, an association of futures industry participants, whose members include firms that are registered as futures commission members, requested an extension of the original comment period. In response to this request, and in order to ensure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to reopen the comment period on the approval of the JAC agreement for an additional 30 days as requested.

Issued in Washington, DC, on October 15, 2008 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E8–24990 Filed 10–20–08; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, 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 22, 2008.

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 IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that 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.

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 15, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Paul Douglas Teacher Scholarship Program Performance Report.

Frequency: Annually.

Affected Public: Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 684.

Abstract: This program has not received funding since 1995. It was originally designed to assist State agencies to provide scholarships to talented and meritorious students who were seeking teaching careers at the

preschool, elementary, and secondary levels. The Department uses this information to ensure the compliance of the State Educational Agencies and the level of fulfillment of the scholarship obligations by the Douglas scholars.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 3858. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–24983 Filed 10–20–08; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 20, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]. Persons submitting comments electronically should not submit paper copies.

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 IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that 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.

Dated: October 15, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.
Title: LEAP/SLEAP Performance Report.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 56.
Burden Hours: 448.

Abstract: Federal Student Aid (FSA) seeks approval for the Leveraging Educational Assistance Program (LEAP)/Special Leveraging Educational Assistance Program (SLEAP) Performance Report, which is set to expire on October 31, 2008. The performance report is used once annually in the fall of each calendar year and is needed to ensure program compliance by states. This is the same form that has been previously approved which has been reformatted utilizing Adobe LiveCycle Forms software. The new formatted form is an electronic interactive form which allows our respondents to navigate, complete and submit more easily, while improving data accuracy.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 3713. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–24984 Filed 10–20–08; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 12, 2008, 5 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Rosemary Rehfeldt, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or E-mail: *ntscab@nv.doe.gov*.

SUPPLEMENTARY INFORMATION:

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

Tentative Agenda:

1. DOE Presentation: Nevada Test Site Wildlife Overview
2. Sub-Committee Reports

A. Environmental Management Public Information Review Effort (EMPIRE) Committee
B. Outreach Committee
C. Transportation/Waste Committee
D. Underground Test Area Committee
3. Review and approval of recommendation letter pertaining to the EMPIRE Committee's review and comments to update six Nevada Test Site Environmental Management videos

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

Minutes: Minutes will be available by writing to Rosemary Rehfeldt at the address listed above or at the following Web site: *http://www.ntscab.com/MeetingMinutes.htm.*

Issued at Washington, DC on October 15, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–24995 Filed 10–20–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 12, 2008, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

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

Tentative Agenda: The main meeting topic will be groundwater and soil remediation.

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

Minutes: Minutes will be available by writing or calling Pat Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC on October 15, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–24998 Filed 10–20–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1175–013 and 1290–011]

Appalachian Power Company; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

October 14, 2008.

a. *Type of Filing:* Notice of Intent To File License Application for a New License and Commencing Licensing Proceeding.

b. *Project Nos.:* 1175–013 and 1290–011.

c. *Dated Filed:* August 14, 2008.

d. *Submitted By:* Appalachian Power Company.

e. *Name of Project:* London/Marmet and Winfield Hydroelectric Projects.

f. *Location:* The projects are located on the Kanawha River. The London/Marmet Project is located in Fayette and Kanawha Counties, West Virginia, and the Winfield Project is located in Kanawha and Putnam Counties, West Virginia. Both projects occupy federal lands (U.S. Army Corp of Engineers Lock and Dams).

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Ms. Teresa P. Rogers, Process Supervisor I, Appalachian Power Company, 40 Franklin Road, Roanoke, VA 24011. Tel. (540) 985–2441.

i. *FERC Contact:* Kim Carter (202) 502–6486 or e-mail at *Kim.Carter@ferc.gov.*

j. We are asking federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Appalachian Power Company as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Appalachian Power Company filed a Pre-Application Document (PAD) and a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name(s) (London/Marmet Hydroelectric Project and/or Winfield Hydroelectric Project) and number (P–1175–013 and/or P–1290–011), and bear the heading "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by December 12, 2008.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Wednesday, November 12, 2008.

Time: 2 p.m. to 4 p.m. (EST).

Location: Country Inn & Suites by Carlson, 105 Alex Lane, Charleston, WV 25304,

Phone: (304) 925–4300.

Evening Scoping Meeting

Date: Wednesday, November 12, 2008.

Time: 7 p.m. to 9 p.m. (EST).

Location: Country Inn & Suites by Carlson, 105 Alex Lane, Charleston, WV 25304,

Phone: (304) 925–4300.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov*, using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Site Visit

The licensee and Commission staff will conduct a site visit of the projects on Wednesday, November 12, 2008, starting at 8 a.m. (EST). All participants should meet at the parking lot of the Winfield powerhouse by 8 a.m. From there, we will continue on to the Marmet and London powerhouses, concluding site visits by noon. All participants are responsible for their own transportation to the powerhouse sites. Anyone with questions about the site visit should contact Teresa Rogers of Appalachian Power Company at (540) 985–2441 or by e-mail at *tprogers@aep.com* on or before November 5, 2008.

Date: Wednesday, November 12, 2008.

Time: 8 a.m. to 12 p.m. (EST).

Location: Winfield at 3732 Winfield Road, Winfield, WV 25213.

Phone: (304) 348–4644.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–24958 Filed 10–20–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12451–023]

SAF Hydroelectric, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 14, 2008.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license to change transmission line route.

b. *Project No:* 12451–023.

c. *Date Filed:* July 14, 2008.

d. *Applicant:* SAF Hydroelectric, LLC.

e. *Name of Project:* Lower St. Anthony Falls Project.

f. *Location:* The project is located at the U.S. Army Corps of Engineers' Lower St. Anthony Falls Lock and Dam on the Mississippi River, in Hennepin County, Minnesota.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* David W. Culligan, SAF Hydroelectric, LLC c/o Brookfield Renewable Power, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2792.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Steven Sachs at (202) 502–8666.

j. *Deadline for filing comments and/or motions:* November 17, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site under the "e-filing" link. The Commission strongly encourages electronic filings. Please include the project number P–12451–023 on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* SAF Hydroelectric, LLC (SAF) filed an amendment request for its license to change the project's transmission line route. SAF no longer plans to construct the 1,030-foot-long underground primary transmission line that is authorized by the license. Instead, it proposes a 13.8 kV transmission line extending from the project's switchgear to Xcel/Northern States Power Company's pole P adjacent to the powerhouse and continuing approximately 4,000 feet to the Elliot Park substation; consisting of approximately 2,000 feet of underground ducted circuit and 2,000 feet of overhead circuit. The overhead portion will be overbuilt with pole extenders attached to Xcel/Northern States Power Company's existing distribution poles. SAF is not proposing any changes to the project operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov;* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–24959 Filed 10–20–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[EL09–4–000]

Independent Power Producers of New York, Inc., Astoria Generating Company, L.P. a U.S. Power Generating Company, ConsumerPowerLine, Inc. East Coast Power, LLC, Energy Curtailment Specialists, Inc., NRG Energy, Inc., TC Ravenswood, LLC, Complainants v. New York Independent System Operator, Inc., Respondent; Notice of Complaint

October 14, 2008.

Take notice that on October 14, 2008, Independent Power Producers of New York, Inc., Astoria Generating Company, L.P., a U.S. Power Generating Company, ConsumerPowerLine, Inc., East Coast Power, LLC, Energy Curtailment Specialists, Inc., NRG Energy, Inc., and TC Ravenswood, LLC (Complainants) filed, pursuant sections 206 and 306 of the Federal Power Act and Rule 206 of the Commission's Rules of Practice and Procedures, 18 CFR 385.206, a formal complaint against New York Independent System Operator, Inc. (Respondent) alleging that the Respondent violated Federal Power Act section 205 by (i) failing to recalculate the Net Cost of New Entry ("Net CONE") for the proxy unit for the New York City Installed Capacity Markets and the resulting New York City Demand Curves, upon the legislative elimination of New York City's Industrial and Commercial Incentive Program real property tax exemption, thereby producing significantly understated New York City Demand Curves that will yield unjust and unreasonable rates for the remainder of the current reset period (through April 2011); and (ii) by improperly applying

the standard under the Commission-approved ISO Agreement, section 19.01, for "exigent circumstances" in its failure to act, thereby producing rates that are unjust and unreasonable. Complainants request that the Commission order the Respondent to promptly file tariff amendments increasing the New York City Demand Curves to account for certain property tax costs in the calculation of the Net CONE, beginning with the spot market auction that is held following the Commission's order in this proceeding.

The Complainants request fast track processing of the complaint.

The Complainants certify that a copy of the complaint has been served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 3, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–24954 Filed 10–20–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ09–1–000]

Bonneville Power Administration; Notice of Filing

October 14, 2008.

Take notice that on October 3, 2008, Bonneville Power Administration submit for filing amendments to its Open Access Transmission Tariff (OATT) and a Petition for Declaratory Order finding that its OATT, as amended by this filing, substantially conforms or is superior to the pro forma tariff and it continues to maintain its reciprocity status, pursuant to 18 CFR 35.28(e), 18 CFR 385.207 and Order No. 890, *Preventing Undue Discrimination and Preference in Transmission Service*, FERC Stats. & Regs. ¶ 31,241 (2007) (Order 890).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 3, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–24957 Filed 10–20–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–19–000; EL09–1–000]

ISO New England Inc.; Braintree Electric Light Department; Notice of Filing

October 14, 2008.

Take notice that on October 1, 2008, ISO New England Inc. (ISO) and Braintree Electric Light Department (BELD) filed an executed non-conforming Standard Large Generator Interconnection Agreement, Original Service Agreement No. LGIA–ISONE/BELD–08–01, under Schedule 22 of the ISO New England Inc's Open Access Transmission Tariff and a Petition of Declaratory Order, pursuant to section 205 of the Federal Power Act and Rule 207 of the Rules of Practice and Procedure of the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 31, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–24955 Filed 10–20–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–32–000]

Barton Windpower, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 14, 2008.

This is a supplemental notice in the above-referenced proceeding of Barton Windpower, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file 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). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 30, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–24956 Filed 10–20–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Independent Coordinator of Transmission (ICT) Stakeholder Policy Committee Meeting

October 14, 2008.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

ICT Stakeholder Policy Committee Meeting

October 29, 2008 (9 a.m.–3 p.m. CST),
Crown Plaza Houston North Greenspoint,
425 N. Sam Houston Parkway East,
Houston, TX 77060.

The discussions may address matters at issue in the following proceedings:

Docket No. EL07–52	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. OA07–32	Entergy Services, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. EL00–66	Louisiana Public Service Commission v. Entergy
Docket No. EL05–15	Arkansas Electric Cooperative, Corp. v. EntergyArkansas, Inc.
Docket No. ER08–844	Entergy Services, Inc.
Docket No. EL01–88	Louisiana Public Service Commission v. Entergy
Docket No. ER03–583	Entergy Services, Inc.
Docket No. EL08–59	ConocoPhillips v. Entergy Services, Inc.
Docket No. EL08–60	Union Electric v. Entergy Services, Inc.
Docket No. OA08–92	Entergy Services, Inc.
Docket No. OA08–75	Entergy Services, Inc.
Docket No. ER07–1252	Entergy Services, Inc.
Docket No. ER08–774	Entergy Services, Inc.
Docket No. ER08–1006	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER08–1057	Entergy Services, Inc.
Docket No. ER08–682	Entergy Services, Inc.
Docket No. EL08–72	NRG Energy, Inc. v. Entergy Services, Inc.
Docket No. EL08–84	AEEC v. Entergy Services, Inc.
Docket No. ER08–513	Entergy Services, Inc.
Docket No. ER07–927	Entergy Services, Inc.
Docket No. OA08–149	Entergy Operating Companies
Docket No. ER08–767	Entergy Services, Inc.
Docket No. ER09–57	Entergy Services, Inc.
Docket No. ER09–58	Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–24960 Filed 10–20–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13285–000]

The Nevada Hydro Company, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene and Competing Applications

October 14, 2008.

On September 10, 2008, The Nevada Hydro Company, Inc. filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Blue Diamond Pumped Storage Project to be located in Clark County, Nevada. The proposed project would be closed loop and would not be located on any existing water body.

The proposed project would consist of: (1) An upper reservoir with a maximum elevation of 4,810 feet MSL, a storage capacity of 4,900 acre-feet, and a surface area of 150 acres; (2) a lower reservoir with a maximum elevation of 3,320 feet MSL, a storage capacity of 4,900 acre-feet, and a surface area of 75 acres; (3) a 21-foot diameter, 4,300-foot long concrete and steel penstock; (4) a powerhouse containing two turbine/pump units with a total installed capacity of 450 MW; (5) a 132-kV, 3.5-mile long transmission line and; (6) appurtenant facilities. The annual production would be 1170 GWh which would be sold to a local utility.

Applicant Contact: Rexford Wait, 2416 Cades Way, Vista, CA 92083 (760) 599–0086.

FERC Contact: Steven Sachs (202) 502–8666.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13285) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–24953 Filed 10–20–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0356; FRL–8731–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Water Quality Standards Regulation (Renewal), EPA ICR Number 0988.10, OMB Control Number 2040–0049

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2008. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 20, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HA–OW–2008–0356, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Samantha Fontenelle, Standards and Health Protection Division, Office of Science and Technology (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460: telephone number: (202) 566–0400; fax number: (202) 566–0409; e-mail address: *fontenelle.samantha@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2008 (73 FR 31477), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2008–0356, which is available for online viewing at *http://www.regulations.gov* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, to access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Water Quality Standards Regulation (Renewal).

ICR numbers: EPA ICR No. 0988.10, OMB Control No. 2040–0049.

ICR Status: This ICR is scheduled to expire on November 30, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. Under OMB regulations, the Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Water quality standards are provisions of State, Tribal, and Federal law that consist of designated uses for waters of the United States, water quality criteria to protect the designated uses, and an antidegradation policy. Section 303(c) of the Clean Water Act requires States and authorized Tribes to establish water quality standards, and to review and, if appropriate, revise their water quality standards once every three years. The Act also requires EPA to review and either approve or disapprove the new or revised standards, and to promulgate replacement Federal standards if necessary. Section 118(c)(2) of the Act specifies additional water quality standards requirements for waters of the Great Lakes system.

The Water Quality Standards Regulation (40 CFR part 131 and portions of part 132) governs national implementation of the water quality standards program. The Regulation describes requirements and procedures for States and authorized Tribes to develop, review, and revise their water quality standards, and EPA procedures for reviewing and approving the water quality standards.

The Regulation establishes specific additional requirements for water quality standards and their implementation in the waters of the Great Lakes system, contained in the Water Quality Guidance for the Great Lakes System (40 CFR part 132).

Burden Statement: The public reporting and recordkeeping burden for this collection of information is estimated to average 1,060 hours per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, Territories and certain authorized Indian tribes that adopt water quality standards under the Clean Water Act; and water dischargers subject to certain requirements related to water quality standards in the Great Lakes system.

Estimated Number of Respondents: 2,809 (56 States and Territories, 43 Tribes; 2,710 Great Lakes dischargers).

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 293,214 hours.

Estimated Total Annual Cost: $14,866,862 with no annualized capital or O&M cost.

Changes in the Estimates: There is an increase of 32,500 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an adjustment in the number of Tribes approved to administer water quality standards programs to reflect additional approvals since the previous ICR in 2005.

Dated: October 15, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–25016 Filed 10–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8732–1]

Meeting of the National Drinking Water Advisory Council—Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given of the forthcoming conference call meeting of the National Drinking Water Advisory Council (Council), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will discuss EPA's proposed rule describing Federal Requirements under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO_2) Geologic Sequestration (GS) Wells.

DATES: The Council meeting will be held via Webcast on Thursday, November 6, 2008, from 10 a.m. to 12:30 p.m., Eastern Standard Time. To register for the Web cast and obtain additional information including the call in number, attendees should visit the following site: *http://gswebinar.cadmusweb.com.*

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to present an oral statement or submit a written statement should contact Veronica Blette, by e-mail at: *blette.veronica@epa.gov,* by phone, 202–564–4094, or by regular mail at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The Council encourages the public's input and will allocate 30 minutes for this purpose during the latter part of the call. To ensure adequate time for public involvement, oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information. Notes and comments will also be submitted to the proposed rule docket at *http://www.regulations.gov* (docket i.d.: EPA–HQ–OW–2008–0390). Any person needing special accommodations at this meeting should contact the Designated Federal Officer, at the number or e-mail listed under the **FOR FURTHER INFORMATION CONTACT** section, at least five business days before the meeting so that the appropriate arrangements can be made.

Dated: October 15, 2008.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E8–25017 Filed 10–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8731–6]

Draft Modification to the NPDES General Permit for Oil and Gas Exploration, Development and Production Facilities in State and Federal Waters in Cook Inlet, AK, Permit No. AKG–31–5000 (Permit)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft modification to NPDES general permit.

SUMMARY: The Director, Office of Water and Watersheds, EPA Region 10, is issuing a draft modification to the National Pollutant Discharge Elimination System (NPDES) general permit in response to a settlement agreement between Union Oil Company of California and XTO Energy, Inc. (Petitioners) and EPA (Ninth Circuit, Case No. 07–72656). On May 25, 2007, EPA issued the final Permit, with an effective date of July 2, 2007 (May 31, 2007, 72 FR 30377). The Permit included the following provisions, among others:

1. Condition II.A.10: "If any discharges are commingled, the most stringent effluent limitations for each individual discharge shall be applied to the resulting discharge. If the Individual discharge is not authorized, the commingled discharge is not authorized. Monitoring for compliance with technology based limits, such as the oil and grease concentration of produced water must be accomplished prior to commingling."

2. Condition II.C.3: "Commingled Waste Streams. If deck drainage is commingled with produced water, then this discharge shall be considered produced water for monitoring purposes (see Section II.G). However, samples collected for compliance with the produced water oil and grease limits shall be taken prior to commingling the produced water stream with deck drainage or any other waste stream. The estimated deck drainage flow rate must be reported in the comment section of the DMR (i.e., discharge monitoring report)."

3. Table 7–A, Footnote 1: "The sample type shall be either grab, or a 24-hour composite which consists of the arithmetic average of the results of 4 grab samples taken over a 24-hour period. If a sample is unavailable to be analyzed and the permittee has explained the reason in the DMR, averaging of the remaining samples is permitted. Samples shall be collected prior to the addition of any seawater to the produced water waste stream. See Section II.G.6.b of this Permit."

On July 3, 2007, Petitioners filed the Petition for Review, challenging the three provisions of the Permit set forth above. On the same date, Petitioners filed an Emergency Motion for Stay Under Circuit Rule 27–3, requesting the Court stay the three highlighted sentences above (the "contested terms"). EPA did not oppose the Emergency Stay and on July 5, 2007, the Court issued an order granting Petitioners' Emergency Motion for Stay of the contested Permit provisions.

On August 21, 2008, after EPA reviewed the basis for the contested terms, EPA and Petitioners reached a settlement agreement. Under this agreement, EPA agreed to modify the Permit, and publish in the **Federal Register**, pursuant to 40 CFR 122.62, a proposal to modify the Permit by removing the third sentence of Condition II.A.10, the second sentence of Condition II.C.3, and the fourth sentence of Footnote 1 to Table 7–A, from the Permit. Intervenor Cook Inletkeeper did not object to the settlement agreement. A fact sheet has been prepared which explains EPA's rationale for the proposed Permit modification.

Public Comment: EPA will only be accepting comments on the proposed modification of the Permit. Interested persons may submit written comments on the draft Permit modification to the attention of Hanh Shaw at the address below. Copies of the draft modification and fact sheet are available upon request. The Permit modification and fact sheet may also be downloaded from the Region 10 Web site at *http://www.epa.gov/r10earth/waterpermits.htm* (click on draft permits, then Alaska). All comments must include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated.

After the expiration date of the Public Notice on November 20, 2008, the Director, Office of Water and Watersheds, EPA Region 10, will make a final determination with respect to issuance of the Permit modification. The proposed changes contained in the draft modification will become final upon issuance if no significant comments are received during the public comment period.

DATES: Comments must be received or postmarked by November 20, 2008.

ADDRESSES: Comments on the proposed Permit modification should be sent to Director, Office of Water and Watersheds; USEPA Region 10; 1200 6th Ave., Suite 900, OWW–130; Seattle, Washington 98101. Comments may also be received via electronic mail at *shaw.hanh@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained by contacting Hanh Shaw at the address above, or by visiting the Region 10 Web site at *http://www.epa.gov/r10earth/waterpermits.htm.* Requests may also be made to Audrey Washington at (206) 553–0523, or electronically mailed to: *washington.audrey@epa.gov.*

Other Legal Requirements

State Water Quality Standards and State Certification

The Alaska Department of Environmental Conservation (ADEC) intends to waive the Permit under Section 401 of the Clean Water Act since State water quality standards are not affected by the modification.

Endangered Species Act

EPA has determined that issuance of the Permit modification would have no effect on any threatened or endangered species, nor designated critical habitat.

Executive Order 12866

EPA has determined that this Permit modification is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control numbers 2040–0086 and 2040–0110.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. However, general NPDES permits are not "rules" subject to the requirements of 5 U.S.C. 553(b), and is therefore not subject to the RFA.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their

"regulatory actions" (defined to be the same as "rules" subject to the RFA) on tribal, state, and local governments and the private sector. However, general NPDES permits are not "rules" subject to the requirements of 5 U.S.C. 553(b), and is therefore not subject to the RFA.

Signed this 10th day of October, 2008.

Michael F. Gearheard,

Director, Office of Water and Watersheds, U.S. Environmental Protection Agency, Region 10.

[FR Doc. E8–25075 Filed 10–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8730–9]

Proposed Agreement and Covenant Not To Sue for 2800 South Sacramento Superfund Site (a/k/a "Celotex Site"), Chicago, IL

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: Notice is hereby given that a proposed Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) acquisition of the 2800 Sacramento Superfund Site (the "Celotex Site") by the City of Chicago and the Chicago Park District ("City Parties") has been negotiated by the United States Environmental Protection Agency ("EPA") and the City Parties subject to the final review and approval of the EPA and the U.S. Department of Justice. The proposed Prospective Purchaser Agreement relates to the City Parties' plan to take ownership of the land and build a park at the Celotex Site. The City Parties are not Potentially Responsible Parties at the Site. Pursuant to the Prospective Purchaser Agreement, the City Parties will develop the property as a public park utilizing certain sustainable development practices, in exchange for a covenant by EPA not to sue the City Parties regarding the Existing Contamination at the Site pursuant to the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.* ("CERCLA").

DATES: EPA will receive written comments by November 20, 2008 relating to the above referenced Prospective Purchaser Agreement. EPA will consider all comments received and will only sign the Prospective Purchaser Agreement after the public comment period has ended and after it has considered all comments received.

ADDRESSES: EPA's response to any comments and the proposed Prospective Purchaser Agreement is available for public inspection at the EPA Superfund Record Center, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Comments and request for copies of the proposed Prospective Purchaser Agreement should be addressed to Karen L. Peaceman, Associate Regional Counsel, EPA Region 5, Mail Code C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; E-mail: *Peaceman.karen@epa.gov* and should reference the 2800 South Sacramento Avenue Superfund Site, Chicago, Illinois. A copy of the proposed Prospective Purchaser Agreement may also be found at *http://www.epa.gov/region5/sites/celotex/index.htm.*

FOR FURTHER INFORMATION CONTACT: Karen L. Peaceman, Associate Regional Counsel, EPA Region 5, Mail Code C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 353–5751.

Dated: October 10, 2008.

Richard C. Karl,

Director, Superfund Division, Region 5.

[FR Doc. E8–24877 Filed 10–20–08; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0064, FRL–8731–1]

U.S. EPA's National Clean Water Act Recognition Awards Presentation During the Water Environment Federation's Technical Exposition and Conference (WEFTEC), and Announcement of 2008 National Awards Winners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency recognized municipalities and industries for outstanding and innovative technological achievements in wastewater treatment and pollution abatement programs. An inscribed plaque was presented to first and second place national winners at the annual Clean Water Act Recognition Awards presentation during the Water Environment Federation's Technical Exposition and Conference (WEFTEC). Recognition is made for outstanding programs and projects in operations and maintenance at wastewater treatment facilities, biosolids management and public acceptance, municipal implementation and enforcement of local pretreatment programs, cost-effective storm water controls, and combined sewer overflow controls. This action announces the 2008 national awards winners.

DATES: Monday, October 20, 2008, 11:30 a.m. to 1 p.m.

ADDRESSES: The national awards presentation ceremony was held at the Hyatt Regency McCormick Place, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Matthew Richardson, Telephone: (202) 564–2947. Facsimile Number: (202) 501–2396. E-Mail: *richardson.matthew@epa.gov.* Also visit the Office of Wastewater Management's Web page at *http://www.epa.gov/owm.*

SUPPLEMENTARY INFORMATION: The Clean Water Act Recognition Awards are authorized by section 501(a) and (e) of the Clean Water Act, and 33 U.S.C. 1361(a) and (e). Applications and nominations for the national awards are recommended by EPA regions. The regulation that establishes the framework for the annual recognition awards program is at 40 CFR part 105. EPA announced the availability of application and nomination information for this year's awards (73 FR 16299, March 27, 2008). The awards program enhances national awareness of municipal wastewater treatment and encourages public support of programs targeted to protecting the public's health and safety and the nation's water quality. State water pollution control agencies and EPA regional offices make recommendations to headquarters for the national awards. Programs and projects being recognized are in compliance with applicable water quality requirements and have a satisfactory record with respect to environmental quality. Municipalities and industries are recognized for their demonstrated creativity and technological achievements in five awards categories as follows:

(1) Outstanding Operations and Maintenance practices at wastewater treatment facilities;

(2) Exemplary Biosolids Management projects, technology/innovation or development activities, research and public acceptance efforts;

(3) Pretreatment Program Excellence;

(4) Stormwater Management Excellence; and,

(5) Outstanding Combined Sewer Overflow Control programs. The winners of the EPA's 2008 National Clean Water Act Recognition Awards are listed below by category.

	Sub-category
Category: Operations and Maintenance Awards	
O&M First Place:	
F. Wayne Hill Water Resources Center, Buford, Georgia, EPA Region 4	Large Advanced Plant.
El Paso Water Utilities Public Service Board, Northwest Wastewater Treatment Facility, El Paso, Texas, EPA Region 6.	Large Advanced Plant.
City of Newnan—Wahoo Creek Water Pollution Control Plant, Newnan, Georgia, EPA Region 4	Medium Advanced Plant.
Waterville Wastewater Treatment Facility, Waterville, New York, EPA Region 2	Small Advanced Plant.
Joint Water Pollution Control Plant, Carson, California, EPA Region 9	Large Secondary Plant.
Southside Wastewater Treatment Plant, City of Vidalia, ESG Operations, Georgia, EPA Region 4	Medium Non-Discharging Plant.
The Manor Water Reclamation Facility, Alpharetta, Georgia, EPA Region 4	Small Non-Discharging Plant.
Bristol, New Hampshire Wastewater Treatment Plant, Bristol, New Hampshire, EPA Region 1	Most Improved Plant.
O&M Second Place:	
Central Contra Costa Sanitary District, Martinez, California, EPA Region 9	Large Secondary Plant.
Grandville Wastewater Treatment Plant, Grandville, Michigan, EPA Region 5	Medium Advanced Plant.
Douglasville-Douglas County Water and Sewer Authority, Beaver Estates Water Pollution Control Plant, Douglasville, Georgia, EPA Region 4.	Small Advanced Plant.
Category: Exemplary Biosolids Management Awards	
Biosolids First Place:	
Lawrence Municipal Wastewater Treatment Facility, Lawrence, Kansas, EPA Region 7	Large Operating Projects.
Tahlequah Public Works Authority Compost Operation, Tahlequah, Oklahoma, EPA Region 6	Small Operating Projects.
Metropolitan Water Reclamation District of Greater Chicago, Chicago, Illinois, EPA Region 5	Public Acceptance.
Biosolids Second Place:	
Spencer Creek Wastewater Treatment Plant, Organic Resource Recycling Program, St. Peters, Missouri, EPA Region 7.	Large Operating Projects.
Category: Pretreatment Program Awards	
Pretreatment First Place:	
Union Sanitary District, Union City, California, EPA Region 9	Greater Than 21 Significant Industrial Users (SIUs).
Sam Hobbs Regional Wastewater Treatment Facility, Casper, Wyoming, EPA Region 8	6–20 SIUs.
St. Johns County Utilities Pretreatment Program, St. Augustine, Florida, EPA Region 4	0–5 SIUs.
Pretreatment Second Place:	
Laguna Subregional Reclamation Facility, Santa Rosa, California, EPA Region 9	Greater Than 21 SIUs.
South Valley Water Reclamation Facility Pretreatment Program, West Jordan, Utah, EPA Region 8	6–20 SIUs.
Category: Stormwater Management Awards	
Stormwater First Place:	
County of Sacramento Commercial/Industrial Stormwater, Compliance Program, Sacramento, California, EPA Region 9.	Industrial Program.
Stormwater First Place:	
Rogue Valley Sewer Services, Central Point, Oregon, EPA Region 10	Municipal Program.
Stormwater Second Place:	
Keep It Clean Partnership—City of Boulder, Town of Erie, City of Longmont, City of Louisville, Town of Superior, and Boulder County, Colorado, EPA Region 8.	Municipal Program.
Category: Combined Sewer Overflow Control Awards	
CSO First Place:	
Village of Metamora Wastewater Collection Separation, Metamora, Ohio, EPA Region 5	Municipal CSO Program.

Dated: October 10, 2008.

Judy Davis,

Acting Director, Office of Wastewater Management.

[FR Doc. E8–24693 Filed 10–20–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collection of information titled: Notification of Changes of Insured Status (3064–0124).

DATES: Comments must be submitted on or before December 22, 2008.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods. All comments should refer to the name of the collection:

Web site: http://www.FDIC.gov/regulations/laws/federal/notices.html.

E-mail: comments@fdic.gov. Include the name of the collection in the subject line of the message.

Mail: Gary A. Kuiper (202.898.3877), Counsel, Room F–1072, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Hand Delivery: Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Notification of Changes of Insured Status.

OMB Number: 3064–0124.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions.

Number of certifications: 280 (Average time to prepare a certification is one quarter hour) for a total of 70 hours. Number of depositor notices: 5 (the average time to prepare a depositor notice is 1 hour) for a total of 5 hours.

Total Annual Burden: 75 hours.

General Description of Collection: The collection involves the certification that insured depository institutions provide the FDIC when they completely assume deposit liabilities from another insured depository institution, and a notification that insured depository institutions provide to the FDIC when they seek to voluntarily terminate their insured status.

Request for Comment

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs, and costs of operation, maintenance and purchase of services to provide the information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 15th day of October 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–24951 Filed 10–20–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Thursday, October 23, 2008, to consider the following matter:

Discussion Agenda

Memorandum and resolution re: Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Treatment of Perpetual Preferred Stock Issued To the United States Treasury under the Emergency Economic Stabilization Act of 2008.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: October 16, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–25098 Filed 10–20–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Thursday, October 23, 2008, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), (9)(A)(ii), and (9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: October 16, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–25099 Filed 10–20–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, October 27, 2008.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C 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.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, October 17, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–25209 Filed 10–17–08; 4:15 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission ("Commission" or "FTC").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through October 31, 2011, the current PRA clearance for information collection requirements contained in the FTC rule on "Labeling and Advertising of Home Insulation" ("R-value Rule" or "Rule"). The current clearance expires on October 31, 2008.

DATES: Comments must be submitted on or before November 20, 2008.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "R-value Rule, PRA Comment, FTC File No. P094200" to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*)—and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential. . . .," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-rvaluePRA*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-rvaluePRA*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the "R-value Rule, PRA Comment, FTC File No. P094200" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

All comments should additionally be submitted to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Bureau of Consumer Protection, (202) 326–2889, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington D.C. 20580.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the R-value Rule, 16 CFR Part 460 (OMB Control Number 3084–0109).

The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat.

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

Estimated annual hours burden: 117,000 hours, rounded

The Rule's requirements include product testing, recordkeeping, and third-party disclosures on labels, fact sheets, advertisements, and other promotional materials. Based on information provided by members of the insulation industry, staff estimates that the Rule affects: (1) 150 insulation manufacturers and their testing laboratories: (2) 1,615 installers who sell home insulation; (3) 125,000 new home builders/sellers of site-built homes and approximately 5,500 dealers who sell manufactured housing; and (4) 25,000 retail sellers who sell home insulation for installation by consumers.

Under the Rule's testing requirements, manufacturers must test each insulation product for its R-value. Based on past industry input, staff estimates that the test takes approximately 2 hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. Their total annual testing burden is therefore approximately 30 hours.

Staff further estimates that most manufacturers require an average of approximately 20 hours per year regarding third-party disclosure requirements in advertising and other promotional materials. Only the five or six largest manufacturers require additional time, approximately 80 hours each. Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours [(144 manufacturers x 20 hours) + (6 manufacturers x 80 hours)].

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep their testing-related records in the ordinary course of business. Staff estimates that no more than one additional hour per year per manufacturer is necessary to comply with this requirement, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers x 1 hour).

Installers are required to show the manufacturers' insulation fact sheet to retail consumers before purchase. They must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to install. Staff estimates that two minutes per sales transaction is sufficient to comply with these requirements. Approximately 1,520,000 retrofit insulations (an industry source's estimate) are installed by approximately 1,615 installers per year, and, thus, the related annual burden total is approximately 50,667 hours (1,520,000 sales transactions x 2 minutes). Staff anticipates that one hour per year per installer is sufficient to cover required disclosures in advertisements and other promotional materials. Thus, the burden for this requirement is approximately 1,615 hours per year. In addition, installers must keep records that indicate the substantiation relied upon for savings claims. The additional time to comply with this requirement is minimal—approximately 5 minutes per year per installer—for a total of approximately 135 hours.

New home sellers must make contract disclosures concerning the type, thickness, and R-value of the insulation they install in each part of a new home. Staff estimates that no more than 30 seconds per sales transaction is required to comply with this requirement, for a total annual burden of approximately 10,833 hours (an estimated 1.3 million new home sales[2] x 30 seconds). New home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those claims. Because few new home sellers make these claims, and the ones that do would likely keep these records regardless of the R-value Rule, staff believes that the 30 seconds covering disclosures would also encompass this recordkeeping element.

The Rule requires that the approximately 25,000 retailers who sell home insulation make fact sheets available to consumers before purchase. This can be accomplished by, for example, placing copies in a display rack or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets should require no more than approximately one hour per year per retailer, for a total of 25,000 annual hours, industry-wide.

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is very minimal because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer should suffice to meet this requirement, for a total annual burden of approximately 25,000 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is *de minimis*. The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

To summarize, staff estimates that the Rule imposes a total of 116,790 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours for manufacturers; 135 recordkeeping and 52,282 disclosure hours for installers; 10,833 disclosure hours for new home sellers; and 50,000 disclosure hours for retailers. Rounded to the nearest thousand, the total burden is 117,000 burden hours.

Estimated annual cost burden: $2,650,000, rounded to the nearest thousand (solely related to labor costs)

The total annual labor cost for the Rule's information collection requirements is $2,649,720, derived as follows: $690 for testing, based on 30 hours for manufacturers (30 hours x $23 per hour for skilled technical personnel); $3,705 for manufacturers' and installers' compliance with the Rule's recordkeeping requirements, based on 285 hours (285 hours x $13 per hour for clerical personnel); $43,680 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours x $13 per hour for clerical personnel); and $2,601,645 for disclosure compliance by installers, new home sellers, and retailers (113,115 hours x $23 per hour for sales persons).

There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. Because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

William Blumenthal,

General Counsel

[FR Doc. E8–25106 Filed 10–20–08: 8:45 am]

BILLING CODE 6750–01–S

[2] Based on U.S. census data from 2007. *See* (*http://www.census.gov/const/www/quarterly_starts_completions.pdf.*) Figures for new housing starts show a continuing decline from 2005, when the Commission last sought PRA clearance for the Rule, through 2007. *See id.*

FEDERAL TRADE COMMISSION

[File No. 071 0196]

Dick's Sporting Goods, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 7, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Dicks Sporting Goods, File No. 071 0196," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-DicksSportingGoods*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*)

FOR FURTHER INFORMATION CONTACT: Melissa Westman-Cherry, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580, (202) 326–2338.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 9, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/10/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Dick's Sporting Goods, Inc. ("Dick's" or "Respondent"). Dick's, through its wholly-owned subsidiary Golf Galaxy, operates a chain of golf superstores in the United States. The agreement settles charges that Dick's violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by agreeing with a potential competitor to allocate markets. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate comment on the proposed order. The analysis does not constitute an official interpretation of the agreement and proposed order, and does not modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

I. The Complaint

The allegations of the complaint are summarized below:

Golf Galaxy operates a chain of golf superstores in the United States. Golf Galaxy stores offer a broad selection of golf merchandise and related services, including golf clubs, equipment, accessories, clothing, lessons, swing analysis, and golf club fitting. The founders of Golf Town Canada Inc. ("Golf Canada") wished to launch a chain of golf superstores in Canada similar to the Golf Galaxy stores.

In June 1998, Golf Canada and Golf Galaxy entered into a consulting agreement (the "1998 Agreement"). Golf Galaxy agreed therein: (i) to develop and present an initial training program for certain Golf Canada employees, (ii) to provide Golf Canada on an ongoing basis with useful business documents, including construction blueprints, merchandising plans, and sales reports, and (iii) to provide continuing consulting support to Golf Canada. In consideration for these consulting services, Golf Galaxy received shares of Golf Canada, a seat on the company's board of directors, and cash payments.

Certain provisions of the 1998 Agreement restrained Golf Canada from competing with Golf Galaxy. Specifically, Golf Canada was barred: (i) from operating any retail store in the United States during the term of the 1998 Agreement and for five years thereafter, and (ii) from engaging in any

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

business outside of Canada that competes with or is similar to the business of Golf Galaxy during the term of the 1998 Agreement and for two years thereafter.

Between 1998 and 2004, with the assistance of Golf Galaxy, Golf Canada opened thirteen retail locations in Canada.

In October 2004, Golf Galaxy sold its shares of Golf Canada and the parties terminated all consulting obligations effective immediately. Golf Galaxy and Golf Canada entered into a new contract (the "2004 Amended Agreement") that, *inter alia*, extended the duration of the restraints on competition beyond the expiration dates contemplated in the 1998 Agreement. The 2004 Amended Agreement bars Golf Canada: (i) from operating any retail store in the United States for nine years (until June 2013), and (ii) from engaging in any business outside of Canada that competes with or is similar to the business of Golf Galaxy for six years (until June 2010). In addition, the 2004 Amended Agreement for the first time prohibits Golf Galaxy from opening a store in Canada (until June 2008).

II. Legal Analysis

There are two distinct sets of restraints in this matter.

One set was agreed upon by Golf Galaxy and Golf Canada in 1998 when their consulting relationship was launched. These restraints appear to have been reasonably necessary to the formation and/or efficient operation of the parties' collaboration. For example, Golf Canada's commitment not to compete in the United States during the term of the consulting relationship (and for five years thereafter) may have been necessary in order to induce Golf Galaxy to share with Golf Canada certain valuable, confidential, and proprietary information.[2] The Commission therefore does not challenge these 1998 restrictions.

The parties entered into a second set of restraints in 2004, contemporaneous with the decision to terminate their collaboration. The 2004 restraints provide for a division of markets well beyond the term contemplated in the 1998 Agreement, and are the subject of the Commission's claim in this matter. Under the 1998 Agreement, Golf Canada's undertaking to forgo competing in the United States would have expired five years after termination of the consulting relationship; since the consulting relationship ended in 2004, the noncompete would have expired five years later in 2009. With the 2004 Amended Agreement the noncompete was extended from 2009 until 2013—four years longer than what was contemplated under the original 1998 Agreement.

The 2004 Amended Agreement may be analyzed under the framework articulated by the Commission in the *PolyGram* case.[3] Agreements between competitors to divide markets are treated by the courts as presumptively anticompetitive, or inherently suspect. *E.g., Nynex Corp. v. Discon, Inc.*, 525 U.S. 128, 134 (1998) (horizontal market division is unlawful per se); *Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46 (1990) (same); Timothy J. Muris, *The Rule of Reason After California Dental*, 68 Antitrust L. J. 527, 536 (2000) ("[C]ourts already consider price fixing and market division to be inherently suspect."). When an agreement is deemed inherently suspect, the parties can avoid summary condemnation under the antitrust laws by advancing a legitimate (cognizable and plausible) efficiency justification for the restraint.[4]

Here, the Commission found reason to believe that the 2004 restraints serve no pro-competitive purpose. This second set of restraints was *not* reasonably necessary for the formation or efficient operation of the collaboration between Golf Galaxy and Golf Canada. Significantly, the 2004 restraints cannot be said to induce or facilitate cooperation between Golf Galaxy and Golf Canada—for the simple reason that, after 2004, no further cooperation was contemplated. These restraints served only to provide Golf Galaxy's shareholders with additional protection from competition, with no advantage to U.S. consumers. Because there is no efficiency rationale for the 2004 agreement between Golf Galaxy and Golf Canada to divide markets, such agreement constitutes an unreasonable restraint on trade, and is properly judged to be illegal.

Application of the ancillary restraints framework leads to precisely the same conclusion. The D.C. Circuit has explained:

> To be ancillary, and hence exempt from the per se rule, an agreement eliminating competition must be subordinate and collateral to a separate, legitimate transaction. The ancillary restraint is subordinate and collateral in the sense that it serves to make the main transaction more effective in accomplishing its purpose. Of course, the restraint imposed must be related to the efficiency sought to be achieved. If it is so broad that part of the restraint suppresses competition without creating efficiency, the restraint is, to that extend, not ancillary.[5]

The legitimate and competitive purpose of the consulting arrangement, in place from 1998 through 2004, was to enable Golf Canada to benefit from Golf Galaxy's experience and expertise. However, as alleged in the Complaint, the 2004 restraints did nothing to encourage, facilitate, or promote this collaboration. (Again, after 2004, no ongoing cooperation was contemplated.) Certainly, the dissolution of a collaboration does not, of itself, provide a rationale for the ex-partners to adopt new and expanded limitations upon future competition. *See Blackburn v. Sweeney*, 53 F.3d 825 (7th Cir. 1995) (market division agreement adopted by lawyers following dissolution of their partnership judged per se unlawful). In short, the challenged restraints are naked rather than ancillary.

III. The Proposed Consent Order

Dick's (the parent of Golf Galaxy) has signed a consent agreement containing a proposed consent Order. The proposed consent Order enjoins the company from dividing or allocating markets for the retail sale of golf merchandise. In addition, the proposed Order will prevent Golf Galaxy from enforcing any noncompete provision beyond the date originally provided for in the 1998 Agreement. More specifically, the provision of the 2004 Amended Agreement prohibiting Golf Canada from operating any retail store in the United States will no longer be enforceable as of October 8, 2009, and thereafter. The prohibition on Golf Canada's engaging in any business outside of Canada that competes with or is similar to the business of Golf Galaxy will no longer be enforceable as of thirty (30) days from the date on which the Order becomes final and thereafter.

The proposed Order would not interfere with the company's ability to enter into written agreements to allocate or divide markets, customers, contracts, lines of commerce, or geographic territories in connection with the sale of golf merchandise where such agreement is reasonably related to a lawful consulting arrangement or lawful joint venture agreement; and is reasonably necessary to achieve such agreement's procompetitive benefits.

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[2] *See e.g., Polk Bros. v. Forest City Enters.*, 776 F.2d 185, 189 (7th Cir. 1985).

[3] *Polygram Holding, Inc.*, 136 F.T.C. 310 (2003), *aff'd*, 416 F.3d 29 (D.C. Cir. 2005). *See also N. Tex. Speciality Physicians v. FTC*, 528 F.3d 346 (5th Cir. 2008).

[4] *Polygram Holding, Inc. v. FTC*, 416 F.3d 29, 35–36 (D.C. Cir. 2005).

[5] *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 224 (D.C. Cir. 1986).

The proposed Order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary

[FR Doc. E8–24931 Filed 10–20–08; 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Meeting

ACTION: Meeting announcement.

SUMMARY: This notice announces the meeting date for the 25th meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

Meeting Date: November 12, 2008, from 8:30 a.m. to 2:45 p.m. (Eastern)

ADDRESSES: Hubert H. Humphrey building (200 Independence Avenue, SW., Washington, DC 20201), Room 800.

SUPPLEMENTARY INFORMATION: The meeting will include updates on the Healthcare Information Technology Standards Panel, the Certification Commission for Healthcare Information Technology, and hospital health information technology adoption rates. Final reports on the Electronic Health Records, Chronic Care, Consumer Empowerment, Quality, and Personalized Healthcare Workgroups will also be presented. Finally, an update on the AHIC Successor organization will be heard.

For further information, visit *http://www.hhs.gov/healthit/ahic.html.*

A Web cast of the Community meeting will be available on the NIH Web site at: *http://www.videocast.nih.gov/.*

If you have special needs for the meeting, please contact (202) 690–7151.

Dated: October 15, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E8–24991 Filed 10–20–08; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Environmental Health Sciences (NIEHS); National Toxicology Program (NTP); Request for Information (NOT–ES–09–001): Ongoing Research and Research Needs for Biological Effects of Exposure to Bisphenol A (BPA)

AGENCY: National Institutes of Health (NIH).

ACTION: Request for information.

SUMMARY: The NIEHS Division of Extramural Research and Training (DERT) and the NTP are seeking input on a number of key research areas that have been identified in recent evaluations of bisphenol A (BPA). Information provided will be used to help focus future research and testing activities on BPA. This Request for Information (RFI) is for planning purposes only and should not be construed as a funding opportunity or grant program. The NIEHS and NTP welcome input from the lay public, environmental health researchers, healthcare professionals, educators, policy makers, industry, and others with an interest in BPA.

DATES: Please respond online at the Bisphenol A Request for Information Web page by December 1, 2008, at *http://ntp.niehs.nih.gov/go/rfibpa.*

FOR FURTHER INFORMATION CONTACT: Other correspondence regarding this RFI should be directed to either (1) Dr. Jerry Heindel, DERT Program Administrator, NIEHS, P.O. Box 12233, MD EC–23, Research Triangle Park, NC 27709, (phone) 919–541–0781, (e-mail) *heindelj@niehs.nih.gov* or (2) Dr. Paul Foster, NTP Acting Toxicology Branch Chief, NIEHS, P.O. Box 12233, MD EC–34, Research Triangle Park, NC 27709, (phone) 919–541–2513, (e-mail) *foster2@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NTP is an interagency program whose mission is to evaluate agents of public health concern by developing and applying tools of modern toxicology and molecular biology. The NTP was established as a cooperative effort to (1) Coordinate toxicology testing programs within the federal government, (2) strengthen the science base in toxicology, (3) develop improved testing methods, and (4) provide information about potentially toxic chemicals to health, regulatory, and research agencies, scientific and medical communities, and the public. To meet these goals, NTP designs and conducts large-scale laboratory animal research and testing programs and analyzes and reports its findings to assess potential hazards to human health from exposure to environmental agents. The NTP also carries out formal review and literature analysis activities.

The NIEHS mission is to understand the complex relationship between environmental risk factors and human biology within affected individuals and populations and to use this knowledge to prevent illness, reduce disease, and promote health. To accomplish this, the NIEHS supports research and professional development in environmental health sciences, environmental clinical research, and environmental public health. These extramural research and development activities are managed through NIEHS/DERT.

Recently, both the NTP and NIEHS/DERT conducted assessments related to understanding the potential human health and environmental risks posed by BPA. The NTP evaluation was conducted through its Center for the Evaluation of Risks to Human Reproduction (CERHR) and focused on whether current exposures may pose health risks to human reproduction and development. The final results of this evaluation were released on September 3, 2008, as the NTP–CERHR Monograph on Bisphenol A. The monograph and details of this evaluation are available at *http://cerhr.niehs.nih.gov/chemicals/bisphenol/bisphenol.html.* The NIEHS workshop, "Bisphenol A: An Examination of the Relevance of Ecological, *In Vitro* and Laboratory Animal Studies for Assessing Risks to Human Health" (for consensus statement see vom Saal *et al.*, Reproductive Toxicol. 2007. 24:131–138) was co-sponsored with a number of other organizations and was broader in scope compared to the NTP–CERHR evaluation as it included consideration of ecological effects and human health effects not directly related to development or reproduction.

The NTP and NIEHS review activities resulted in a number of research recommendations to better characterize the sources and levels of human exposures to BPA and to help determine what, if any, adverse health effects might result from such exposures. Similarly, a number of research needs have been identified by the Food and Drug Administration in its draft assessment of BPA in food contact applications (*http://www.fda.gov/ohrms/dockets/ac/oc08.html#Scienceboard* see "Science Board to the Food and Drug

Administration'' meeting information for September 16, 2008).

Currently the NTP is pursuing studies of absorption, distribution, metabolism, and excretion (ADME) in experimental animals (rodents and non human primates) as well as the kinetics associated with these processes, following exposures to BPA from the perinatal period through adulthood, over a wide range of doses, by multiple routes of administration. These studies have been identified as high priority needs in all recent reviews and reflect the general lack of information on concentrations of BPA in blood and target tissues in animal studies reporting effects of ''low'' doses of BPA on various aspects of development.

In addition to ADME studies, other areas of research have been suggested to better characterize possible hazards associated with BPA exposures in humans. They include studies to (1) Examine pathways of human exposures, (2) identify cellular targets for BPA at low and high doses for consistency with an estrogenic mechanism of action, (3) identify interactions with other estrogenic substances including naturally occurring hormones, and (4) investigate further the ''low'' dose effects reported in experimental animals.

The findings from the ADME studies and the information collected as a result of this RFI will be analyzed and considered for use in the further development of NTP and NIEHS/DERT research and testing programs on BPA.

Information Requested

The NTP and NIEHS/DERT request information on the following:

- Ongoing or planned research activities that you are aware of related to this RFI.
- Specific data needs for any or all of the priority areas identified below.
- Suggestions for beneficial research collaborations.

To aid in the development of a listing of prioritized data needs, a summary listing of the research needs identified in the NTP CERHR evaluation, the NIEHS co-sponsored workshop, or the draft FDA assessment are included below. This list may be used as a starting point for developing a prioritized listing of research needs related to the health effects of BPA.

1. Studies of the concentrations of BPA and metabolites in human blood, urine, breast milk, amniotic fluid, placenta and other tissues, particularly in infants and young children, where appropriate.

2. More complete assessment of sources of human exposure to BPA.

3. *In vitro* studies examining interactions of BPA with multiple cellular targets (toxicity pathways) across a range of concentrations, and comparing these results with similar studies of other known estrogenic agents and combinations of estrogenic agents with BPA.

4. Studies of gestational and lactational exposure of experimental animals to ''low'' doses of BPA regarding effects on development and onset of adult disease including:

a. The sensitivity of the developing brain to BPA induced structural, functional, and biochemical alterations.

b. The relevance to primates of diminished estrogen-dependent brain and behavioral sexual dimorphisms in rodents exposed to BPA during development.

c. Confirmation of rodent studies reporting behavioral effects following BPA exposure during development related to the dopaminergic systems such as novelty-seeking, socio-sexual behaviors, and response to addictive drugs.

d. The susceptibility of the mammary gland and prostate gland to alterations in development from exposures to BPA.

e. The predilection of BPA-induced changes in mammary gland and prostate gland development to neoplasia later in life.

5. The robustness and biologic basis for altered puberty following BPA exposure in multiple species.

6. The potential for effects on the immune system.

7. The potential for metabolic disruptions leading to obesity, diabetes, or other metabolic diseases.

8. The potential for disruptions to the male reproductive tract including effects on sperm quantity and quality.

9. The potential for aneuploidy or chromosomal disruption to female germ cells and for proliferative and/or cystic changes to the ovary and uterus later in life.

10. Other areas not previously identified.

All responses to information requested within this RFI are optional. The information collected will be analyzed and considered for use in the further development of NTP and NIEHS/DERT research and testing programs on BPA. The summarized data (without identifiers) may appear in future reports. Although the NIH will provide safeguards to prevent the release of identifying information there is no guarantee of confidentiality. This RFI is for planning purposes and shall not be construed as a solicitation for applications nor as an obligation on the part of the Government. The Government will not pay for the preparation of any information submitted or for the Government's use of that information. Respondents will not be notified of the Government's assessment of the information received. No basis for claims against the Government shall arise as a result of responses to this RFI, or in the Government's use of such information as part of its evaluation process.

Dated: October 7, 2008.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E8–25053 Filed 10–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 73 FR 46300–46301, dated August 8, 2008) is amended to reflect the reorganization of the Coordinating Center for Infectious Diseases at the Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the *Strategic Business Unit (CVA2)* and insert the following:

Strategic Business Unit (CVA2). The mission of the Strategic Business Unit (SBU) is to support CCID programs and staff through the efficient, professional, and timely delivery of critical public health mission-support services. In carrying out its mission, the SBU performs the following functions: (1) Provides direct and daily management and execution of domestic travel processing for federal employees, Commissioned Corps, and all CDC-invited guests; (2) provides direct and daily management and execution of the administrative aspects of human resources across CCTD, including training and administration of policies and guidelines developed by the Atlanta Human Resources Center, Department of Health and Human Services (HHS),

Ethics Office, Financial Management Office (FMO), Office of Commissioned Corps Personnel, Coordinating Office for Global Health (COGH), Office of Personnel Management, Office of Workforce and Career Development, and Procurement and Grants Office (PGO); (3) provides direct and daily management and execution of the coordination of laboratory and office facilities, and supplies technical guidance and expertise regarding occupancy and facilities management to emergency situations, CDC; (4) provides direct and daily management and execution of the distribution, accountability, and maintenance of CDC property and equipment; (5) provides direct and daily management and execution of micro purchases and procurement requisitions, and performs administrative tasks related to initiating, processing and maintaining interagency agreements; and provides training and administration of policies and procedures developed by PGO and FMO regarding acquisitions; 6) provides direct and daily management and execution of the creation, organization, access, maintenance, and disposition of CCID records, and of the establishment of policies and procedures coordinating a CCID response to Freedom of Information Act (FOIA) requests; and (7) provides direct and daily management and execution of the coordination of logistics for CCID's federal government committee meetings and conferences.

Delete in their entirety the titles and functional statements for the following:

Travel (CVA22), Personnel/Training (CVA23), Procurement/Property/Facilities (CVA24), and Records Management/FOIA/Committee Management/Conference Logistics (CVA25).

Dated: October 8, 2008.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. E8–24812 Filed 10–20–08; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0170]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Premarket Notification for a New Dietary Ingredient" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 19, 2008 (73 FR 34940), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0330. The approval expires on August 31, 2011. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 14, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–25091 Filed 10–20–08; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0548]

Authorization of Emergency Use of Doxycycline Hyclate Tablet Emergency Kits for Eligible United States Postal Service Participants in the Cities Readiness Initiative and Their Household Members; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) for doxycycline hyclate tablet emergency kits for eligible United States Postal Service (USPS) participants in the Cities Readiness Initiative (CRI) and their household members. FDA is issuing this Authorization under the Federal Food, Drug, and Cosmetic Act (the act), as requested by the Biomedical Advanced Research and Development Authority (BARDA), Office of the Assistant Secretary for Preparedness and Response, HHS. The Authorization contains, among other things, conditions on the emergency use of doxycycline hyclate tablet emergency kits. The Authorization follows the determination by the Secretary of the Department of Homeland Security that there is a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis.* On the basis of such determination, Secretary of Health and Human Services Michael O. Leavitt (the Secretary) declared an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a). The Authorization, which includes an explanation of the reasons for its issuance, is reprinted in this Notice.

DATES: The Authorization is effective as of October 3, 2008.

ADDRESSES: Submit written requests for single copies of the Emergency Use Authorization to the Office of Counterterrorism and Emerging Threats (HF–29), Food and Drug Administration, 5600 Fishers Lane (HF–29), rm. 14C–26, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Boris Lushniak, Office of Counterterrorism and Emerging Threats (HF–29), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4067.

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the act (21 U.S.C. 360bbb–3), as amended by the Project BioShield Act of 2004 (Public Law 108–276), allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product during a domestic emergency, or a significant

potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents. With this EUA authority, FDA can help assure that medical countermeasures may be used in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by such agents, when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the act provides that, before an EUA may be issued, the Secretary must declare an emergency justifying the authorization based on one of the following grounds:

(1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents;

(2) A determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a specified biological, chemical, radiological, or nuclear agent or agents; or

(3) A determination by the Secretary of a public health emergency under section 319 of the Public Health Service Act (PHS Act) that affects, or has a significant potential to affect, national security, and that involves a specified biological, chemical, radiological, or nuclear agent or agents, or a specified disease or condition that may be attributable to such agent or agents.

Once the Secretary has declared an emergency justifying an authorization under section 564 of the act, FDA may authorize the emergency use of a drug, device, or biological product if the agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the act permits FDA to authorize, during the effective period of the declaration, the introduction into interstate commerce of a drug, device, or biological product intended for use in an actual or potential emergency. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), and 515 of the act (21 U.S.C. 355, 360(k), and 360e) or section 351 of the PHS Act (42 U.S.C. 262). FDA may issue an EUA only if, after consultation with the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC) (to the extent feasible and appropriate given the circumstances of the emergency), FDA[1] concludes:

(1) That an agent specified in a declaration [of emergency] can cause a serious or life-threatening disease or condition;

(2) That, based on the totality of scientific evidence available to [FDA], including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that:

(A) The product may be effective in diagnosing, treating, or preventing—

(1) Such disease or condition; or

(2) A serious or life-threatening disease or condition caused by a product authorized under [Section 564], approved or cleared under this Act, or licensed under Section 351 of the [PHS] Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and

(B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product;

(3) That there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and

(4) That such other criteria as the Secretary may by regulation prescribe are satisfied.

No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the act. Because the statute is self-executing, FDA does not require regulations or guidance to implement the EUA authority. However, FDA published guidance in July 2007 entitled "Emergency Use Authorization of Medical Products" to provide more information for stakeholders and the public about the EUA authority and the agency's process for the consideration of EUA requests.

II. EUA Request for Doxycycline Hyclate Tablets in Emergency Kits

On September 23, 2008, under section 564(b)(1)(A) of the act, the Secretary of Homeland Security determined that there is a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis*.

[1] The Secretary has delegated his authority to issue an EUA under section 564 of the act to the Commissioner of Food and Drugs.

On October 1, 2008, under section 564(b) of the act, and on the basis of such determination, Secretary of Health and Human Services Michael O. Leavitt declared an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a). Notice of the determination of the Secretary of Homeland Security and the declaration of the Secretary of Health and Human Services was published in the **Federal Register** of October 6, 2008 (73 FR 58242). On October 1, 2008, BARDA requested an EUA for doxycycline hyclate tablet emergency kits for eligible USPS participants in CRI and their household members. Doxycycline hyclate tablets are not approved with certain written information, including emergency use instructions, which are authorized under this EUA.

III. Electronic Access

An electronic version of this document and the full text of the Authorization are available on the Internet at *http://www.regulations.gov*.

IV. The Authorization

Having consulted with NIH and CDC, and having concluded that the criteria for issuance of this Authorization under section 564(c) of the act are met, FDA has authorized the emergency use of doxycycline hyclate tablet emergency kits for eligible USPS participants in the CRI and their household members. The Authorization follows and provides an explanation of the reasons for its issuance, as required by section 564(h)(1) of the act:

The letter of authorization follows:

Robin Robinson, Ph.D.
Director
Biomedical Advanced Research and Development Authority (BARDA)
330 Independence Avenue SW
Room G640
Washington, DC 20201

Dear Dr. Robinson:

This letter is in response to BARDA's October 1, 2008 submission, as amended,[2] requesting that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for the pre-event provision and potential use of doxycycline hyclate tablet emergency kits[3] for

[2] BARDA's amendment was submitted on October 3, 2008.

[3] Your submissions refer to a Household Antibiotic Kit (HAK), which would be stored in an eligible United States Postal Service (USPS) participant's home and would contain unit-of-use bottles of doxycycline hyclate tablets (100 mg) and both emergency use instructions and home preparation instructions. Your submissions also refer to an individual Household Antibiotic Kit

inhalational anthrax, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act). Your request is specifically for eligible[4] United States Postal Service (USPS) participants in the Cities Readiness Initiative (CRI) (hereinafter USPS participants) and their household members.[5]

On September 23, 2008, pursuant to section 564(b)(1)(A) of the Act, 21 U.S.C. § 360bbb–3(b)(1)(A), the Secretary of the Department of Homeland Security determined that there is a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents--in this case, *Bacillus anthracis*.[6] On October 1, 2008, pursuant to section 564(b) of the Act, and on the basis of such determination, the Secretary of the Department of Health and Human Services declared an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. § 360bbb–3(a).[7,8] Having consulted with the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC), and having concluded that the criteria for issuance of this authorization under section 564(c) of the Act are met, I am authorizing the emergency use of doxycycline hyclate tablet emergency kits for the post-exposure prophylaxis of inhalational anthrax for eligible USPS participants and their household members,[9] subject to the terms of this authorization.

The remainder of this letter is organized into four sections: Background, Criteria for Issuance of Authorization, Scope of Authorization, Conditions of Authorization, and Duration of Authorization.

I. Background

CRI involves 72 major metropolitan areas and all 50 states. The primary goal of CRI is to develop the ability to provide mass prophylaxis to 100% of the identified population within 48 hours of notification to do so.

On February 18, 2004, the Secretary of the Department of Health and Human Services (HHS), the Secretary of the Department of Homeland Security (DHS), and the Postmaster General signed a Memorandum of Agreement to explore how the resources of the USPS could be made available to help deliver oral antibiotics in response to a biological terrorism incident. Subsequently, HHS launched CRI and asked the USPS to participate in what has been referred to as the CRI Postal Module (or Postal Plan). The Postal Module involves the delivery of antibiotics to residential households within pre-determined zip codes by USPS participants where there may be an intentional release of *Bacillus anthracis* in their geographic area. The CRI Postal Module could be activated and executed while the municipality is establishing its points-of-dispensing (POD) network for the remainder of the emergency response which, in the case of a wide-area anthrax event, could continue for 1–2 months. The postal carriers' role is voluntary because emergency response is neither part of the basic mission of USPS nor a provision of the contracts between USPS and the unions representing the carriers. USPS has made its participation in the CRI Postal Module contingent on the pre-event provision of prescription antibiotic countermeasures to USPS participants and their household members.

Your request relates to a potential EUA for the pre-event provision and potential use of doxycycline hyclate tablets (100 mg) in the form of emergency kit(s) for eligible USPS participants and their household members. Although doxycycline hyclate tablets are approved for the post-exposure prophylaxis of inhalational anthrax, the emergency kits you describe in your submissions would require an EUA because they would include certain written information that is not currently part of the approved new drug applications (NDAs) or abbreviated new drug applications (ANDAs) for doxycycline hyclate tablets (100 mg). Specifically, you indicated that the following pieces of written information would accompany the doxycycline hyclate tablets:

- Fact Sheet for Recipients
- For the household doxycycline hyclate tablet emergency kit, home preparation instructions for recipients who cannot swallow pills (hereinafter home preparation instructions)
- Information placard (unless the bag is pre-printed with placard information)
- MedWatch Form 3500 for the reporting of any adverse events associated with the doxycycline hyclate tablet emergency kit

In addition, a Fact Sheet for Health Care Providers would be distributed to health care providers and authorized dispensers of the doxycycline hyclate tablet emergency kits.

You propose to use doxycycline hyclate tablets (100 mg) that were manufactured by West-Ward Pharmaceutical Corp., and repackaged by PD–Rx Pharmaceuticals into unit-of-use bottles containing 20 oral tablets each, a 10-day supply.[10]

The doxycycline hyclate tablet emergency kit(s) that are the subject of your request would come in two forms. The first, which you describe as a Household Antibiotic Kit (HAK), would contain a unit-of-use bottle of doxycycline hyclate tablets for each eligible USPS participant and each eligible household member, as well as the Fact Sheet for Recipients, home preparation instructions, MedWatch Form 3500, and information placard (unless bag is pre-printed with placard information) described above. All of these items would be placed in one tamper-evident, clear plastic bag for home storage. The second, which you describe as an individual Household Antibiotic Kit (iHAK), would contain one unit-of-use bottle of doxycycline hyclate tablets for the eligible USPS participant and the Fact Sheet for Recipients, MedWatch Form 3500, and information placard (unless the bag is pre-printed with placard information) described above. All of these items would be placed in a separate tamper-evident, clear plastic bag for secure storage at the USPS participant's workplace, should the USPS participant need to deploy emergently.

II. Criteria for Issuance of Authorization

Having considered the September 23, 2008, determination by the Secretary of the Department of Homeland Security that there is a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis*, and the October 1, 2008 declaration of emergency by the Secretary of Health and Human Services, and having consulted with NIH and CDC, I have concluded that the emergency use of doxycycline hyclate tablet emergency kits for

(iHAK), which would be stored at an eligible USPS participant's workplace and would contain only one unit-of-use bottle of doxycycline hyclate tablets (100 mg) and emergency use instructions. For ease of reference, this letter of authorization will use the term "doxycycline hyclate tablet emergency kit(s)" to refer to both types of kits, unless otherwise specified. When referring to the kits separately, this letter will use the term "household doxycycline hyclate tablet emergency kit to refer to the HAK and the term "individual doxycycline hyclate tablet emergency kit" to refer to the iHAK.

[4] The term "eligible" refers to USPS participants who have agreed in writing to participate in the Postal Module of CRI, have been screened for fitness to receive OSHA-required personal protective equipment, have (including household members) been medically screened for contraindications based on completed health assessment forms, have (including household members) been given a valid prescription, and have (including household members) not otherwise been determined to be ineligible to receive doxycycline hyclate tablet emergency kits.

[5] Your submissions define "household member" as "anyone that considers that address as his or her permanent place of residence."

[6] Memorandum from Michael Chertoff to Michael O. Leavitt, Determination Pursuant to § 564 of the Federal Food, Drug, and Cosmetic Act (Sept. 23, 2008).

[7] Declaration of Emergency Pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3(b) (Oct. 1, 2008).

[8] The doxycycline hyclate tablet emergency kits for eligible USPS participants and their household members referenced and authorized in this letter fall within the scope of the Secretary of the Department of Health and Human Services' declaration.

[9] Doxycycline hyclate tablets are indicated for treatment of infections caused by "Anthrax due to *Bacillus anthracis*, including inhalational anthrax (post-exposure): to reduce the incidence or progression of disease following exposure to aerosolized *Bacillus anthracis*." This indication generally means that drug administration is expected to start after a known or suspected exposure to aerosolized *Bacillus anthracis* spores, but before clinical symptoms of the disease develop. The indication includes presumed exposure, since it is often difficult to know whether and when exposure has actually occurred. The indication also encompasses instances where *Bacillus anthracis* exposure via inhalation is expected and will be imminent. In such cases, the first few doses of prophylaxis may be taken pre-exposure, but the remainder of the course would be taken post-exposure. The indication is commonly referred to as "post-exposure prophylaxis of inhalational anthrax," and this term will be used throughout this letter for ease of reference.

[10] We note that the full course of doxycycline hyclate tablets for adults for the post-exposure prophylaxis of inhalational anthrax is 100 mg twice daily for 60 days. The corresponding oral dosing regimen for children under 100 pounds is 1 mg per pound of body weight twice daily for 60 days.

the post-exposure prophylaxis of inhalational anthrax for eligible USPS participants and their household members meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

(1) *Bacillus anthracis* can cause anthrax, a serious or life-threatening disease or condition;

(2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that doxycycline hyclate tablet emergency kits may be effective for post-exposure prophylaxis of inhalational anthrax,[11] and that the known and potential benefits of doxycycline hyclate tablet emergency kits, when used for the post-exposure prophylaxis of inhalational anthrax in the specified population, outweigh the known and potential risks of the product; and

(3) there is no adequate, approved, and available alternative to doxycycline hyclate tablet emergency kits for the post-exposure prophylaxis of inhalational anthrax.[12]

Specifically, I have concluded, pursuant to section 564(c)(1) of the Act, that *Bacillus anthracis* can cause inhalational anthrax, which is a serious or life-threatening disease or condition. The fatality rate for inhalational anthrax in the United States is estimated to be approximately 45 percent to 90 percent. From 1900 to October 2001, there were 18 identified cases of inhalational anthrax in the United States, the latest of which was reported in 1976, with an 89 percent (16/18) mortality rate. Most of these exposures occurred in industrial settings, i.e., textile mills. From October 4, 2001, to December 5, 2001, a total of 11 cases of inhalational anthrax linked to intentional dissemination of *Bacillus anthracis* spores were identified in the United States. Five of these cases were fatal. These fatalities occurred despite aggressive medical care, including treatment with antimicrobial drugs.

I have also concluded that, based on the totality of the scientific evidence available to FDA, including data supporting the safe and effective use of doxycycline hyclate tablets (100 mg) for the post-exposure prophylaxis of inhalational anthrax, the results of CDC's home MedKit study, and information associated with the development of the home preparation instructions, it is reasonable to believe that doxycycline hyclate tablet emergency kits may be effective for the post-exposure prophylaxis of inhalational anthrax pursuant to section 564(c)(2)(A) of the Act.

The above conclusion is largely based on the fact that FDA has previously approved a number of NDAs and ANDAs for doxycycline hyclate tablets for the treatment and post-exposure prophylaxis of inhalational anthrax, as summarized below.

In November 2001, as part of a public health response to the use of anthrax spores as a bioterrorism agent, the Agency published a notice in the *Federal Register* that clarified the dosing recommendations for, among others, doxycycline hyclate products, in the management of patients with inhalational anthrax who had been exposed to spores of *Bacillus anthracis*, but who did not manifest clinical disease.[13] In that notice, FDA announced that it had determined that the language in the labeling of certain drug products, including those containing doxycycline hyclate, is intended to, and does, cover all forms of anthrax, including inhalational anthrax (post-exposure): to reduce the incidence or progression of disease exposure to aerosolized *B. anthracis*. FDA also announced that the appropriate dosing regimen for adults is 100 mg of doxycycline, taken orally twice daily for 60 days; and the corresponding oral dosing regimen for children under 100 pounds is 1 mg per pound (1 mg/lb) of body weight (2.2 mg/kilogram (kg)), given twice daily for 60 days.[14] FDA based these conclusions on the following:

- Effectiveness was supported by minimal inhibitory concentration (MIC) data for the tetracycline class and *Bacillus anthracis*, pharmacokinetic data, data from the Sverdlovsk incident, and the outcome data from a study of inhalational exposure to *Bacillus anthracis* in rhesus monkeys.
- With respect to safety, FDA noted that doxycycline drug products have been used for over 30 years and the literature on the products is voluminous. FDA previously reviewed the literature dealing with the long-term administration of doxycycline for treatment of diseases other than anthrax. Several articles reported the results of studies involving the administration of doxycycline in amounts comparable to the recommended doses. They also involved administration of doxycycline for 60 days and periods approaching and exceeding 60 days. FDA also reviewed data from the Adverse Event Reporting System (AERS). Analysis of these articles and data indicated no pattern of unlabeled adverse events associated with the long-term use of doxycycline.
- FDA also noted that doxycycline and other members of the tetracycline class of antibiotics are not generally indicated for the treatment of any patients under the age of 8 years. Tetracyclines are known to be associated with teeth discoloration and enamel hypoplasia in children and delays in bone development in premature infants after prolonged use. FDA balanced the nature of the effect on teeth and the fact that this delay in bone development is apparently reversible against the lethality of inhalational anthrax, and concluded that doxycycline drug products can be labeled with a pediatric dosing regimen for inhalational anthrax (post-exposure).

As noted above, FDA has approved, under section 505(j) of the Act, a number of abbreviated new drug applications (ANDAs), including West-Ward's ANDA (#65–095) for doxycycline hyclate tablets (100 mg) for treatment and post-exposure prophylaxis of inhalational anthrax on July 2, 2003. West-Ward's doxycycline hyclate tablets (100 mg), which have been repackaged and re-labeled by PD–Rx Pharmaceuticals, are the subject of this emergency use authorization. This product is the same as the reference listed drug, Vibra-Tabs (doxycycline hyclate tablets, 100 mg; NDA #50–333), within the meaning of section 505(j) of the Act.

I have also considered CDC's home MedKit study and information associated with the development of the home preparation instructions as part of the totality of the scientific evidence available to FDA, and have determined that this information helps to support the conclusion that it is reasonable to believe that doxycycline hyclate tablet emergency kits may be effective for post-exposure prophylaxis of inhalational anthrax, as summarized below.

The CDC study evaluated the ability of study participants to receive what was referred to as a MedKit—doxycycline[15] with certain written information, including emergency use instructions and home preparation instructions similar to those being authorized here. A convenience sample of 4,250 St. Louis area households, divided among three cohorts, was enrolled in the study after medical screening and informed consent. The primary outcomes for this evaluation were to determine the extent to which participants would follow instructions for appropriately keeping the MedKits intact and reserving them for emergency use until directed by a local government official. Although this study had a number of limitations as explained below, approximately 97% of all study respondents returned the MedKits upon completion of the study.

Finally, FDA considered information associated with the development of the home preparation instructions for doxycycline hyclate tablets. FDA had previously developed home preparation instructions and these instructions were tested by the Chicago Department of Public Health, which provided its results to FDA. The Agency revised the home preparation instructions based on these findings and performed additional laboratory tests and limited palatability testing. FDA also worked with CDC to improve the readability of the instructions.

Although FDA has approved a number of NDAs and ANDAs for doxycycline hyclate tablets (100 mg) for the treatment and post-exposure prophylaxis of inhalational anthrax, these products are not approved with emergency use instructions and home preparation instructions. The amount and nature of the scientific evidence regarding the ability to use emergency use instructions and home preparation instructions is more limited than the scientific evidence supporting the approval of doxycycline hyclate tablets for the post-exposure prophylaxis of inhalational anthrax. However, taking into consideration the potentially fatal nature of anthrax disease, the CDC home MedKit study and the information associated with the development

[11] The Act uses the terms "diagnosing, treating, or preventing" in Section 564(c)(2)(A). Post-exposure prophylaxis is encompassed by these statutory terms.

[12] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

[13] *See* 66 Fed. Reg. 55679 (Nov. 2, 2001); Docket 01N–0494.

[14] *Id.* The *Federal Register* notice further requested that applicants for these products submit labeling supplements to update their package inserts with this information.

[15] In this study, participants who were allergic to doxycycline or for whom doxycycline was otherwise contraindicated received ciprofloxacin.

of the home preparation instructions also helps to support a conclusion that it is reasonable to believe that doxycycline hyclate tablet emergency kits may be effective for the post-exposure prophylaxis of inhalational anthrax. Accordingly, based on the totality of the scientific evidence available to FDA, it is reasonable to believe that doxycycline hyclate tablet emergency kits may be effective for the post-exposure prophylaxis of inhalational anthrax.

I have also concluded, pursuant to section 564(c)(2)(B) of the Act, that it is reasonable to believe that the known and potential benefits of doxycycline hyclate tablet emergency kits outweigh the known and potential risks of the product for USPS participants and their household members. The available scientific evidence that supports this conclusion is summarized below.

We have already concluded, as evidenced by the previous NDA and ANDA approvals discussed above, that the known and potential benefits of the approved doxycycline hyclate tablets (100 mg) for post-exposure prophylaxis of inhalational anthrax outweigh the known and potential risks of the product. Under this EUA, doxycycline hyclate tablets will be packaged with additional written information (including emergency use instructions and home preparation instructions) that has not been approved by FDA as part of a new drug application. CDC's home MedKit study and the process by which home preparation instructions were developed, as discussed above, help to further inform the requisite risk-benefit analysis under section 564(c)(2)(B).

The CDC home MedKit study was somewhat limited in its ability to address certain questions about home storage and use since the participants were not required to follow any directions for preparation or use of doxycycline hyclate tablets in an actual emergency. The effect of the actual storage conditions on the stored drug product was not tested and the instructions for storage did not provide the temperature conditions for storage on the outside of the bag. Despite the limitations of the CDC home MedKit study, it is important to note that approximately 97% of all study respondents returned the MedKits upon completion of the study.

As described above, the development of the home preparation instructions has been informed by limited testing and input from CDC. However, the current version of the home preparation instructions has not been subjected to formal independent testing procedures for an assessment of an individual's understanding or his/her ability to follow the directions.

Because of the limitations of the CDC study and the lack of formal independent testing on the home preparation instructions, FDA cannot conclude without further testing and information that the emergency use instructions and home preparation instructions pose no additional risks to eligible USPS participants and their household members. Inappropriate use and the development of doxycycline resistant microorganisms could be a potential issue if a considerable number of eligible USPS participants take the product for an unintended purpose.

The known and potential risks of eligible USPS participants and their household members not being able to store, prepare, and use doxycycline hyclate tablets in accordance with the emergency use instructions and home preparation instructions, and of experiencing adverse reactions, is outweighed by the known and potential benefits of using doxycycline hyclate tablets as a safe and effective treatment against an otherwise potentially fatal aerosolized anthrax attack. For the foregoing reasons, it is reasonable to believe that the known and potential benefits of the doxycycline hyclate tablet emergency kits (including emergency instructions and home preparation instructions as authorized) for the post-exposure prophylaxis of inhalational anthrax in the specified population outweigh the known and potential risks of the product under the terms of this letter of authorization.[16]

I have also concluded, pursuant to section 564(c)(3) of the Act, that there is no adequate, approved, and available alternative to the doxycycline hyclate tablet emergency kits for post-exposure prophylaxis of inhalational anthrax in the specified population. Although doxycycline hyclate is approved for treatment and post-exposure prophylaxis of inhalational anthrax, the emergency use instructions and home preparation instructions included here as part of the doxycycline hyclate tablet emergency kits are not approved by FDA.

Other products approved for treatment and post-exposure prophylaxis of inhalational anthrax include penicillin G procaine, ciprofloxacin, and levofloxacin. However, none of these products is approved with emergency use instructions. In addition, penicillin G procaine is administered by injection and fluoroquinolones (ciprofloxacin and levofloxacin) have additional significant adverse events reported following their use, including adverse tendon effects and rupture, peripheral neuropathy, and central nervous system disorders.

Further, Biothrax (Anthrax Vaccine Adsorbed) is indicated for the active immunization against *Bacillus anthracis* of individuals between 18 and 65 years of age who come in contact with animal products such as hides, hair or bones that come from anthrax endemic areas, and that may be contaminated with *Bacillus anthracis* spores. This product is not considered an "adequate, approved, and available" alternative for several reasons including: (1) the license for Biothrax does not extend to post exposure use; (2) the immunization consists of three subcutaneous injections given 2 weeks apart followed by three additional subcutaneous injections given at 6, 12 and 18 months; and (3) following the initial injections, time is needed to develop the antibodies. Therefore, I have concluded that there is no adequate, approved, and available alternative to doxycycline hyclate tablet emergency kits for the post-exposure prophylaxis of inhalational anthrax for the specified population.

[16] The terms of this letter of authorization, including its scope and conditions, are integral to the conclusions regarding the known and potential risks and benefits of the emergency use of this product in eligible USPS participants and their household members.

III. Scope of Authorization

Pursuant to section 564(d)(1) of the Act, this authorization is limited to the use of doxycycline hyclate tablet emergency kits for the post-exposure prophylaxis of inhalational anthrax[17] for eligible[18] USPS participants in the Postal Module of CRI and their household members.

The doxycycline hyclate tablets authorized under this EUA were manufactured by West-Ward Pharmaceutical Corp. and have been repackaged into unit-of-use bottles containing 20 tablets (a 10-day supply) by PD–Rx Pharmaceuticals, consistent with current Good Manufacturing Practice (CGMP) and the Draft Guidance entitled "Expiration Dating of Unit-Dose Repackaged Drugs; Compliance Policy Guide." The product has been stored under conditions consistent with the manufacturer's labeled storage conditions and CGMP and is within its labeled expiration date. Once doxycycline hyclate tablets covered by this EUA have passed their expiration date, they are outside the scope of this EUA.

HHS will determine whether to initiate distribution of product under this EUA to particular CRI locations based on:

(a) whether the municipality has submitted a Strategic Security Plan acceptable to USPS and HHS;

(b) whether the municipality, in collaboration with pertinent State public health officials, local law enforcement agencies, USPS, HHS, and other appropriate entities, has developed a mutually acceptable set of policies and procedures for recruiting USPS participants, screening them for fitness to receive doxycycline hyclate tablets, providing the doxycycline hyclate tablet emergency kits to eligible USPS participants and their household members, and maintaining the readiness of the participant force. Policies and procedures must also include screening for fitness to receive OSHA-required personal protective equipment (PPE) (i.e., N95 masks) and provision of PPE to eligible USPS participants;[19]

(c) whether HHS has determined that it has sufficient funds to cover the costs of CRI Postal Module implementation in that location.

After the distribution decision has been made by HHS and conveyed to FDA, the unit-of-use bottles will be delivered to secure site(s), where USPS and/or local public health authorities will assume control over them. Under this EUA, the unit-of-use bottles will be repackaged and relabeled[20] into doxycycline hyclate tablet emergency kits by

[17] See footnote 8.

[18] See footnote 3.

[19] The emergency use of unapproved, unlicensed, or uncleared PPE or the unapproved use of approved, licensed, or cleared PPE is not authorized as part of this EUA.

[20] The term "repackaged and relabeled" will be used to refer to the activity of putting unit-of-use bottles into clear, tamper-evident bags with the addition of certain written information.

licensed health care providers under the auspices of local public health authorities.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the doxycycline hyclate tablet emergency kits, when used for the post-exposure prophylaxis of inhalational anthrax, outweigh the known and potential risks of the product for the population described above.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the doxycycline hyclate tablet emergency kits may be effective for the post-exposure prophylaxis of inhalational anthrax pursuant to section 564(c)(2)(A) of the Act. FDA has reviewed the scientific information available, including the information described in Section II above, and concludes that the doxycycline hyclate tablet emergency kits, when used for the post-exposure prophylaxis of inhalational anthrax in the specified population, meet the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The pre-event distribution and use of doxycycline hyclate tablet emergency kits under this EUA must conform to and may not exceed the terms of this letter of authorization, including the scope and the conditions of authorization set forth below. Subject to the terms of this EUA and under the circumstances set forth in the Secretary of Homeland Security's determination under section 564(b)(1)(A) described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), doxycycline hyclate tablet emergency kits are authorized for the post-exposure prophylaxis of inhalational anthrax for eligible USPS participants and their household members.

This EUA will cease to be effective when the declaration of emergency is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act. When the EUA ceases to be effective, doxycycline hyclate tablet emergency kits will no longer be authorized for emergency use under this EUA, and doxycycline hyclate tablet emergency kits that have been distributed under this EUA must be collected as described in this letter of authorization.

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

A. BARDA will conduct an educational and information program under appropriate conditions designed to ensure that health care providers or other authorized dispensers (hereinafter health care providers) distributing doxycycline hyclate tablet emergency kits are informed:

(1) that FDA has authorized the emergency use of doxycycline hyclate tablet emergency kits for the post-exposure prophylaxis of inhalational anthrax for eligible USPS participants and their household members;

(2) of the significant known and potential benefits and risks of the emergency use of doxycycline hyclate tablet emergency kits, and of the extent to which such benefits and risks are unknown for eligible USPS participants and their household members; and

(3) of the alternatives to doxycycline hyclate tablet emergency kits for eligible USPS participants and their household members, and of their benefits and risks.

With respect to condition (2) above, relating to provision of the significant known and potential benefits and risks of the emergency use of doxycycline hyclate tablet emergency kits, BARDA will ensure that the manufacturer's package insert is provided to all health care providers who distribute doxycycline hyclate tablet emergency kits to eligible USPS participants and their household members. With respect to conditions (1)–(3), BARDA will ensure that health care providers are provided with the authorized Fact Sheet for Health Care Providers. Any revision to the authorized Fact Sheet for Health Care Providers is subject to FDA's prior approval. BARDA will also ensure that all such health care providers are provided with the same information as that provided to eligible recipients described immediately below.

B. BARDA will conduct an educational and information program under appropriate conditions designed to ensure that individuals to whom doxycycline hyclate tablet emergency kits are distributed are informed:

(1) that FDA has authorized the emergency use of doxycycline hyclate tablet emergency kits for the post-exposure prophylaxis of inhalational anthrax for eligible USPS participants and their household members;

(2) of the significant known and potential benefits and risks of the emergency use of doxycycline hyclate tablet emergency kits for eligible USPS participants and their household members, and of the extent to which such benefits and risks are unknown; and

(3) of the option to accept or refuse administration of doxycycline hyclate tablet emergency kits, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available, and of their benefits and risks.

As a condition of this authorization, BARDA will ensure that, prior to distribution of doxycycline hyclate tablet emergency kits, the authorized information that meets the requirements set forth above is provided to each eligible recipient (i.e., in the case of the **household** doxycycline hyclate emergency kit, the Fact Sheet for Recipients, home preparation instructions, and information placard (or bag pre-printed with placard information); in the case of the **individual** doxycycline hyclate emergency kit, the Fact Sheet for Recipients, and information placard (or bag pre-printed with placard information)). Any revision to the authorized information for potential recipients is subject to FDA's prior approval.

C. USPS, in conjunction with appropriate local public health authorities, will also be responsible for ensuring that health care providers distributing doxycycline hyclate tablet emergency kits, and individuals to whom such emergency kits are dispensed, receive the authorized information described respectively in sections A and B above.

USPS, in conjunction with appropriate local public health authorities, will distribute doxycycline hyclate tablet emergency kits to eligible recipients through health care providers who are qualified and licensed under applicable state law to dispense prescription drugs. The health care providers will distribute doxycycline hyclate tablet emergency kits under conditions that assure that otherwise eligible[21] recipients are screened for medical eligibility (including contraindications) and are issued prescriptions for the doxycycline hyclate tablet emergency kit. Such conditions shall include exclusion of a USPS participant if:

- No medical history and Health Assessment Form is available for the USPS participant or any member of their household; or
- Doxycycline hyclate is contraindicated for the USPS participant.

USPS, in conjunction with appropriate public health authorities, must ensure documentation of eligibility or ineligibility to receive doxycycline hyclate tablet emergency kits. If doxycycline hyclate tablets are contraindicated for any of the USPS participant's household members, the USPS participant can still receive the doxycycline hyclate tablet emergency kit if s/he consents in writing to accept an incomplete kit and acknowledges that the household member(s) will have the same dependence on whatever community-based mass prophylaxis is available to the general public in an emergency.

USPS, in conjunction with appropriate local public health authorities, will ensure that the authorized Health Assessment Form will be provided to and completed by potential recipients and then reviewed for eligibility by qualified health care providers, prior to dispensing to eligible recipients the doxycycline hyclate tablet emergency medical kits. Any revision of the authorized Health Assessment Form is subject to FDA's prior approval. A health care provider will review with each USPS participant his/her Health Assessment Form and the Health Assessment Form corresponding to each family member and will comply with applicable state prescribing laws before authorizing the filling of one unit-of-use bottle for each eligible USPS participant and household member. See Section D below for requirements regarding repackaging and relabeling of doxycycline hyclate tablet emergency kits prior to dispensing to eligible recipients.

D. Doxycycline hyclate tablet emergency kits must be manufactured, (re)packaged, (re)labeled, and held according to applicable good manufacturing practice requirements, except that with respect to the doxycycline hyclate tablet emergency kits that will be repackaged and relabeled by appropriate local public health authorities using the doxycycline unit-of-use bottles manufactured by West-Ward Pharmaceutical Corp. and repackaged by PD–Rx Pharmaceuticals described in this EUA, the Secretary waives good manufacturing practice requirements applicable to the repackaging and relabeling

[21] USPS postal carriers are not eligible to receive a doxycycline hyclate tablet emergency kit if they have not passed their N95 mask fit test. See Section III, Scope of Authorization, above.

of such kits, subject to the following requirements

- USPS, in conjunction with appropriate local public health authorities, will be responsible for repackaging and relabeling doxycycline hyclate unit-of-use bottles into doxycycline hyclate tablet emergency kits through health care providers qualified and licensed under state law to dispense prescription drugs.
- The packaging and relabeling described below should be performed in a controlled environment such that there is adequate space, lighting, and freedom from debris and from other drug products to prevent mix-ups or cross-contamination.
- A health care provider who initially assembles the doxycycline hyclate tablet emergency kits will do the following:
  - The health care provider will determine the number of authorized individuals in a household eligible to receive the product using the completed Health Assessment Form. The health care provider will document the prescription number, lot number, and expiration date of doxycycline hyclate for each authorized individual.
  - The health care provider will record all prescription numbers for the household on the Healthcare Provider Quality Checklist.
  - The health care provider will be responsible for maintaining an inventory/drug accountability record. At a minimum, this record will contain a running total/balance, the date filled, household name, and number of unit-of-use bottles dispensed to a household. The prescription number, lot number, and expiration date of the doxycycline hyclate tablets for each authorized individual will also be recorded.
  - For the **household** doxycycline hyclate tablet emergency kit, the health care provider will place the correct number of unit-of-use bottles of doxycycline hyclate (corresponding to the authorized USPS participant and each authorized household member) in one clear, tamper-evident plastic bag. Each unit-of-use bottle will be labeled with the appropriate authorized individual's name.
  - For an **individual** doxycycline hyclate tablet emergency kit, the health care provider will place one unit-of-use bottle of doxycycline hyclate tablets in a separate clear, tamper-evident plastic bag for the authorized USPS participant for secure storage by the USPS at work. The unit-of-use bottle will be labeled with the authorized USPS participant's name.
  - For the **household** doxycycline hyclate tablet emergency kit, the health care provider will place the Fact Sheet for Recipients, home preparation instructions, and MedWatch Form 3500 inside and in the outer pocket of the clear, tamper-evident plastic bag; and, if the bag is not pre-printed with placard information, the health care provider will place the information placard inside the bag facing out so the wording is plainly visible.
  - For the **individual** doxycycline hyclate tablet emergency kit, the health care provider will place the Fact Sheet for Recipients and MedWatch Form 3500 Form inside and in the outer pocket of the clear, tamper-evident plastic bag; and, if the bag is not pre-printed with placard information, the health care provider will place the information placard inside the bag facing out so the wording is plainly visible.
  - The health care provider will complete the first page of the Healthcare Provider Quality Checklist, including signature and date.
  - The health care provider will **not** seal the bag, and will give it to the identified health care provider to check the contents of the bags as described below.
- Before dispensing, a different health care provider will check each doxycycline hyclate tablet emergency kit that has been assembled as follows:
  - Review and verify Health Assessment Forms for eligibility of USPS participant and each household member to receive the doxycycline hyclate tablet emergency kit.
  - Verify that each unit-of-use bottle is labeled with the authorized individual's name.
  - Verify the prescription number, lot number, and expiration date of the doxycycline hyclate tablets for each authorized individual on the Health Assessment Forms.
  - Verify prescription numbers for each authorized individual on the Healthcare Provider Quality Checklist.
  - For the **household** doxycycline hyclate tablet emergency kit, verify that the correct number of unit-of-use bottles of doxycycline hyclate tablets have been placed in the tamper-evident bag for that household based on the number of household members eligible. For the **individual** doxycycline hyclate tablet emergency kit, verify that the correct unit-of-use bottle of doxycycline hyclate tablets has been placed in the tamper-evident bag for the USPS participant for secure storage by USPS at work.
  - Verify that the appropriate written information is inside the tamper-evident bags.
  - Verify that the appropriate written information is in the outer pocket of the tamper-evident bags.
  - If the information placard is not pre-printed on the outside of the tamper-evident bags, verify that the information placard is inside the tamper-evident bags and plainly visible.
  - Complete the second page of the Healthcare Provider Quality Checklist, including signature and date.
  - Seal the bags.
  - Attach the Healthcare Provider Quality Checklist to the Health Assessment Forms for the household.
  - The doxycycline hyclate tablet emergency kits may then be dispensed to the USPS participant along with review of the instructions and information.

The authorized Healthcare Provider Quality Checklist and placard information will be used. Any revision of the authorized Healthcare Provider Quality Checklist or placard information is subject to FDA's prior approval.

E. BARDA will record the amount of unit-of-use bottles of doxycycline hyclate tablets (including lot numbers) shipped under this EUA to the USPS/local public health authorities for use by eligible USPS participants and their households. Such records will be made available to FDA for inspection upon request. However, the appropriate public health authority responsible for distributing the doxycycline hyclate tablet emergency kits will prepare, maintain, and make available records and provide reports as directed by HHS/FDA.

F. Once an **individual** doxycycline hyclate tablet emergency kit has been dispensed to an eligible USPS participant, USPS will store the **individual** doxycycline hyclate tablet emergency kit in a secure location for the eligible USPS participant.

G. BARDA, USPS, and appropriate local public health authorities may only provide written materials as included in BARDA's October 1, 2008 submission, as amended on October 3, 2008, and authorized under this EUA. Any revisions or additional written materials to be provided by BARDA, USPS, or appropriate local public health authorities are subject to FDA's prior approval, except that USPS may provide additional materials for recruitment purposes to the extent that those materials are consistent with the materials included in BARDA's October 1, 2008 submission, as amended on October 3, 2008, that are authorized under this EUA.

H. USPS, in conjunction with appropriate local public health authorities, will conduct an adverse event monitoring and reporting program designed to ensure that adverse events and medication errors associated with the use of the doxycycline hyclate tablet emergency kit are documented and reported within 15 days to MedWatch through *www.fda.gov/medwatch*, by submitting MedWatch Form 3500 in hard copy, or by calling 1–800–FDA–1088; and that any such report identifies the product as "doxycycline hyclate tablet emergency kit" and includes in the description of the event the designation "USPS–CRI EUA" or "USPS–CRI Emergency Use Authorization." As part of this program, health care providers will be provided copies of MedWatch Form 3500, recipients will be instructed to report if they take any of the doxycycline hyclate tablets in their emergency kit and experience an adverse event or medication error, MedWatch Form 3500 will be included in each doxycycline hyclate tablet emergency kit, and recipients will be provided with a toll-free number for contacting a health care provider if they experience an adverse event or medication error. USPS, in conjunction with appropriate local public health authorities, will maintain associated records until notified by FDA and will make such records available to FDA for inspection upon request.

I. Appropriate local public health authorities will periodically verify and document that any undistributed doxycycline hyclate is within its labeled expiration date. Appropriate local public health authorities will maintain any

associated records until notified by FDA and will make such records available to FDA for inspection upon request. Appropriate local public health authorities will periodically verify and reconcile drug accountability records.

J. USPS will obtain information from participating USPS carriers every six months documenting whether (a) they have stored their kits as instructed; (b) they are able to locate their kits readily; (c) their kits are intact; and (d) the doxycycline hyclate in their kits has not expired. USPS will ascertain the circumstances surrounding non-compliance for USPS participants who report (a) loss of a kit or (b) use of doxycycline hyclate from the emergency kit in the absence of instructions to do so. Depending on its findings, USPS may disqualify an individual from further participation. If the doxycycline hyclate emergency kit will expire before the next 6-month follow-up, a new doxycycline hyclate emergency kit will be prescribed for eligible participants in accordance with paragraph D and the other terms of this letter. In such cases, USPS, in conjunction with local public health authorities, will be responsible for ensuring that such kits are collected, accounted for, and disposed of, as instructed by HHS. Drug accountability records will be maintained. USPS will also ascertain whether there have been any adverse events or medication errors associated with the doxycycline hyclate tablet emergency kit. If any such adverse events or medication errors have not previously been reported to FDA as outlined in paragraph H, they must be reported within 15 days to FDA. FDA has authorized BARDA's Form entitled "Questions to Determine Status of Your Household Antibiotic Kit (HAK) or Individual Household Antibiotic Kit (iHAK)" (Kit Status form). Any revision of the Kit Status form is subject to FDA's prior approval. USPS, in conjunction with appropriate local public health authorities, will be responsible for ensuring that completed Kit Status forms are maintained until notified by FDA. A report summarizing the information collected on Kit Status forms under this paragraph will be submitted to FDA within 30 days of gathering such information. Associated records will be made available to FDA for inspection upon request.

K. USPS, in conjunction with appropriate public health authorities, will be responsible for collecting any expired doxycycline hyclate tablet emergency kits. USPS and/or appropriate local public health authorities will be responsible for disposing of expired doxycycline hyclate tablet emergency kits as instructed by HHS at that time. USPS, in conjunction with appropriate local public health authorities, will ensure that drug accountability records are maintained and reconciled. Such records shall be made available to FDA for inspection upon request.

L. USPS, in conjunction with appropriate local public health authorities, will be responsible for ensuring that completed Health Assessment Forms, Healthcare Provider Quality Checklists, and any other records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

M. As a condition of this EUA, all advertising and promotional descriptive printed matter relating to the use of doxycycline hyclate tablet emergency kits authorized under this EUA shall be consistent with the Fact Sheets, home preparation instructions, and placard information, as well as the terms set forth in this EUA and other requirements set forth in the Act and FDA regulations.

N. Upon termination of the declaration of emergency under section 564(b)(2) of the Act or upon revocation of this EUA under section 564(g) of the Act, USPS, in conjunction with appropriate public health authorities, will be responsible for collecting all doxycycline hyclate tablet emergency kits. USPS and/or local public health authorities will dispose of doxycycline hyclate emergency kits as instructed by HHS at that time. USPS, in conjunction with appropriate local public health authorities, will ensure that drug accountability records are maintained and reconciled. Such records will be made available to FDA for inspection upon request.

O. HHS will notify FDA of its decision to add a CRI location and its decision to initiate distribution of doxycycline hyclate tablet emergency kits under this EUA to particular CRI locations.

The emergency use of doxycycline hyclate tablet emergency kits as described in this letter of authorization must comply with the conditions above and all other terms of this authorization.

V. Duration of Authorization

This EUA will be effective until the declaration of emergency is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,
Randall W. Lutter, Ph.D.
Deputy Commissioner for Policy

Dated: October 15, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–25062 Filed 10–20–08; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0484]

Preparation for International Conference on Harmonization Meetings in Brussels, Belgium; Public Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the public meeting notice entitled "Preparation for ICH meetings in Brussels, Belgium." This meeting was announced in the **Federal Register** of September 16, 2008 (73 FR 53428). The amendment is being made to reflect changes in the *Location* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Tammie Jo Bell, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, by email: *Tammie.Bell2@fda.hhs.gov* or fax: 301–827–0003.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 16, 2008, FDA announced that a preparation meeting for the International Conference on Harmonization will be held on October 21, 2008 from 2:30 p.m. to 5:30 p.m.

On page 53428, in the first column, the *Location* portion of the document is amended to read as follows:

Location: The meeting will be held at the Hilton Washington DC/ Rockville Hotel & Executive Meeting Center, Regency Room, 1750 Rockville Pike, Rockville, MD 20852. For directions please visit *www.washingtondcrockville.hilton.com.*

The agenda for the public meeting will be made available via the internet at *http://www.fda.gov/cder/meeting/ICH_20081021.htm.*

Dated: October 15, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–25034 Filed 10–20–08; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Evaluation of Risk Factors Associated With Viral Infections in Chinese Donors: a. Risk Factors Associated With HIV; b. Risk Factors Associated With Hepatitis B Virus (HBV) and Hepatitis C Virus (HCV).

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 31, 2008, pages 44751–44753 and allowed 60 days for public comment. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of

Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a current valid OMB control number.

Proposed Collection: Title: Evaluation of Risk Factors Associated with Viral Infections in Chinese Donors: a. Risk factors associated with Human Immunodeficiency Virus (HIV), b. Risk factors associated with Hepatitis B virus (HBV) and Hepatitis C virus (HCV). This collection will cover two protocols as stated in the title. The first protocol will aim to study risk factors associated with HIV in Chinese donors and the second protocol will study risk factors related to HBV and HCV in Chinese donors. *Type of Information Collection Request: NEW. Need and Use of Information Collection:* Understanding the risk factors associated with HIV, HBV and HCV infections in donors is essential for developing donor behavioral screening policies. Injection drug use, sexual transmissions, transfusion history, and medical injections are thought to be major routes of transmission in China but their relative importance in blood donors is unknown.

In the U.S., risk factors have been better characterized, but questions still remain. Risk factors cannot be identified in 33% and 40% of persons with acute hepatitis B and C respectively, and risk factors may differ between the U.S. and China. This study will improve our understanding of potential transfusion transmitted viral risk factors that cannot be optimally studied in the U.S. because of their low prevalence. For example, we may be able to assess whether treatments commonly used in China, such as acupuncture and medical injections, are important routes of HBV and HCV transmission.

The primary objectives of the proposed study are to assess:

- The primary risk factors associated with HIV, HBV and HCV.
- The relative importance of injection drug use, heterosexual transmission, family history, transfusion history, history of previous whole blood or plasma donation, male to male sex, medical injections, acupuncture, and tattoos as routes of transmission for HIV, HBV and HCV.
- Other important routes of transmission for these viruses such as sex with an injection drug user, snorting drugs, living with someone who has HBV and HCV, living with someone who injects drugs, sharing a toothbrush or a razor, having been in jail, occupational history, having surgery, etc.

It is proposed to conduct a large, multi blood center case-control study to meet the study objectives. Cases for the HIV protocol will be donors with confirmed anti-HIV antibody reactivity. Blood centers will select a random group of donors with negative infectious disease test results as Controls for this study. Controls will be enrolled with a 2:1 ratio to Cases and will be matched to the Cases by blood center and donation month. Blood centers will contact potential Controls by phone and/or mail, inviting them to come back to participate in this study. Cases and Controls will be consented and interviewed using the same Risk Factor Questionnaire (RFQ) by Chinese-CDC (C–CDC) or blood center staff, either at the local C–CDC or blood center.

The second protocol assessing risk factors related to HBV and HCV will have three groups of donors: "HBV Group": HBV (HBsAg) positive donors either from prescreening (rapid testing) or routine screening testing. Confirmatory testing for HBV will be done for these donors. "HCV Group": HCV (anti-HCV) positive donors from routine screening testing (blood centers do not do prescreening rapid testing for anti-HCV). Confirmatory testing for HCV will be done for these donors. The third group will be a "Control Group" including donors with negative results for all prescreening and routine screening tests. No additional testing is done for these donors. On a monthly basis, the blood centers will use the confirmatory testing results for HBV and HCV respectively, to generate a list of cases. For that same month, the blood center will generate a list of controls (randomly selected and matched by blood center and month of donation). The same control group will be used for HBV and HCV cases. Donors in all three groups will be mailed a Risk Factor Survey study packet. The packet will include a study information sheet (discussing the purpose and nature of this study), an informed consent document explaining the voluntary nature, the benefits and risks of this study, a RFQ, a small monetary reward for taking the survey and an envelope with paid postage for the donor to mail their completed questionnaire back to the blood center.

Frequency of Response: Once. *Affected Public:* Individuals. *Type of Respondents:* Adult Blood Donors. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3,920; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* 0.33; and *Estimated Total Annual Burden Hours Requested:* 1,293.5. The annualized cost to respondents is estimated at: $1,940.25 (based on $1.50 per hour). According to China's National Bureau of Statistics in 2006, the average annual wage in China is 21,001 Chinese Yuan (or $2,958 U.S. dollars based on current exchange rate of 1 U.S. dollar = 7.1). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Estimated No. of respondents	Estimated No. of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
HIV Risk factor:			
Case	350	0.33	115.5
Control	700	0.33	231
HBV and HCV Risk factor:			
Case	1700	0.33	561
Control	1170	0.33	386
Total	3920	0.33	1293.5

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address 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 the assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information 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.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. George Nemo, Project Officer, NHLBI, Two Rockledge Center, Room 9144, 6701 Rockledge Drive, MSC 7950, Bethesda, MD 20892–7950, or call 301–435–0065, or E-mail your request to *nemog@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received *within 30 days* of the date of this publication.

Dated: October 8, 2008.

Dr. George Nemo,

Project Officer, NHLBI, National Institutes of Health.

[FR Doc. E8–24947 Filed 10–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Developmental Genetics.

Date: November 13, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–24948 Filed 10–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Review Committee.

Date: November 18, 2008.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Room 4076, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rudy Pozzatti, PhD., Scientific Review Officer, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–24950 Filed 10–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Developing and Advanced Centers.

Date: November 17, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA.

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–25022 Filed 10–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; RAISE.

Date: November 10, 2008.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–25023 Filed 10–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Interagency Autism Coordinating Committee.

The meeting will be open to the public, 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 inform the Contact Person listed below at least 5 business days in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Date: November 21, 2008.

Time: 9 a.m. to 4 p.m.

Agenda: To finalize the Strategic Plan for Autism Spectrum Disorder (ASD) Research and discuss services and supports for individuals and families affected by ASD.

Place: Ronald Reagan Building and International Trade Center, The Rotunda Room, 1300 Pennsylvania Ave. NW., Washington, DC 20004.

Registration: In Person: A registration link for the meeting is available at the following web address: *https://guest.cvent.com/EVENTS/Register/IdentityConfirmation.aspx?e=69c15884-4164-4680-b17c-ada6d72f694a.*

Webinar: https://www1.gotomeeting.com/register/471694223.

Conference Call: USA/Canada Phone Number: 888–455–2920, International Phone Number: 212–287–1838, Access Number: 3857872.

Contact Person: Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Bethesda, MD 20892–9669, (301) 443–6040, *IACCpublicinquiries@mail.nih.gov.*

Any member of the public interested in presenting oral comments to the Committee should notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of the oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to a maximum of five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Members of the public who wish to participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the web presentation tool, please contact GoToWebinar at 800–263–6317.

To access the web presentation tool on the Internet, the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended).

Information about the IACC is available on the Web site: *http://www.nimh.nih.gov/research-funding/scientific-meetings/recurring-meetings/iacc/index.shtml.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–25024 Filed 10–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health 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 a meeting of the Board of Scientific Counselors, NIEHS.

The 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 the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individuals conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: November 16–18, 2008.

Closed: November 16, 2008, 7 p.m. to 9:30 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Closed: November 17, 2008, 8:30 a.m. to 9:15 a.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Executive Conference Room, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Open: November 17, 2008, 9:15 a.m. to 11:35 a.m.

Agenda: An overview of the organization and research in the Biostatistics Branch.

Place: NIEHS/National Institutes of Health, South Campus, Conference Rooms 101A–C, Research Triangle Park, NC 27709.

Closed: November 17, 2008, 11:35 a.m. to 12:25 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: NIEHS/National Institutes of Health, South Campus, Conference Rooms 101A–C, Research Triangle Park, NC 27709.

Open: November 17, 2008, 1 p.m. to 1:45 p.m.

Agenda: Poster Session.

Place: NIEHS/National Institutes of Health, South Campus, Conference Rooms 101A–C, Research Triangle Park, NC 27709.

Closed: November 17, 2008, 1:45 p.m. to 5:15 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: NIEHS/National Institutes of Health, South Campus, Conference Rooms 101A–C, Research Triangle Park, NC 27709.

Closed: November 17, 2008, 5:15 p.m. to Adjournment.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Closed: November 18, 2008, 9 a.m. to 10 a.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: NIEHS/National Institutes of Health, South Campus, Conference Rooms 101A–C, Research Triangle Park, NC 27709.

Contact Person: Perry J Blackshear, PhD, MD, Acting Scientific Director, Division of Intramural Research, National Inst. of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4899, *black009@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–25036 Filed 10–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–35]

Notice of Proposed Information Collection: Comment Request; FHA-Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/ Preservation

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 22, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: William Matchneer, Associate Deputy Assistant Secretary, Office of Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Dispute Resolution Certification and Federal Manufactured Housing Dispute Resolution Information Form.

OMB Control Number, if applicable: 2502–0562.

Description of the need for the information and proposed use: 42 U.S.C. 5401–5426, amended on December 27, 2000, by the Manufactured Housing Improvement Act of 2000, Public Law 106–569, required HUD to establish a manufactured housing dispute resolution program for states that choose not to operate their own dispute resolution programs. In order for a state to operate its own dispute resolution program, it needs to certify that its program meets the requirements of 42 U.S.C. 5401–5426, and must recertify every three years. For persons to provide the federal manufactured housing dispute resolution program information to resolve the dispute, they need to submit information on the home and parties involved in the dispute.

Agency form numbers, if applicable: OMB 2502–0562.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 511. The number of respondents is 228, the number of responses is 228, the frequency of response is on occasion, and the burden hour per response is 1.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 9, 2008.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing Deputy Federal Housing Commissioner.

[FR Doc. E8–24935 Filed 10–20–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–34]

Notice of Proposed Information Collection: Comment Request; Multifamily Financial Management Template

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: December 22, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Eric Ramsey, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–5000, telephone (202) 708–3944 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of proposal: Multifamily Financial Management Template.

OMB control number: 2502–0551.

Description of the need for the information and proposed use: The Uniform Financial Reporting Standards (UFRS) for HUD housing programs requires multifamily housing program participants to submit financial data electronically, using generally accepted accounting principles, in a prescribed format. HUD will continue to use the financial information collected from multifamily property owners to evaluate their financial condition. Requiring multifamily property owners to report electronically has enabled HUD to provide a more comprehensive financial assessment of the multifamily property owners receiving Federal funds.

Agency form number, if applicable: None.

Members of affected public: Multifamily property owners.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated total number of annual hours needed to prepare the information collection is 53,784; the number of respondents is 20,774, generating 20,774 annual responses; the frequency of response is annually; and the number of hours per response is approximately 7.25 hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 9, 2008.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing Deputy Federal Housing Commissioner.

[FR Doc. E8–24940 Filed 10–20–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–33]

Notice of Proposed Information Collection: Comment Request; Construction Complaint—Request for Financial Assistance

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 22, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Margaret E. Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of

information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Construction Complaint—Request for Financial Assistance.

OMB Control Number, if applicable: 2502–0047.

Description of the need for the information and proposed use: This information collection is used to provide orderly processing of homeowner complaints by listing complaint items that the builder is responsible to correct as provided for in a warranty of completion and conformance.

Agency form numbers, if applicable: Form HUD—92556.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is .50. The number of respondents is 10, the number of responses is 1, the frequency of response is on occasion, and the burden hour per response is 5.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 9, 2008.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8–24941 Filed 10–20–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–58]

2009 American Housing Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The 2009 AHS is a longitudinal study that provides a periodic measure on the quality, availability, and cost of housing for both the country (AHS–N) and one select metropolitan area (AHS–MS). The study also provides information on demographic and other characteristics of the occupants. Federal and local agencies use AHS data to evaluate housing issues.

DATES: *Comments Due Date:* November 20, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0017) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: 2009 American Housing Survey.

OMB Approval Number: 2528–0017.

Form Numbers: AHS–26/66, AHS–27, AHS–28/68, AHS–30.

Description of the Need for the Information and Its Proposed Use: The 2009 AHS is a longitudinal study that provides a periodic measure on the quality, availability, and cost of housing for both the country (AHS–N) and one select metropolitan area (AHS–MS). The study also provides information on demographic and other characteristics of the occupants. Federal and local agencies use AHS data to evaluate housing issues.

Frequency of Submission: Biannually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	63,466	0.85	....	0.61	....	33,425

Total Estimated Burden Hours: 33,425.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 15, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–25104 Filed 10–20–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5130–N–31]

Privacy Act: Notification of the Intent To Establish a New Privacy Act System of Records, Asset Disposition and Management System (ADAMS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establishment of a new Privacy Act System of Record.

SUMMARY: HUD proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of record is the Asset Disposition and Management System (ADAMS/P260). ADAMS contains information about purchasers involved in the sale of HUD/FHA single-family homes (including non-profit organizations and Asset Control Area (ACA) participants approved by HUD to purchase HUD/FHA single-family homes), successful bidders of HUD-owned properties, HUD employees and contractors.

DATES: *Effective Date:* This action shall be effective without further notice on November 20, 2008 unless comments are received that would result in a contrary determination.

Comments Due Date: November 20, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Departmental Privacy Act Officer, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402–8047. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records as identified as the Asset Disposition and Management System (ADAMS/P260).

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records About Individuals," July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: October 10, 2008.

Lisa Schlosser,

Chief Information Officer.

HUD/HS–58

SYSTEM NAME:

Asset Disposition and Management System (ADAMS).

SYSTEM LOCATION:

Dallas, TX and Phoenix, AZ.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are covered by this system include successful bidders of a HUD-owned property, and non-profit organizations and Asset Control Area (ACA) participants approved by HUD to purchase HUD/FHA single-family homes. Also, individuals involved in the sale of HUD/FHA single-family homes Management and Marketing contractors (M&M), HUD employees, brokers, Name and Address identifier contractors, and financial control contractors.

CATEGORIES OF RECORD IN THE SYSTEM:

Files contain identifying information about purchasers, such as name, Social Security Number, and current address. In addition, the files contain appraisal information, tax payments, sales offer information, HUD–1, contract information, vendor information, and financial transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Housing Act as amended (12 U.S.C. 1702 *et seq.*).

PURPOSE:

ADAMS is a case management system for HUD owned and HUD managed single-family properties. The re-engineered application will be introduced into production in 2009. ADAMS supports HUD staff at Headquarters and Homeownership Centers (HOCs), and HUD's Management and Marketing (M&M) contractors to track single-family properties from their acquisition by HUD through the steps necessary to resell the properties. ADAMS captures pertinent data relating to the properties, including acquisition, maintenance and sales cost, property description and value, bids and sales proceeds, and special program designations. ADAMS also tracks and monitors certain events after sales under the Good Neighbor Next Door, non-profit, and ACA sales programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include:

(a) To General Accounting Office (GAO) for audit purposes.

(b) IRS for tax purposes.

(c) Inspector General Office (IG) for audit purposes.

(d) Management and Marketing contractors for processing the sale of HUD Homes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically in a computer mainframe.

RETRIEVABILITY:

Records can be viewed using computer search by the FHA Case Number, Property Address (including other geographical characteristics such as contract area, property state/city/county/zip code, Homeownership Center), or contractor ID or name.

SAFEGUARDS:

Records are maintained in a secured computer network. Access is limited to authorized personnel. ADAMS access requires two levels of logins to access the system. The first login uses HUD Siteminder system to verify that the user has active HUD authorization. The second login uses ADAMS internal security system to set permissions for data access and system functionality.

RETENTION AND DISPOSAL:

Information is archived electronically. Records will be retained and disposed of in accordance with the General Records Schedule included in HUD Handbook 2228.2, appendix 14, items 21–26.

SYSTEM MANAGER AND ADDRESS:

Michael Reyes, Office of Single Family Asset Management, 451 7th Street, SW., Room 9178, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. Written requests must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records, and for applicants who want to appeal initial agency determination appear in 24 CFR part 16. If additional information is needed, contact:

(i) In relation to contesting contents of records, the Departmental Privacy Act Officer at HUD, 451 Seventh Street, SW., Room 2256, Washington, DC 20410; and

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Purchasers, Brokers, appraisers, contractors, and HUD employees.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8–24936 Filed 10–20–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5130–N–32]

Privacy Act; Notification of an Amendment to an Existing Privacy Act System of Records, Housing Counseling System Client Activity Reporting System

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of Amendment to a Privacy Act System of Records, Housing Counseling System (HCS)/Client Activity Reporting (CAR) System.

SUMMARY: HUD proposes to amend one of its system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. HCS/CAR contains detailed characteristics of housing counseling clients that receive specific services from HUD-approved counseling agencies. The previous system of records was published at 78 FR 17366. The Department is modifying the system of records to include new capabilities for the system and to include a new "Purpose" captions, and an expansion on other captions for additional clarification purposes, to rename a new system manger in order to accurately identify the official responsible for managing the system. Additionally, updates are applied to the "Routine Use" caption, to expand the use of data to HUD approved entities for the purpose of conducting research and evaluation studies directly related to the participation and outcome of HUD's Housing Counseling Programs.

DATES: *Effective Date:* This action shall be effective without further notice on November 20, 2008 unless comments are received that would result in a contrary determination.

Comments Due Date: November 20, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Departmental Privacy Act Officer, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402–8047. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records as identified as HCS Client Reporting System.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records About Individuals," July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: *October 10, 2008.*

Lisa Schlosser,

Chief Information Officer.

HUD/HS–22

SYSTEM NAME:

Housing Counseling System (HCS) with a sub-module as a database naming 'Client Activity Report System (CARS)

SYSTEM LOCATION:

HUD Headquarters, Washington DC and Field Offices. In addition to these offices, HUD-approved counseling agencies in many cities, both voluntary and grant awarded by HUD, maintain files of this type. To determine whether such an agency exists in a particular city, contact the nearest HUD field office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records of individuals who have been referred; individuals who have been or are receiving counseling; assistance with housing problems and financial problems; and individuals seeking debt and mortgage information.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records on the counseling agency profiles, grant award processes and client counseling performances. It contains information on the clients participating in the program; such as, name, address, household demographics (age, gender, race, ethnicity, income, assets, marital status, education, current work status, number of dependents, living situation and costs); financial information (gross monthly income, amount in savings, amount in retirement accounts, monthly rent paid, monthly utilities paid, mortgage payment status); Social Security Number, homeownership status, program status information, counseling agency ID, employment history of counselor, Born in U.S., English as primary language, homeownership status, foreclosure status; name, address, and telephone numbers of two relatives or friends for future follow-up.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 106(a) of the 1968 Housing Act; 12 U.S.C. 1701.

PURPOSE:

Is to administer Housing Counseling Assistance to enable anyone who wants to (or already does) rent or own housing—whether through a HUD program, a Veterans Affairs program, other Federal programs, a State or local program, or the regular private market—to get the counseling they need to make their rent or mortgage payments and to be a responsible tenant or owner in other ways. The counseling is provided by HUD-approved housing counseling agencies.

Three strategic goals undergird the programs: (1) To improve the quality of renter and homeowner education, (2) to develop a reliable stream of funding and resources for counseling agencies, and (3) to enhance coordination among local housing providers. HUD intends that these strategies together will create a

new expectation among mortgage lenders and insurers, homebuilders, real estate brokers, nonprofit organizations, and government agencies: to make counseling an integral part of services for potential renters and homebuyers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses:

- For Pooling current agency contact information for the public awareness, monitoring agency grant spending, monitoring agency performance in client counseling;
- To HUD systems such as, CHUMS, and Office of the Chief Financial Officer (CFO) to allow lending institutions verification of HUD programs for agencies;
- To the Office of Policy Development and Research, individual under contract with funds provided by HUD for the preparation of studies and statistical reports directly related to the management of HUD's Housing Counseling Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

All documents are stored electronically in secure locations—there will be no retaining of paper copies.

SAFEGUARDS:

During the counseling process and the retention period, records are maintained in confidential files with access limited to those whose official duties require access. Data transmitted from agencies will have SSN and other client identification data encrypted to conceal this information. Access to the system is password/ID controlled.

RETRIEVING:

Name, Case Number, Client property address

RETENTION AND DISPOSAL:

Counseling records are maintained by the counseling agency for as long as the individual being counseled participates in the program and up to five (5) years thereafter. The Department may maintain summary records of the counseling for as long as the individual being counseled lives in HUD-insured or assisted property.

SYSTEM MANAGER(S) AND ADDRESS:

George Grotheer, Program Manager, Single Family Housing Program Support Division, HUPH 451 Seventh Street, SW., Room 9274, Washington, DC 20410. Phone: 202–402–2294

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR part 16.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting:

(i) In relation to contesting contents of records, the Departmental Privacy Act, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2256, Washington, DC 20410

(ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Information in this system of records is: (1) Supplied directly by the individual, and/or (2) supplied by Housing Counseling Agency, and/or (3) supplied by HUD system users.

EXEMPTION FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8–24938 Filed 10–20–08; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5130–N–33]

Privacy Act; Notification of the Establishment of a New Systems of Records, Nonprofit Data Management System

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establishment of a new Privacy Act System of Records, Nonprofit Data Management System.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of record is the Single Family Nonprofit Data Management System (NPDMS) developed by the Office of Single Family Housing. NPDMS will be used as an automated we-based tool used to manage the Nonprofit program activities. The application will be used to improve the application, recertification, and reporting process for organizations that participate in HUD Federal Housing Administration (FHA) Nonprofit Program activities and will be used to assist HUD staff with the daily administration of these programs.

DATES: *Effective Date:* This action shall be effective without further notice on *November 20, 2008* unless comments are received that would result in a contrary determination.

Comments Due Date: November 20, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh St., SW., Room 4178, Washington, DC 20410, Telephone Number (202) 402–8073. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that HUD proposes to establish a new system of records as identified as the NPDMS.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records, and require published notice of the existence and character of the system of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining

Records About Individuals," July 25, 1994; 59 FR 37914.

Authority: 5 U.S.C. 552a 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: October 10, 2008.

Lisa Schlosser,

Chief Information Officer.

HUD/HS–60

SYSTEM NAME:

Nonprofit Data Management System.

SYSTEM LOCATION:

The system is located on the UAI (contractor's server). UAI is located at 307 Wynn Drive, NW., Huntsville, Alabama 35805–1960.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system maintains information on Government Entities, Nonprofit Organizations, Nonprofit board members and key staff and homebuyers who purchase HUD (REO) homes from Nonprofits and Government Entities participating in the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Business Documentation (IRS Letters for Determination of Nonprofit Status, Articles of Organization; Mortgage Notes, W–9/SAMS–1111), *Property Report Documentation* (HUD–9548 Sales Contract, HUD–1 Settlement Statement-Purchase, HUD–1 Settlement Statement-Resale, and Median Income Certification) and limited information about the homebuyers; such as, their name, and address, SSN and race/ethnicity characteristics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Housing and Urban Development 24 CFR part 200.194 (Part 200—Introduction to FHA Programs)—Placement of Nonprofit Organization on Nonprofit Organization Roster.

PURPOSES:

NPDMS is an automated web-based program management tool designed to improve the application, recertification, and reporting process for organizations that participate in the Office of Single Family Housing (OSFH) activities and to assist HUD staff with the daily administration of FHA's Nonprofit Program activities. HUD maintains a roster of nonprofit organizations that are qualified to participate in certain specified FHA activities. In order to be recognized as a nonprofit organization for purposes of single family regulations in this chapter, an organization must: (1) Be included in the Roster; and (2) Comply with any requirements stated in a specific applicable provision of the single family regulations in this chapter. To be included in the Roster, a nonprofit organization must apply to HUD using an application (or materials) in a form prescribed by HUD (which may require an affordable housing program narrative for the activities the nonprofit organization proposes to carry out). The nonprofit organization must specify in its application the FHA activities it proposes to carry out. FHA, through its four Homeownership Centers (HOCs), receives application and recertification packages as well as annual reports from organizations that participate in OSFH activities such as purchasing HUD/Real Estate Owned (REO) homes at a discount, providing secondary financing in conjunction with FHA-insured mortgages, and securing FHA loans as the Mortgagor.

In the past, participating organizations had to submit the required documents in paper form to FHA. To ease the burden of creating documents, printing them, and mailing them to the HOC, FHA has developed NPDMS. NPDMS will serve as a new means for industry clients to submit data required by FHA.

NPDMS collects, stores and provides web-based access to participants' application and property activity data. This property data includes limited information on homebuyers that purchase HUD–REO properties. The system enhances FHA's ability to manage an organization's program activities from initial application/re-certification through the entire life cycle of program activities. Additionally, NPDMS enables participating organizations to: (1) Submit required property reports on-line; and (2) access Geographic Information System (GIS) capability and data on HUD-REO properties that are eligible for purchase.

The records maintained in the system are used by HUD staff to: (1) Verify an agency's eligibility to participate in the program; (2) to validate that no conflicts of interest exists amongst board members, employees, business partners, and homebuyers; (3) to validate that discounted HUD–REO homes were sold to eligible buyers; and (4) to determine that participating agencies have not exceeded profit limits on the re-sale of HUD–REO homes purchased through the discount program. However, because Government entities do not need approval to participate in the program they are not required to submit any business documentation or documentation on any governing boards or key staff. Government entities are required to submit property reports documenting the purchase and sell of REO discount properties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

There are no external disclosures made from the system only adhoc reports are generated internal to HUD. These reports do not include any personal/sensitive information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Data is stored in NPDMS which is on UAI's server. Data is also backed up nightly with copies of data tapes stored in a secure location for disaster recovery.

RETRIEVABILITY:

Agency records can be retrieved by selecting an agency's name from the drop down list. Under the agency's file the viewer can see an agency's tax payer ID, board members and key staff names and partial social security numbers (the system maintains social security numbers but they are not fully visible); homebuyer information can be retrieved by selecting a REO case file number. The system maintains homebuyer's name, address, race and social security number.

SAFEGUARDS:

UAI further secures the system as part of their normal best practices review of all services. Best practices for software include:

- Review of all security controls.
- Obtain and apply SSL Certificates.
- Review URLs to ensure use of HTTPS.
- Store passwords in non-human readable format.
- Inspect all SQL queries to prevent SQL injection attacks.

Server systems are in a secured location with coded key entry for restricted access that has been inspected and approved by HUD. The Public HUD site hosted by UAI is in separate domain from non-profit data management service hosted by UAI. Data is backed up nightly with copies stored in a secure location for disaster recovery. Encryption and hashing techniques are applied to Public Housing information.

RETENTION AND DISPOSAL:

Records are maintained for 3 years after they are no longer active then they are sent to the Records Center to be archived and destroyed according departmental policy.

SYSTEM MANAGER(S) AND ADDRESS:

Ruth Roman, Division Director of Program Support, Office of Single Family Housing , 451 7th Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC. Written requests must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records, and for applicants wanting to appeal initial agency determination, appear in 24 CFR part 16. If additional information is needed, contact:

(i) In relation to contesting contents of records, the Departmental Privacy Act Officer at HUD, 451 Seventh Street, SW., Room 2256, Washington, DC 20410; and

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Information is received from Nonprofit Organizations, Government Entities and homebuyers purchasing homes from participating agencies.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8–24939 Filed 10–20–08; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[FWS–R2–ES–2008–N0063; 20124–1112–0000–F2]

Notice of Availability of Record of Decision for the Horseshoe-Bartlett Habitat Conservation Plan for Incidental Take by the Salt River Project, Maricopa and Yavapai Counties, AZ

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: The United States Fish and Wildlife Service (Service) has issued an incidental take permit (ITP) to the Salt River Project (SRP) for 16 federally listed and candidate species in Maricopa and Yavapai counties, Arizona. Authorized take will occur as the result of modified operation of Horseshoe Dam and Reservoir (Horseshoe) and Bartlett Dam and Reservoir (Bartlett).

The Record of Decision (ROD) became effective on June 13, 2008. It states that the preferred alternative will be implemented and discusses all factors leading to the decision.

ADDRESSES: Persons wishing to review the ROD may obtain a copy by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Bills, Arizona State Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; 602–242–0210, Mr. Charles Paradzick, Senior Ecologist, Salt River Project, P.O. Box 52025, PAB352, Phoenix, AZ 85072–2025; 602–236–2724, or Mr. Craig Sommers, President, ERO Resources Corporation, 1842 Clarkson Street, Denver, CO 80218; 303–830–1188.

A read-only downloadable copy of the ROD is available on the Internet at *http://www.fws.gov/southwest/es/arizona*. A copy is available for public inspection and review at the locations listed below under **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that the Service has issued an Incidental Take Permit (ITP) to SRP for the following federally listed and candidate species: southwestern willow flycatcher (*Empidonax traillii extimus*), bald eagle (*Haliaeetus leucocephalus*), yellow-billed cuckoo (*Coccyzus americanus*), razorback sucker (*Xyrauchen texanus*), Colorado pikeminnow (*Ptychocheilus lucius*), Gila topminnow (*Peociliopsis occidentalis occidentalis*), Spikedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*), roundtail chub (*Gila robusta*), longfin dace (*Agosia chrysogaster*), Sonora sucker (*Catostomus insignis*), desert sucker (*Catostomus clarki*), speckled dace (*Rhinichthys osculus*), lowland leopard frog (*Rana yavapaiensis*), Northern Mexican gartersnake (*Thamnophis eques megalops*), and narrow-headed gartersnake (*Thamnophis rufipunctatus*).

SRP completed the Horseshoe and Bartlett Habitat Conservation Plan (HCP) as part of the application package for an ITP submitted to the Service as required by the Endangered Species Act of 1973, as amended (Act), which provides measures to minimize and mitigate for the effects of the taking of listed and candidate species and the habitats upon which they depend.

The Notice of Intent and Notice of Public Scoping Meeting was published in the **Federal Register** on June 19, 2003 (68 FR 36829).

The Notice of Availability for the Draft Environmental Impact Statement, application for the ITP, Draft HCP, and Draft Implementing Agreement was published in the **Federal Register** on July, 25 2007 (72 FR 40892).

The Notice of Availability for the Final EIS (FEIS), Final HCP, and Implementing Agreement published in the **Federal Register** on April 30, 2008 (73 FR 23488).

A copy of the ROD is available for public inspection and review at the following locations (by appointment at government offices):

Department of the Interior, Natural Resources Library, 1849 C. St., NW., Washington, DC 20240.

U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021.

Salt River Project, 1521 Project Drive, Tempe, AZ 85281.

Background

Horseshoe and Bartlett are operated by SRP in conjunction with four reservoirs on the Salt River and one reservoir on East Clear Creek as integral features of the Salt River Federal Reclamation Project, authorized by the Reclamation Act of 1902, and under a 1917 contract with the United States (43 U.S.C. 499). Since completion in the 1930s and 1940s, Horseshoe and Bartlett have provided water for irrigation, municipal, and other uses. Currently, SRP reservoirs supply much of the water for the population of more than 2.6 million people in the cities of Phoenix, Mesa, Chandler, Tempe, Glendale, Gilbert, Scottsdale, Tolleson, and Avondale. Water deliveries are also made under specific water rights in Horseshoe and Bartlett held by the City of Phoenix, the Salt River Pima-Maricopa Indian Community, and the Fort McDowell Yavapai Nation. In addition, water is provided to irrigate agricultural lands within SRP and for satisfaction of the independent water rights of Buckeye Irrigation Company, Gila River Indian Community, Roosevelt Irrigation District, Roosevelt Water Conservation District, and others. Horseshoe, Bartlett, and the other SRP reservoirs also provide a variety of recreational uses and environmental benefits in central Arizona.

Due to dry conditions in central Arizona for the past 12 years, water levels in Horseshoe and Bartlett have been below normal. As a result, riparian

trees and shrubs have grown in the Horseshoe storage space and have been colonized by a population of flycatchers, which are listed as endangered under the Act. Thus, periodic refilling of the reservoir may adversely impact the habitat and nesting of the flycatcher as well as the cuckoo, which uses similar habitat. Also, nonnative fish produced in Horseshoe and Bartlett can adversely impact covered fish, frog, and gartersnake species through predation, competition, and alteration of habitat in the Verde River and portions of its tributaries.

Based upon our review of the alternatives and their environmental consequences described in the FEIS, our decision is to implement Alternative 2—Optimum Operation of Horseshoe and Bartlett (the preferred alternative). The HCP will minimize and mitigate for take of the covered species named above by operating Horseshoe to maintain riparian forest in the upper end of the reservoir, acquiring and managing 200 acres of replacement habitats in perpetuity, managing Horseshoe to benefit aquatic species, funding improvements to a State native fish hatchery, stocking covered fish species, and supporting other watershed improvement projects as described in the HCP.

Thomas L. Bauer,

Acting Regional Director, Southwest Region.

[FR Doc. E8–24978 Filed 10–20–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N0177; 20124–1115–0000–F4]

Draft Candidate Conservation Agreement With Assurances and Application for an Enhancement of Survival Permit for the Lesser Prairie-Chicken and Sand Dune Lizard (Center of Excellence for Hazardous Materials Management)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft candidate conservation agreement with assurances and draft environmental assessment; receipt of application.

SUMMARY: The Center of Excellence for Hazardous Materials Management (CEHMM) (Applicant) has applied for an enhancement of survival permit under Section 10(a)(1)(A) of the Endangered Species Act (Act) of 1973, as amended. The permit application includes a draft Candidate Conservation Agreement with Assurances (CCAA) between the U.S. Fish and Wildlife Service (Service) and CEHMM for the lesser prairie-chicken (*Tympanuchus pallidicinctus*) (LPC) and the dunes sagebrush lizard (*Sceloporus arenicolus*), commonly known as the sand dune lizard (SDL) throughout their range in New Mexico. The Applicant proposes to implement conservation measures for the LPC and SDL by removing threats to the survival of these species and protecting their habitat. We invite public comment.

DATES: To ensure consideration, we must receive written comments on or before November 20, 2008.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, NM 87103. Persons wishing to review the draft CCAA or the draft environmental assessment may obtain a copy by written or telephone request to Nancy Riley, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, NM 87113 (505/761–4707). Documents will be available for public inspection by written request, or by appointment only during normal business hours (8 a.m. to 4:30 p.m.), at the above Albuquerque address.

FOR FURTHER INFORMATION CONTACT: Nancy Riley, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, NM 87113 (505/761–4707).

SUPPLEMENTARY INFORMATION: With the assistance of the Service, the Applicant proposes to implement conservation measures for the LPC and SDL by removing threats to the survival of these species and protecting their habitat. The proposed CCAA would be in effect for 20 years in southeastern New Mexico. This area constitutes the CCAA's Planning Area, with Covered Areas being private lands and state trust lands that provide suitable habitat or are being improved or restored to provide suitable habitat for the LPC and/or SDL. This CCAA is part of a larger conservation effort for the LPC and SDL within New Mexico in the form of a Candidate Conservation Agreement (CCA) among the Service, the Bureau of Land Management, and CEHMM that would address conservation measures on Federal lands. The CCA contains more information regarding both species, including the life history, historic ranges, threats to the species, and conservation measures to reduce and/or eliminate those threats. There are no assurances associated with the CCA.

Under the CCAA, LPC and SDL conservation will be enhanced by providing assurances such that, should the Participating Landowner or Other Cooperator have or attract LPCs or SDLs to their property, the Participating Landowner or Other Cooperator will not incur additional land use restrictions in the event either species is listed. Without regulatory assurances, landowners may be unwilling to initiate conservation measures for these species.

Background

The historic range of the LPC encompassed habitats with sandy soils supporting shinnery oak-bluestem and sand sage-bluestem communities in the high plains of southeastern Colorado, southwestern Kansas, western Oklahoma, west Texas, the Texas panhandle, and eastern New Mexico. The Service was petitioned to list the LPC as threatened in 1995. The Service ruled that listing of the LPC was warranted, but precluded because of other higher priority species. The LPC was designated as a candidate for listing in 1997.

The SDL is native to a small area of southeastern New Mexico and west Texas. The species only occurs in sand dune complexes associated with shinnery oak. Oil and gas development near dunal complexes along with shinnery oak removal for the enhancement of forage production for grazing has increased fragmentation of SDL habitat and gaps in the species' range. In 2001, the Service determined that listing of the SDL was warranted, but precluded because of other higher priority species, and the species was designated a candidate for listing under the Act.

This CCAA was initiated in order to facilitate conservation and restoration of the LPC and SDL on private lands and state trust lands. Conservation benefits for both species are expected in the form of habitat enhancement and restoration. The Applicant also proposes to encourage creative partnerships among public, private, and government entities to conserve the LPC and SDL and their habitats. In addition to habitat enhancement and restoration activities, release of captive-reared or trans-located LPCs will be conducted in order to establish viable populations within the Planning Area. The Applicant has committed to guiding the implementation of these conservation measures and requests issuance of the permit in order to address the take prohibitions of Section 9 of the Act

should the species become listed in the future.

The draft CCAA and permit application are not eligible for categorical exclusion under the National Environmental Policy Act (NEPA) of 1969. A draft Environmental Assessment has been prepared to further analyze the direct, indirect, and cumulative impacts of the CCAA on the quality of the human environment or other natural resources.

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR part 1506.6).

Public Availability of Comments

All comments we receive become part of the public record. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Brian Millsap,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E8–24678 Filed 10–20–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice; Request for Comments.

SUMMARY: We (U.S. Geological Survey) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on October 31, 2008. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before November 20, 2008.

ADDRESSES: Send your comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; and identify your submission with #1028–0053.

Please submit a copy of your comments to Phadrea Ponds, Information Collections, U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (FAX); or *pponds@usgs.gov* (e-mail). Use Information Collection Number 1028–0053 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Scott F. Sibley at (703) 648–4976.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1028–0053.

Title: Nonferrous Metals Surveys.

Form Number: Various (31 forms).

Type of Request: Extension of a currently approved collection.

Affected Public: Private Sector.

Respondent Obligation: Voluntary.

Frequency of Collection: Monthly, quarterly, or annually.

Estimated Number and Description of Respondents: Approximately 1,801 producers and consumers of nonferrous and related metals. Respondents are canvassed for one frequency period (e.g., monthly respondents are not canvassed annually).

Estimated Number of Responses: 5,339.

Completion Time per Response: We estimate the public reporting burden for the 31 forms averages 20 minutes to 2 hours per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.

Annual burden hours: 3,973.

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data for nonferrous and related nonfuel mineral commodities, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbooks, monthly/quarterly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications for use by Government agencies, industry, education programs, and the general public.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." Responses are voluntary. No questions of a "sensitive" nature are asked. We will release data collected on these forms only in a summary format that is not company-specific.

Comments: To comply with the public consultation process, on April 16, 2008, we published a **Federal Register** notice (73 FR20706) announcing our intent to submit this information collection to OMB for approval. In that notice, we solicited public comments for 60 days, ending on June 16, 2008. We did not receive any comments concerning the notice. We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(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 respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

USGS Information Collection Clearance Contact: Phadrea Ponds 970–226–9445.

Dated: October 15, 2008.

John H. DeYoung, Jr.,

Chief Scientist.

[FR Doc. E8–24981 Filed 10–20–08; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19558–A; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Chinuruk Incorporated. The lands are in the vicinity of Umkumiute, Alaska, and are located in:

Seward Meridian, Alaska

T. 6 N., R. 89 W.,
Secs. 1 and 2;
Secs. 11 to 15, inclusive;
Sec. 22.
Containing approximately 5,120 acres.
T. 7 N., R. 89 W.,
Sec. 36.
Containing approximately 640 acres.
T. 3 N., R. 90 W.,
Secs. 1, 2, and 12.
Containing approximately 1,609 acres.
Total aggregate of approximately 7,369 acres.

A portion of the subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Chinuruk Incorporated. The remaining lands lie within Clarence Rhode National Wildlife Range, established January 20, 1969. The subsurface estate in the refuge lands will be reserved to the United States at the time of conveyance. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until November 20, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E8–24982 Filed 10–20–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–07–1990–AL]

Extension of Call for Nominations for the Bureau of Land Management's California Desert District Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Extension of call for nominations for the Bureau of Land Management's California Desert District Advisory Council.

SUMMARY: The Bureau of Land Management's California Desert District announces an extension of call for nominations from the public for five members of its Desert District Advisory Council to serve the 2009–2011 three-year term.

The five positions to be filled include:

— One renewable resources representative
— One elected official
— One transportation/Rights-of-Way
— One renewable energy interests
— One public-at-large

DATES: Nominations will be accepted through Monday, December 1, 2008. The three-year term would begin January 1, 2009.

ADDRESSES: Nominations should be sent to the District Manager, Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs (951) 697–5220.

SUPPLEMENTARY INFORMATION: The BLM published notice in the **Federal Register** on September 28, 2008 calling for nominations to the California Desert District Advisory Council to serve the 2009–11 three-year term for the five positions listed above. The closing date for submissions was listed as October 30, 2008.

Nominations must include the name of the nominee; work and home addresses and telephone numbers; a biographical sketch that includes the nominee's work and public service record; any applicable outside interests or other information that demonstrates the nominee's qualifications for the position; and the specific category of interest in which the nominee is best qualified to offer advice and council. Nominees may contact the BLM California Desert District External Affairs staff at (951) 697–5217 or write to the address below and request a copy of the nomination form.

All nominations must be accompanied by letters of reference from represented interests, organizations, or elected officials supporting the nomination. Individuals nominating themselves must provide at least one letter of recommendation. Advisory Council members are appointed by the Secretary of the Interior, generally in late January or early February.

Dated: October 6, 2008.

Steven J. Borchard,

District Manager.

[FR Doc. E8–25018 Filed 10–20–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR and University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items, for which the University of Oregon Museum of Natural and Cultural History, Eugene, OR, and U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR, have joint responsibility, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1959, cultural items were removed from site 45–KL–18, also known as the Fountain Bar Site, Klickitat County, WA, during excavations conducted by the University of Oregon prior to construction of the John Day Dam. The cultural items were accessioned by the University of Oregon Museum in 1959. The 85 unassociated funerary objects are 2 projectile point fragments, 2 knife fragments, 2 preforms, 2 biface/uniface tools, 1 biface, 5 biface fragments, 8 unifaces, 2 scrapers, 1 graver, 3 hammerstones, 6 flaked cobbles, 32 unmodified flakes, 6 dentalia, 4 steatite beads, 3 oval blue glass beads, 1 blue faceted glass bead, 2 other beads, 2 strings of shell beads, and 1 vial of shell beads.

Some of the objects are listed as having been recovered from a designated "burial area" without reference to specific burials, while association of others with specific burials cannot be verified because of incomplete documentation, but are reasonably believed to be unassociated funerary objects. Site 45–KL–18 extends from the mouth of Rock Creek for more than 2 miles eastward along the now-inundated, north side shoreline of the Columbia River. The site is described as a severely-looted, vandalized and eroded lithic scatter and cemetery. Although no dates of occupation were obtained by the researchers, the burials and associated and unassociated funerary objects were characterized as prehistoric. The site burial pattern is consistent with customs of Columbia Plateau Native American groups. Excavation and museum documentation indicate that the cultural items are consistent with cultural items typically found in context with burials characteristic of the Mid-Columbia River Basin.

Oral histories and published ethnographic documentation indicate that site 45–KL–18 is located within the traditional territory of Sahaptin-speaking groups represented by the present-day Confederated Tribes of the Warm Springs Reservation of Oregon and Confederated Tribes and Bands of the Yakama Nation, Washington. Per the 1855 Treaty with the Tribes of Middle Oregon, the Confederated Tribes of the Warm Springs Reservation of Oregon signers were comprised of three Chinookan-speaking Wasco bands and four Sahaptin-speaking Warm Springs bands. The Uto-Aztecan-speaking Northern Paiutes, also part of the Confederated Tribes of the Warm Springs Reservation of Oregon, joined the confederation in the 1870s. The Wasco and Warm Springs bands traditionally occupied the south shore of the Columbia River and its tributaries from Cascade Locks to just east of the present-day city of Arlington, OR. The 14 Sahaptin, Salish and Chinookan-speaking tribes and bands of the Confederated Tribes and Bands of the Yakama Nation, Washington traditionally lived on the Washington side of the Columbia River between the eastern flanks of the Cascade Range and the lower reaches of the Yakima River drainage.

Officials of the U.S. Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 85 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the U.S. Army Corps of Engineers, Portland District have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Daniel Mulligan, NAGPRA Coordinator, Environmental Resources Branch, U.S. Army Corps of Engineers, Portland District, P.O. Box 2946, Portland, OR 97208–2946, telephone (503) 808–4768, before November 20, 2008. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Warm Springs Reservation of Oregon and/or the Confederated Tribes and Bands of the Yakama Nation, Washington may proceed after that date if no additional claimants come forward.

The U.S. Army Corps of Engineers, Portland District is responsible for notifying the Confederated Tribes of the Warm Springs Reservation of Oregon and Confederated Tribes and Bands of the Yakama Nation, Washington that this notice has been published.

Dated: September 10, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–24969 Filed 10–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR and University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items, for which the University of Oregon Museum of Natural and Cultural History, Eugene, OR, and U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR, have joint responsibility, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1952, cultural items were removed from site 35–WS–5, Wasco County, OR, during the River Basin Survey Party excavations conducted prior to construction of The Dalles Dam. The cultural items were later accessioned by the University of Oregon Museum (Museum Catalog No. 1–22725 to 1–22731). The seven unassociated funerary objects are one pipe fragment, one stone bead, one scraper, one drill fragment, one worked pebble, one unidentified "fragment," and one lot of glass beads.

According to the project report authored by J.L. Shiner, the objects were not considered grave goods nor evidence of burials, inhumations and/or cremations. However, museum catalog records list the artifacts as being associated with a "surface cremation site;" subsequent excavations conducted in 1954 and 1961 revealed that burials and human remains were also present. More-specific provenience information for the cultural items has not been determined because the original project field notes are unavailable for review. Based on museum records and subsequent excavations, the cultural items are reasonably believed to be unassociated funerary objects.

Site 35–WS–5 is located on the south shore of the Columbia River, approximately 2 miles east of The Dalles Dam. The site is described as a permanent Wasco village that was occupied prior to A.D. 1800. The site was inundated by Lake Celilo after the construction of The Dalles Lock and Dam. The burial pattern observed within the site is consistent with customs of Columbia Plateau Native American groups. Ethnographic and museum records indicate that the cultural items are consistent with cultural objects typically found in context with burials characteristic of the Mid-Columbia River Basin.

Site 35–WS–5 is located within the traditional lands of the present-day Confederated Tribes of the Warm Springs Reservation of Oregon, which is composed of three Wasco bands, four Warm Springs bands and Northern Paiutes. The Columbia River-based Wasco were the easternmost group of Chinookan-speaking Indians. The Sahaptin-speaking Warm Springs bands lived farther east along the Columbia River and its tributaries. Northern Paiutes, who spoke a Uto-Aztecan language, historically occupied much of southeastern Oregon. The Confederated Tribes of the Warm Springs Reservation of Oregon peoples also traditionally shared the site area with relatives and neighbors whose descendants may be culturally affiliated with the 14 Sahaptin, Salish and Chinookan-speaking tribes and bands of the present-day Confederated Tribes and Bands of the Yakama Nation, Washington. Yakama homelands were traditionally located on the Washington side of the Columbia River between the eastern flanks of the Cascade Range and the lower reaches of the Yakima River drainage.

Officials of the U.S. Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the seven cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the U.S. Army Corps of Engineers, Portland District also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Daniel Mulligan, NAGPRA Coordinator, Environmental Resources Branch, U.S. Army Corps of Engineers, Portland District, P.O. Box 2946, Portland, OR 97208–2946, telephone (503) 808–4768, before November 20, 2008. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington may proceed after that date if no additional claimants come forward.

The U.S. Army Corps of Engineers, Portland District is responsible for notifying the Confederated Tribes of the Warm Springs Reservation of Oregon and Confederated Tribes and Bands of the Yakama Nation, Washington that this notice has been published.

Dated: September 10, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–24973 Filed 10–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR and University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains for which the University of Oregon Museum of Natural and Cultural History, Eugene, OR, and U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR, have joint responsibility. The human remains were removed from property that would be later designated Army Corps of Engineers land within the Bonneville Lock and Dam Project area, Wasco County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the University of Oregon Museum of Natural and Cultural History and U.S. Army Corps of Engineers, Portland District professional staff in consultation with representatives of the Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of the Warm Springs Reservation of Oregon, and Confederated Tribes and Bands of the Yakama Nation, Washington.

Native American cultural items described in this notice were originally removed from public domain land (prior to U.S. Army Corps of Engineers acquisition of the property) by three private collectors and later donated to the University of Oregon.

At an unknown date during the 1890s, human remains representing one individual were removed from Lower Memaloose Island, Columbia River, Wasco County, OR, by a private collector whose name is withheld, and donated to the University of Oregon in 1938. No known individual was identified. No associated funerary objects are present. Although historic period artifacts were originally found in direct association with the human remains, none were donated to the University of Oregon.

At an unknown date, human remains representing one individual were removed from Lower Memaloose Island, Columbia River, Wasco County, OR, by a private collector whose name is withheld, and donated to the University of Oregon in 1950. No known individual was identified. No information has been found concerning possible burial associations. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of three individuals were removed from an unspecified "sand island in the Columbia River near The Dalles, OR" or Lower Memaloose Island, Columbia River, Wasco County, OR, by an unidentified University of Oregon student, and donated to the University of Oregon in 1913. No known individuals were identified. No information has been found concerning possible burial associations. No associated funerary objects are present.

Lower Memaloose Island is located in the center of the Bonneville Dam Reservoir (Lake Bonneville), approximately 3 river miles west of the city of Lyle, WA, and 8 miles east of Hood River, OR. The island was long-used by local Native American peoples

as a cemetery. Based on physical characteristics, osteological evidence, and the location of the human remains on the island, all five individuals have been determined to be Native American.

Lower Memaloose Island is within the traditional territory of Chinookan- and Sahaptin-speaking groups represented by the present-day Confederated Tribes of the Warm Springs Reservation of Oregon and Confederated Tribes and Bands of the Yakama Nation, Washington. Per the 1855 Treaty with the Tribes of Middle Oregon, the Confederated Tribes of the Warm Springs Reservation of Oregon signers were comprised of three Chinookan-speaking Wasco bands and four Sahaptin-speaking Warm Springs bands. The Uto-Aztecan-speaking Northern Paiutes, also part of the Confederated Tribes of the Warm Springs Reservation of Oregon, joined the confederation in the 1870s. The Wasco and Warm Springs bands traditionally occupied the south shore of the Columbia River and its tributaries from Cascade Locks to just east of the present-day city of Arlington, OR. The 14 Sahaptin, Salish, and Chinookan-speaking tribes and bands of the Confederated Tribes and Bands of the Yakama Nation, Washington, traditionally lived on the Washington side of the Columbia River between the eastern flanks of the Cascade Range and the lower reaches of the Yakima River drainage. Representatives of the Confederated Tribes of the Grande Ronde Community of Oregon, whose membership also includes Chinookan-speakers, have indicated that Lower Memaloose Island is outside of their pre-Contact territory.

Officials of the U.S. Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of five individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers, Portland District also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Daniel Mulligan, NAGPRA Coordinator, Environmental Resources Branch, U.S. Army Corps of Engineers, Portland District, P.O. Box 2946, Portland, OR 97208–2946, telephone (503) 808–4768, before November 20, 2008. Repatriation of the human remains to the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington may proceed after that date if no additional claimants come forward.

The U.S. Army Corps of Engineers, Portland District is responsible for notifying the Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of the Warm Springs Reservation of Oregon, and Confederated Tribes and Bands of the Yakama Nation, Washington that this notice has been published.

Dated: September 10, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–24966 Filed 10–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR and University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects for which the University of Oregon Museum of Natural and Cultural History, Eugene, OR, and U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR, have joint responsibility. The human remains and associated funerary objects were removed from sites on Army Corps of Engineers land within the The Dalles Lock and Dam Project area, Wasco County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the University of Oregon Museum of Natural and Cultural History and U.S. Army Corps of Engineers, Portland District professional staff in consultation with representatives of the Confederated Tribes of the Warm Springs Reservation of Oregon and Confederated Tribes and Bands of the Yakama Nation, Washington.

Native American cultural items described in this notice were excavated under Antiquities Act permits by the University of Oregon, Eugene, OR, on Army Corps of Engineers project lands. Following excavations at the sites described below, and under the provisions of the permits, the University of Oregon was allowed to retain the collections for preservation.

In 1956, human remains representing a minimum of three individuals were removed from site 35–WS–1/WS–2, also known as the Big Eddy Site, Wasco County, OR, during excavations conducted by the University of Oregon prior to construction of The Dalles Dam. No known individuals were identified. No associated funerary objects are present.

Site 35–WS–1/WS–2 is located 5 miles east of the city of The Dalles, OR, on the south shore of the Columbia River. The site is described as a Wasco village and midden site dating from the Late Prehistoric through Historic periods. Based on the location of the human remains within the site, the individuals have been determined to be Native American.

In 1954, human remains representing a minimum of eight individuals were removed from the Five Mile Rapids Site (35–WS–4), on the south shore of the Columbia River within The Dalles Lock and Dam Project area, Wasco County, OR, by the University of Oregon in conjunction with studies undertaken prior to the construction of The Dalles Dam. No known individuals were identified. The 515 associated funerary objects are 1 knife blade; 2 knives with wooden handles; 1 knife with a bone handle; 1 knife with a copper handle; 1 adze blade; 1 iron hatchet head; 1 projectile point fragment; 2 sturgeon hooks; 2 eyelets with springs; 2 composite harpoons; 1 fish scaler; 1 copper handle fragment; 10 decorated copper disks; 3 undecorated copper disks; 36 copper buttons; 1 phoenix button; 1 ring around a bear claw; 371 glass beads; 1 shell bead; 30 dentalium beads; 1 fragmentary copper tube bead; 3 stone beads; 1 bone bead; 1 lot of assorted beads, nails, and glass specimens; 1 reed fragment; 9 elk tooth ornaments; 7 complete and fragmentary dentalium shells; 3 carved bone fragments; 1 steatite cup; 1 steatite pipe; 1 Northwest Company token; 2 red

ochre specimens; 1 iron ore specimen; 4 mirror and glass fragments; 2 petrified wood pieces; 2 antler pieces; 1 container of wood, bone, iron, and lead pieces; 1 bag of cut bone and wood pieces; 1 bag of wood pieces; 1 lock of hair; 1 lot of fragmentary iron strips; and 1 lot of bark fragments.

Site 35–WS–4, sometimes referred to as 35–WS–8 or The Dalles Roadcut Site, is located approximately 2 miles northeast of The Dalles Dam at what was once the headwaters of (the now-inundated) Five Mile Rapids. The Five Mile Rapids Site is described as a possible village site dating to between 11,000 B.P. and historic times. The site was last occupied in the 19th Century as a Tenino summer fishing village. Based on the associated funerary objects, the human remains have been determined to be Native American.

In 1954, human remains representing a minimum of seven individuals were removed from site 35–WS–5, Wasco County, OR, during excavations conducted by the University of Oregon prior to construction of The Dalles Dam. Two additional individuals were removed at a later, unknown date, possibly during salvage operations in 1961. No known individuals were identified. No associated funerary objects are present.

Site 35–WS–5 is located on the south shore of the Columbia River, approximately 2 miles east of The Dalles Dam. The site is described as a permanent village that was occupied prior to A.D. 1800. The site was inundated by Lake Celilo after the construction of The Dalles Lock and Dam. Based on osteological evidence and the location of the human remains within the site, the individuals have been determined to be Native American.

The sites described above are within the traditional lands of the present-day Confederated Tribes of the Warm Springs Reservation of Oregon, which is composed of three Wasco bands, four Warm Springs bands and Northern Paiutes. The Columbia River-based Wasco were the easternmost group of Chinookan-speaking Indians. The Sahaptin-speaking Warm Springs bands lived farther east along the Columbia River and its tributaries. Northern Paiutes, who spoke a Uto-Aztecan language, historically occupied much of southeastern Oregon. The Confederated Tribes of the Warm Springs Reservation of Oregon peoples also traditionally shared the site area with relatives and neighbors whose descendants may be culturally affiliated with the 14 Sahaptin, Salish and Chinookan-speaking tribes and bands of the present-day Confederated Tribes and Bands of the Yakama Nation, Washington. Yakama homelands were traditionally located on the Washington side of the Columbia River between the eastern flanks of the Cascade Range and the lower reaches of the Yakima River drainage.

Officials of the U.S. Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 20 individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers, Portland District have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 515 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Daniel Mulligan, NAGPRA Coordinator, Environmental Resources Branch, U.S. Army Corps of Engineers, Portland District, P.O. Box 2946, Portland, OR 97208–2946, telephone (503) 808–4768, before November 20, 2008. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington may proceed after that date if no additional claimants come forward.

The U.S. Army Corps of Engineers, Portland District is responsible for notifying the Confederated Tribes of the Warm Springs Reservation of Oregon and Confederated Tribes and Bands of the Yakama Nation, Washington that this notice has been published.

Dated: September 10, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–24967 Filed 10–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR and University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects for which the University of Oregon Museum of Natural and Cultural History, Eugene, OR, and U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR, have joint responsibility. The human remains and associated funerary objects were removed from a site on Army Corps of Engineers land within the John Day Dam project area, Klickitat County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the University of Oregon Museum of Natural and Cultural History and U.S. Army Corps of Engineers, Portland District professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and Nez Perce Tribe of Idaho.

Native American cultural items described in this notice were excavated under an Antiquities Act permit by the University of Oregon, Eugene, OR, on Army Corps of Engineers project land. Following excavations at the site described below, and under the provisions of the permits, the University of Oregon was allowed to retain the collections for preservation.

In 1965, human remains representing a minimum of three individuals were removed from site 45–KL–5, also known as the Alderdale Site, Klickitat County,

WA, during excavations by the University of Oregon prior to construction of the John Day Dam. No known individuals were identified. The 55 associated funerary objects are 1 stone knife/scraper; 1 bone awl; 1 obsidian flake; 15 assorted flakes and shatter fragments; 1 unmodified angular basalt piece; 3 animal bones; and 33 animal bone fragments.

Site 45–KL–5 is located on the now-inundated, north side shoreline of the Columbia River adjacent to the town of Alderdale, WA. Recovered artifacts, ethnographic accounts, and informant reports indicate the site served as a long term camp or village. At the time of the National Park Service sponsored excavations, the site was described as heavily-looted, vandalized, and damaged by the effects of ongoing erosion. Radiocarbon dates obtained from the site, though not from the burial contexts, suggest the area was occupied from at least circa 1770 120 years BP into the historic period, as informant reports indicate the site was still used as an Indian village during the early 20th Century.

Based on the associated funerary objects and the location of the human remains within the site, all three individuals have been determined to be Native American. Oral histories and published ethnographic documentation indicate the site described above is within the shared, traditional territory of the Wishram, Yakama, Skin-pah, Wasco, Tenino, Western Columbia River Sahaptin groups, and Nez Perce bands. Descendants of the Wishram, Yakama, Skin-pah, and other ancestral groups are members of the Confederated Tribes and Bands of the Yakama Nation, Washington. Descendants of the Umatilla, Walla Walla, and Cayuse tribes are members of the Confederated Tribes of the Umatilla Indian Reservation, Oregon. Descendants of the Wasco, Tenino, and other culturally-affiliated Western Columbia River Sahaptin groups are members of the Confederated Tribes of the Warm Springs Reservation of Oregon. Descendants of Nez Perce groups are members of the Nez Perce Tribe of Idaho.

Officials of the U.S. Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers, Portland District have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 55 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and/or Nez Perce Tribe of Idaho.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Daniel Mulligan, NAGPRA Coordinator, Environmental Resources Branch, U.S. Army Corps of Engineers, Portland District, P.O. Box 2946, Portland, OR 97208–2946, telephone (503) 808–4768, before November 20, 2008. Repatriation of the human remains and associated funerary objects to the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and/or Nez Perce Tribe of Idaho may proceed after that date if no additional claimants come forward.

The U.S. Army Corps of Engineers, Portland District is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and Nez Perce Tribe of Idaho that this notice has been published.

Dated: September 10, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–24968 Filed 10–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the University of Denver Department of Anthropology and Museum of Anthropology professional staff in consultation with representatives of the U.S. Department of Agriculture, Forest Service; U.S. Department of the Interior, Bureau of Indian Affairs; U.S. Department of the Interior, Bureau of Land Management; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. The museum also sent reports and solicited feedback via telephone and correspondence with representatives from Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Pueblo of Picuris, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santo Domingo, New Mexico; and Ysleta Del Sur Pueblo of Texas.

This notice corrects a Notice of Inventory Completion published in the **Federal Register** of October 9, 2001 (FR Doc 01–25140, pages 51472–51474) by deleting paragraphs 4–6, and 11–12, and substituting paragraphs 7–10 and 13–15. The original notice is corrected because after further consideration of museum

records, consultation with tribal representatives and Federal agency officials, the controller for a minimum of two individuals of the original nine individuals described in the notice was misattributed and the cultural affiliation for the remaining seven individuals was incorrect.

In consultation with the U.S. Department of Agriculture, Forest Service; U.S. Department of the Interior, Bureau of Indian Affairs; and U.S. Department of the Interior, Bureau of Land Management, the museum has determined that control of the human remains and associated funerary objects in paragraphs 11 and 12 is misattributed for DU 6015 and DU 6066 per 43 CFR 10.2 (a)(3)(ii), see the Notice of Inventory Completion published in the **Federal Register** on August 21, 2008, (FR Doc E8–19319, pages 49485–49486), published by the U.S. Department of Agriculture, San Juan National Forest, Durango, CO. The museum has also determined that the cultural affiliation conclusions for human remains and associated funerary objects referenced in the notice are incorrect as defined at 25 U.S.C. 3001 (2). Based on this information, paragraphs 11 and 12 are deleted from the original notice of October 9, 2001, (FR Doc 01–25140, pages 51472–51474). Further discussions with the U.S. Department of the Interior, Bureau of Indian Affairs are taking place regarding the human remains identified as DU UT W: 10:2, and a separate notice will be published with that determination.

After October 9, 2001, museum officials contracted a research archeologist and conducted additional consultations with tribal representatives. After further consideration of the evidence and tribal input, museum officials have determined that the cultural affiliation of the remaining seven individuals and associated funerary objects are incorrect as defined at 25 U.S.C. 3001 (2).

Museum officials have determined that the human remains representing a minimum of four individuals referenced in paragraphs 4–6 (DU6002, DU6180, DU1995.1.7a–b, and DU CO Y:6:15) taken from the San Luis Valley, CO, are human remains that are of Native American ancestry, but that there is not sufficient available evidence that can lead to a reasonable assignment of cultural affiliation, and are therefore culturally unidentifiable. Museum officials have determined that without further information regarding archeological context and dating or material culture, the evidence surrounding the human remains does not provide enough data to assign cultural affiliation. The San Luis Valley is an area that was visited and inhabited by a number of tribes over time and the evidence does not provide definitive clues. This conclusion was supported in tribal consultation and by Douglas Bowman, Southwestern archeologist contracted with the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah. Based on this information, paragraphs 4–6 are deleted from the original notice of October 9, 2001 (FR Doc 01–25140, pages 51472–51474).

Museum officials have determined that the human remains representing a minimum of three individuals referenced in paragraphs 7–10 (DU CO X:16:12 and DU CO V:9:GEA) have a cultural affiliation that can be narrowed to the present-day Pueblo tribes. The original notice of October 9, 2001 (FR Doc 01–25140, pages 51472–51474) is corrected by replacing paragraphs 7–10 with the following:

In 1950, human remains representing one individual (catalog number DU CO X:16:12) were recovered from site 5CN26, Conejos County, CO, probably by Harry Christopher Meyers, Jr. who recorded the site card and conducted a survey of the area for his master's thesis. Mr. Meyers' thesis is on file at the University of Denver, Department of Anthropology, dated May 1950. In his thesis, Mr. Meyers thanks Mr. Mercedes Ortiz, of Conejos, CO, for his aid in "the survey" of portions of the San Luis Valley. Mr. Ortiz is likely a local land owner who acted as a guide. Although the thesis provides a likely contextual framework for the areas examined and the types of sites recorded, site 5CN26 was recovered in August 1950 and is not referenced in any report. No known individual was identified. The nine associated funerary objects are seven black-on-white sherds, one obsidian core, and one chipped stone.

The site card describes a cave with an opening onto a flat plain, dropping down over 10 feet. The interior of the cave is reported to consist of four rooms containing dry laid stone walls, lithic debitage, and pottery sherds. The main, or upper room, is described as opening directly off of the opening. Its walls were apparently about 2 1/2 feet high. The three other rooms appear to be contiguous, extending back inside the cave. An attempt to relocate site 5CN26 was undertaken by an unknown individual at an unknown date (presumably after the mid 1980s based on the form used). Notes of this visit to the area are recorded on a Cultural Resource Reevaluation Form on file at the Colorado Office of Archaeology and Historic Preservation. The researcher notes that the legal location data on the old site card was poor, so the southern half of the listed section and the northern half of the neighboring section were extensively searched, but "no evidence of the site could be found."

Black-on-white pottery indicates this site is ancestral Puebloan. The scientific literature provides significant evidence of cultural affiliation between ancestral Puebloan culture and the Pueblos of today. Mr. Meyers' thesis work was specifically looking for Puebloan sites. Additionally, a likely source for the obsidian is New Mexico, which further supports a Puebloan affiliation.

At an unknown date, human remains representing two individuals (catalog number DU CO V:9:GEA) were recovered from a site at the edge of McElmo Canyon, Montezuma County, CO, 20 miles northwest of Mesa Verde, by Faye Conklin, a graduate of the University of Denver. No known individuals were identified. The 50 associated funerary objects are 1 black-on-white pottery bowl, 1 black-on-white pottery bowl fragment, 1 black-on-white pottery jar fragment, 25 black-on-white sherds, 3 redware sherds, 1 nonhuman bone, 4 nonhuman bone fragments, 1 piece of wood, 8 pieces of cordage, 3 beans, and 2 corn kernels.

Black-on-white pottery, beans, and corn indicate this site is ancestral Puebloan. The scientific literature provides significant evidence of cultural affiliation between ancestral Puebloan culture and the Pueblos of today.

Based on the preponderance of evidence, including archeology, architecture, material culture, oral traditions, and expert opinion, officials of the University of Denver Museum of Anthropology and Museum of Anthropology have reasonably determined that the Native American human remains (catalog numbers DU CO X:16:12 and U CO V:9:GEA) are ancestral Puebloan. Descendants of ancestral Puebloan culture are members of the present-day tribes of the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico (formerly Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and

Zuni Tribe of the Zuni Reservation, New Mexico.

The original notice of October 9, 2001, (FR Doc 01–25140, pages 51472–51474) is corrected by replacing paragraphs 13–15 with the following:

Officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of three individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 25 U.S.C.3001 (3)(A), the 59 objects described above are reasonably believed to have been placed with or near the individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), the preponderance of the evidence supports a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico (formerly Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Christina Kreps, University of Denver Museum of Anthropology, Sturm 146, Denver, CO 80208, telephone (303) 871–2688, before November 20, 2008. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The University of Denver Department of Anthropology and Museum of Anthropology is responsible for notifying the U.S. Department of Agriculture, Forest Service; U.S. Department of the Interior, Bureau of Indian Affairs; U.S. Department of the Interior, Bureau of Land Management; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: October 6, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–24961 Filed 10–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation of the human remains and associated funerary objects that were described in a Notice of Inventory Completion published in the **Federal Register** of October 26, 2001 (FR Doc 01–27050, pages 54284–54285). After further consultation of museum records, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that the human remains and associated funerary objects referenced in the notice have a cultural affiliation that can be narrowed.

After October 26, 2001, museum officials contracted a research archeologist and conducted additional consultations with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. The museum also sent reports and solicited feedback via telephone and correspondence with

representatives from the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Pueblo of Picuris, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santo Domingo, New Mexico; and Ysleta del Sur Pueblo of Texas.

The October 26, 2001, notice, pursuant to 43 CFR 10.2 (e), identified a relationship of shared group identity that could be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. After further consideration of the evidence, museum officials have determined that the evidence and research at the Pettit Site point to a cultural affiliation that is more specific to the Zuni Tribe of the Zuni Reservation, New Mexico.

In the **Federal Register** of October 26, 2001, paragraph numbers 5–8 are corrected by substituting the following paragraphs:

The Pettit Site, 29VA1 (LA 59484), is in Togeye Canyon, which opens onto the El Morro Valley just a few kilometers southeast of Ramah, NM, near the Zuni Reservation. The Pueblo consists of at least 154 rooms (including the presence of kivas and community kivas) and has been dated to A.D. 1190–1250. The Pettit Site is generally considered to be from the PIII period site (circa A.D. 1150–1350), also known in some chronologies as the Reorganization period. Both terms refer to a time period just prior to the large population aggregations of the PIV and Aggregation periods on the Colorado Plateau.

The Pettit Site reflects the social tension and struggle documented for Pueblo III society in Pueblo ethnography and historiography. Researchers believe that hierarchies, such as are evident at the Pettit Site, led to subsequent changes in the Zuni area, specifically, population aggregation at large and planned pueblos after A.D. 1275 (Dr. Keith Kintigh and Dr. Dean Saitta).

The Pettit Site likely played a key role in the economic and ideological development of ancestral Zuni society. First, the site occupies a prominent landform in the canyon. It is also noted that petroglyphs of stick-figure humans with arms pointing downward are found on the top of Pettit Mesa. Turquoise, a presumed ritual commodity, is found in rooms surrounding a kiva at the extreme west end of the mesa top ruin. The presence of large community kivas at the Pettit Site suggests architectural continuity between Chacoan and Reorganization period material landscapes in the northern Southwest, as noted in several places in southwestern Colorado and the Zuni area. Dr. Saitta further suggests that ideological continuity is found in the D-shaped kivas at the Pettit Site, coupled with its location on a prominent landform, which is a context identical to that of many early Chacoan great houses in the Zuni area.

Based on the preponderance of the evidence, including archeology, architecture, oral traditions, material culture, and expert opinion, officials of the University of Denver Department of Anthropology and Museum of Anthropology reasonably believe the human remains from the Pettit Site are Native American and are ancestral to the Zuni. This conclusion is supported by tribal consultation, who largely supported a Zuni affiliation, and by Drs. Saitta and Kintigh. The Pueblo of Acoma NAGPRA Committee demonstrated cultural affiliation to the El Morro Canyon area, especially sacred trails and pilgrimage areas. This oral testimony was supported by Dr. Kintigh, who recognized El Morro Valley as a "place where Acoma and Zuni interests overlap." However, the Pueblo of Acoma NAGPRA Committee supports a Zuni tribal affiliation for the Petitt archeological site. Descendants of the Zuni are members of the Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described in the October 26, 2001 notice represent the physical remains of a minimum of eight individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 178 objects described in the October 26, 2001 notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), by a preponderance of the evidence, a relationship of shared group identity can be reasonably traced between the Native American human remains and associated funerary objects in the October 26, 2001 notice and the Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Christina Kreps, University of Denver Museum of Anthropology, Sturm 146, Denver, CO 80208, telephone (303) 871–2688, before November 20, 2008. Repatriation of the human remains and associated funerary objects to the Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The University of Denver Department of Anthropology and Museum of Anthropology is responsible for notifying the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: October 6, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–24962 Filed 10–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

This notice rescinds a Notice of Inventory Completion published in the **Federal Register** of July 2, 2001 (FR Doc 01–16547, pages 34956–34957). After further consideration of the evidence, museum officials have determined that the human remains are of Native American ancestry, but that there is not sufficient available evidence that can lead to a reasonable assignment of cultural affiliation as defined at 25 U.S.C. 3001 (2). This research conclusion was supported by feedback during tribal consultations, claims to the area, associated funerary objects, and a rendering of the pictograph found at Cave 5 on the T.O Ranch.

The original notice identified a relationship of shared group identity that was reasonably traced between the Native American human remains and the associated funerary objects with the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Fort McDowell Yavapai Nation Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

After July 2, 2001, museum officials contracted a research archeologist and conducted additional consultations with representatives of the Comanche Nation, Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. The museum also sent reports and solicited feedback via telephone and correspondence with representatives from the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santo Domingo, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Ysleta del Sur Pueblo of Texas.

In the notice of July 2, 2001, the human remains representing a minimum of one individual (catalog number DU6065) were removed from an unknown location in the Southwestern part of the United States between the 1920s and the 1950s, possibly by Dr. E.B. Renaud, founder of the University of Denver Department of Anthropology, or H.B. Roberts, who often worked on Dr. Renaud's excavations. The human remains include a cranium of a young adult female with worn dentition and no evidence of cranial flattening (cradleboarding). The cranium is labeled by H.B. Roberts in pencil as "Basketmaker Female Early Southwest." Catalog records do not identify a specific site or any archeological context. No known individual was identified. No associated funerary objects are present. Officials at the University of Denver Museum of Anthropology recognize that scholars have historically attributed the activity of cradleboarding to Pueblo Tribes, but during consultation, Pueblo officials knew of examples of other groups who used cradleboards. In the absence of specific archeological dates, representatives agreed that cranial flattening was not specifically a Pueblo cultural practice.

In the notice of July 2, 2001, the human remains representing one individual (catalog number DU6067) and 198 associated funerary objects were recovered from a cave (Renaud number Cave 6) on the T.O. Ranch, near Folsom, Colfax County, NM, by Dr. E.B. Renaud of the University of Denver Department of Anthropology in 1929. No known individual was identified. The 198 associated funerary objects are 9 bone awls, 1 antler flaker, 124 bone beads (found in the configuration of a necklace), 1 hammerstone, 2 choppers, 1 stone pounder, 1 metate, and 59 chipped stone tools. The assemblage has been dated to the terminal Archaic/ Transitional Basketmaker (circa 200 B.C. to A.D. 700 based on the archeological context of the site).

Dr. Renaud collected the human remains and funerary objects while on an expedition sponsored by the Colorado Museum of Natural History (now the Denver Museum of Nature & Science). The burial site and other caves in the area included corn cobs as well as fragments of yucca sandals that Dr. Reynaud says resemble those found by Kidder and Guernsey in northeastern Arizona. Dr. Renaud characterizes the entire culture as "primitive maize growers." Dr. Renaud links Cave 6 with another cave in the area, Cave 5, based on the relative position of the hearths and the similarity of the lithic and animal bone assemblages. He concludes that the occupations of these neighboring caves were essentially the

same and contemporaneous, and that both reflect the same culture. A pictograph appears at the opening of Cave 5, described as a small, conventionalized male figure with squared-shoulders.

The expedition encompassed the Cimarron Valley, including Kenton Caves in the panhandle of Oklahoma. Based on the material culture, Renaud groups all the sites in the Cimarron Valley as a discrete cultural group, which he describes alternatively as "Basketmaker," "Primitive Basketmaker," and "Fumerole." The lack of specific evidence does not make cultural affiliation conclusive. A review of more recent literature regarding the Cimarron Valley reveals that as a result of scattered artifact collections, inadequate material descriptions, and poor provenience information, assigning cultural affiliation to these sites is impossible.

Based on the information described above, including tribal consultation and expert opinion, officials of the University of Denver Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.

Representatives of any Native American tribe who wish to comment on this notice should address their comments to Dr. Christina Kreps, University of Denver Museum of Anthropology, Sturm 146, Denver, CO 80208, telephone (303) 871–2688, before November 20, 2008.

The University of Denver Museum of Anthropology is responsible for notifying the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: October 6, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–24963 Filed 10–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The notice corrects the cultural affiliation of a minimum of six individuals that were described in a Notice of Inventory Completion published in the **Federal Register** of October 4, 2001, (FR Doc 01–24931, pages 50676–50677). After further consideration of museum records, morphological evidence, and tribal consultation, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that there is not sufficient available evidence to lead to a reasonable determination that the six individuals (catalog numbers DU6061, DU6068, DU6069, DU6070, and DU6181) are culturally affiliated, pursuant to 25 U.S.C. 3001 (2), and therefore are culturally unidentifiable.

Museum officials contracted a research archeologist and conducted additional consultations since October 4, 2001, with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. Reports and correspondence was also conducted with representatives from Pueblo of Picuris, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santo Domingo, New Mexico; and Ysleta Del Sur Pueblo of Texas.

Field notes for the human remains representing the six individuals do not exist. The collector, Dr. E.B. Renaud, founder of the University of Denver Department of Anthropology, identified the individuals as "Pueblo," due to cranial reshaping that resulted from "cradleboarding." Officials at the University of Denver Department of Anthropology and Museum of Anthropology recognize that scholars have historically attributed the activity of cradleboarding to Pueblo Tribes, but during consultation, Pueblo officials cited examples of other groups who used cradleboards. In the absence of specific archeological dates or any location information, tribal representatives agreed that cranial flattening was not specifically a Pueblo cultural practice.

In the **Federal Register** of October 4, 2001, (FR Doc. 01–24931, pages 50676–50677), the Notice of Inventory Completion is corrected by deleting paragraph numbers 4 and 5 that describe the six individuals; and substituting paragraphs 6 to 9 with the following paragraphs:

In 1939, human remains representing a minimum of one individual (catalog number 1995.1.1) were collected by Theodore Sowers, a graduate of the University of Denver. In 1995, his daughters donated the human remains to the University of Denver so that they could be repatriated. No known individual was identified. The 42 associated funerary objects are 9

projectile points (stemmed, side notched, and corner notched); 1 stone pipe (also identified during consultation as a "cloud blower"); 1 bone tool (also identified during consultation as a turkey call); 3 stone knives; 3 stone scrapers; 1 sinker; 2 stone drills; 3 bone awls; 5 flaked tools; 1 flake; 8 unworked stone; 3 fossils; 1 copper ore fragment; and 1 piece of sulfur.

The human remains and associated funerary objects were originally described as being recovered from Mesa Portales, Sandoval County, NM, however, additional research has uncovered labels and box tags that also indicate Dinwoody Cave and Folsom, NM. The labeling ambiguity makes it impossible to identify a site. However, a determination on cultural affiliation can be reached through the associated funerary objects.

Diagnostic artifacts appear to span the time period between 6,000 B.C. and A.D. 500, based on a comparison of five projectile points associated with the human remains and the typology established by Cynthia Irwin-Williams (1973). The projectile points are interpreted to correspond to the Oshara Tradition, and to reflect the transition from Archaic to Ancestral Puebloan adaptations. Specifically, the projectile points include stemmed, corner-notched, and side-notched tools that appear to be of the Jay, Bajada, San Jose, Armijo, and En Medio types characterized by Dr. Irwin-Williams. Exploitation of large, medium, and small sized fauna, along with natural floral resources is reflected by the earlier point styles. The later Armijo and En Medio styles suggest a time period where the exploitation of natural and domestic flora was practiced. The transition from the Oshara tradition to the Ancestral Puebloan is fluid according to Dr. Irwin-Williams. The projectile points were also identified as Pueblo by several tribal representatives. The remainder of the assemblage associated with the individual contains bone and other stone tools that mirror the collection of projectile points from the site and indicate a transitional and likely multi-component occupation of the site where they were collected. It should be noted that the presence of bone tools could indicate that human remains and funerary objects were recovered from a cave or otherwise-sheltered environment that allowed their preservation.

Museum officials have concluded that the material culture and the expert opinion of tribal representatives and scholars support an Ancestral Puebloan cultural affiliation for the one individual. The scientific literature provides significant evidence of cultural affiliation between ancestral Puebloan culture and the Pueblos of today. Descendants of Puebloan culture are members of the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of one individual of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 42 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), the preponderance of the evidence supports a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Christina Kreps, University of Denver Museum of Anthropology, Sturm 146, Denver, CO 80208, telephone (303) 871–2688, before November 20, 2008. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The University of Denver Museum of Anthropology is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Dated: February 13, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

Editorial Note: This document was received at the Office of the Federal Register October 16, 2008.

[FR Doc. E8–24964 Filed 10–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Denver Department of Anthropology and Museum of Anthropology professional staff in consultation with representatives of the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Zuni Tribe of the Zuni Reservation, New Mexico. The following tribes were contacted, but did not participate in consultations: Pueblo of Picuris, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santo Domingo, New Mexico; Skull Valley Band of Goshute Indians of Utah; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ysleta Del Sur Pueblo of Texas.

This notice replaces a Notice of Inventory Completion published in the **Federal Register** of October 9, 2001, (FR Doc 01–25157, page 51474–51475) and supports a correction notice published in the **Federal Register** of December 10, 2003 (FR Doc 03–30568, pages 68951–68952) that had corrected which museum or Federal agency had control of the human remains and associated funerary objects per 43 CFR 10.2 (a)(3)(ii), transferring control from the U.S. Department of Agriculture, San Juan National Forest, Durango, CO, to the University of Denver Department of Anthropology and Museum of Anthropology. After further consideration of museum records, contract work of a research archeologist, and additional consultations with tribes, the University of Denver Department of Anthropology and Museum of Anthropology have determined that the cultural affiliation is incorrect, pursuant to 25 U.S.C. 3001 (2).

Between 1921 and 1924, human remains representing a minimum of two individuals (catalog number DU 108) were recovered from a pithouse at a site near Chimney Rock, (site 5AA245), Archuleta County, CO. The State Historical and Natural History Society of Colorado (either in collaboration with University of Denver for the first two years or later on its own) conducted expeditions in the Pagosa-Piedra region where site 5AA245 is located. The field director was J. A. Jeancon, then curator of archeology at the State Museum, and was assisted by Frank H. H. Roberts, then an instructor at University of Denver, Henry B. Roberts, and several students. The site card was recorded by P.M. Heberling. No known individuals were identified. The nine associated funerary objects are seven nonhuman bones, one lot of plant fiber, and one grey ceramic jar with weathered black designs.

The ceramic jar has been identified by a ceramics expert as a seed jar with typical checkerboard black-on-white design, P PII (AD 900–1100). Site records also indicate black-on-white, plain gray, and corrugated sherds, lithic cores and flakes, 2 obsidian flakes, mano and metate fragments and whole slab metates, but the cultural items are not in the University of Denver Museum of Anthropology collection.

Henry Roberts described one individual as being found in a cist underneath the floor of the pithouse and the other was on the floor, just a few inches to the south. The pit had been "carefully plastered with adobe and was just large enough to admit the remains." The individual found in the cist was found lying on its right side, with the right hand under the head and the left arm folded across the chest. The knees were flexed and the body faced northwest. According to Mr. Roberts, "there were no artifacts in the grave other than an open bowl of the early black-on-white type." Mr. Roberts mentions that a fairly well-developed black-on-white ware was found on the same level with the skeletons.

The research of Mr. Jeancon, Mr. Roberts, and recent investigators has established that the ceramic/architectural sites in the Piedra River drainage in the vicinity of Chimney Rock are ancestral Puebloan in nature and are generally contemporaneous with the occupations at Chimney Rock. The scientific literature also provides significant evidence of cultural affiliation between ancestral Puebloan culture and the Pueblo communities of today.

Based on the preponderance of evidence, including archeology, architecture, material culture, oral traditions, and expert opinion, officials of the University of Denver Museum of Anthropology and Museum of Anthropology have reasonably determined that the Native American human remains (catalog number DU 108) are ancestral Puebloan. Descendants of ancestral Puebloan culture are members of the present-day tribes of the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico (formerly Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 25 U.S.C.3001 (3)(A), the nine objects described above are reasonably believed

to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), the preponderance of the evidence supports a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico (formerly Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Christina Kreps, University of Denver Museum of Anthropology, Sturm 146, Denver, CO 80208, telephone (303) 871–2688, before November 20, 2008. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The University of Denver Museum of Anthropology is responsible for notifying the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: April 14, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

Editorial Note:

This document was received at the Office of the Federal Register on October 16, 2008.

[FR Doc. E8–24965 Filed 10–20–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on October 15, 2008, a proposed consent decree with defendant Alcoa, Inc., was lodged in *United States* v. *Alcoa, Inc.*, Civil Action No. 08–415, in the United States District Court for the Southern District of Iowa.

The United States sought, pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 & 9607, to recover costs incurred in response to releases of hazardous substances at the Alcoa-Davenport Works and Mississippi River Pool 15 Superfund Sites in Davenport, Iowa ("the Sites"), to recover natural resource damages at the Sites, and to require defendant Alcoa to implement EPA's selected remedy for the Sites.

The proposed consent decree will resolve the United States' claims against Alcoa. Under the proposed consent decree, Alcoa will perform the remedy for the Sites, and pay $752,345.99 to the Superfund in payment of the United States' unreimbursed Site response costs. Alcoa will also pay $198,235 to the United States for natural resource damages. In return, the United States will grant the defendants a covenant not to sue under CERCLA with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Alcoa, Inc.*, D.J. Ref. 90–11–2–08358. Public comments may be submitted by e-mail to the following e-mail address: *pubcomment-ees.enrd@usdoj.gov*.

The proposed consent decree may be examined at the office of the United States Attorney, U.S. Courthouse Annex, Suite # 286, 110 East Court Avenue, Des Moines, Iowa 50309–2053, and may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy may also be obtained upon request from the Consent Decree Library, Environmental Enforcement Section, U.S. Department of Justice, P. O. Box 7611, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.75 (25 cents per page reproduction costs), payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–24980 Filed 10–20–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on September 10, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications

simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Futarque A/S. Aalborg, DENMARK; Kat Digital Corp., Taipei, TAIWAN; Mattel, Inc.. El Segundo, CA; and Skydigital Inc., Seoul, REPUBLIC OF KOREA have been added as parties to this venture.

Also, Ascent Media Group, LLC, Santa Monica, CA; Coretek Limited, Kowloon, HONG KONG–CHINA; Estorage Technology Co., Ltd., Taipei, TAIWAN; Exatel Visual Systems, Ltd., Rehovot, ISRAEL; Hansong (Nanjing) Electronic Ltd., Nanjing, PEOPLE'S REPUBLIC OF CHINA; Jiangsu Hongtu High Technology Co., Ltd., Nanjing, PEOPLE'S REPUBLIC OF CHINA; Link Concept Technology Ltd., Kowloon, HONG KONG–CHINA; New Medium, London, UNITED KINGDOM; Premium Disc Corp., Mississauga, Ontario, CANADA; TOMEN Electronics Limited, Kowloon, HONG KONG–CHINA; Universal Pacific Co., Ltd., Kowloon, HONG KONG–CHINA; and Via Technologies, Inc., Taipei, TAIWAN have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on June 12, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 21, 2008 (73 FR 42366)

Patricia A. Brink,

Deputy Director of Operations Antitrust Division.

[FR Doc. E8–24804 Filed 10–20–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—High Definition Metrology and Process-2 Micron Manufacturing Under ATP Award No. 70NANB77041

Notice is hereby given that, on September 17, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), High Definition Metrology and Process-2 Micron Manufacturing under ATP Award No. 70NANB7H7O41 ("High Definition Metrology") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Roush Enterprises, Inc., Livonia, MI, has been added as a member to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this research project remains open, and High Definition Metrology intends to file additional written notifications disclosing all changes in membership.

On December 13, 2007, High Definition Metrology filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 10, 2008 (73 FR 12762).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–24802 Filed 10–20–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—LiMo Foundation

Notice is hereby given that, on September 22, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), LiMo Foundation ("LiMo") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kvaleberg AS, Oslo, NORWAY; Infineon Technologies AG, Neubiberg, GERMANY; SK Telecom, Co., Ltd., Seoul, REPUBLIC OF KOREA; Mozilla Corporation, Mountain View, CA; SFR Enterprises, Paris, FRANCE; Cellon Communications Technology (Shenzhen) Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; VirtualLogix, Inc., Sunnyvale, CA; MIZI Research Incorporated, Seoul, REPUBLIC OF KOREA; Shanghai Longcheer3G Technology Co. Ltd, Shanghai, PEOPLE'S REPUBLIC OF CHINA; ZTE Corporation, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Telecom Italia SpA, Rome, ITALY; Movial Corporation, Helsinki, FINLAND; Freescale Semiconductor, Inc., Austin, TX; Esmertec AG, Dubendorf, SWITZERLAND; Packetvideo Corporation, San Diego, CA; Innoace Co., Ltd., Seoul, REPUBLIC OF KOREA; Elektrobit Wireless Communications, Ltd., Ouiu, FINLAND, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of this group research project. Membership in this group research project remains open, and LiMo intends to file additional written notifications disclosing all changes in membership.

On March 1, 2007, LiMo filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 9, 2007 (72 FR 17583).

The last notification was filed with the Department on June 12, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 29, 2008 (73 FR 43952).

Patricia A. Brink,

Deputy Director of Operations Antitrust Division.

[FR Doc. E8–24803 Filed 10–20–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on September 5, 2008, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993,

15 U.S.C. 4301 *et seq.* ("the Act"), Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, LFV, Norrkoping, SWEDEN has been added as a party to this venture. Also, SRA International, Fairfax, VA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on June 13, 2008. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 21, 2008 (73 FR 42367).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–24806 Filed 10–20–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open DeviceNet Vendor Association, Inc.

Notice is hereby given that, on September 5, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open DeviceNet Vendor Association, Inc. ("ODVA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, LinkBASE, Seoul, REPUBLIC OF KOREA; Keyence Corporation, Tokyo, JAPAN; RocKontrol Industry Co., Ltd., Shanxi, PEOPLE'S REPUBLIC OF CHINA; Nichigoh Communication Electric Wire Co., Ltd., Osaka, JAPAN; CSE Servelec, Sheffield, UNITED KINGDOM; and Fluke Networks, Inc., Everett, WA have been added as parties to this venture.

Also, Spyder Controls Corp., Lacombe, Alberta, CANADA; APV Products Unna, Unna, DENMARK; and The Siemon Company, Watertown, CT have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on June 4, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 16, 2008 (73 FR 40882)

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–24801 Filed 10–20–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Regal Cinemas, Incorporated; Response to Public Comments on the Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes the public comments received on the proposed Final Judgment in *United States* v. *Regal Cinemas, Incorporated,* Civil Action No. 1:08–cv–746, and the response to the comments. On April 29, 2008, the United States filed a Complaint alleging that Regal Cinema, Inc.'s acquisition of Consolidated Theatres Holdings, GP violated Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on April 29, 2008, requires the combined company to divest four movie theaters in three North Carolina metropolitan areas. Public comment was invited within the statutory 60-day comment period. Copies of the Complaint, proposed Final Judgment, Competitive Impact Statement, Public Comments, the United States' Response to the Comments, and other papers are currently available for inspection in Suite 1010 of the Antitrust Division, Department of Justice, 450 5th Street, NW., Washington, DC 20530, telephone: (202) 514–2481, on the Department of Justice's Web site (*http://www.usdoj.gov/atr*), and the Office of the Clerk of the United States District Court for the District of the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

[Civil Action No: 1:08–cv–00746]

United States of America, Plaintiff, v. Regal Cinemas, Inc., and Consolidated Theatres Holdings, GP, Defendants; Response of the United States to Public Comments on the Proposed Final Judgment

Judge: Leon, Richard J.

Filed:

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) ("APPA" or "Tunney Act"), the United States hereby responds to two public comments received during the public comment period regarding the proposed Final Judgment in this case. One commenter argues for additional, more intrusive relief than the relief obtained by the United States. The other argues there was no harm from the transaction, and that the United States should not have filed its Complaint nor required any relief whatsoever. After careful consideration of the comments, the United States determined that the Proposed Final Judgment remains in the public interest. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

I. Procedural History

On April 29, 2008, the United States filed the Complaint in this matter alleging that defendant Regal Cinema, Inc.'s ("Regal") acquisition of defendant Consolidated Theatres Holdings, GP ("Consolidated"), if permitted to proceed, would combine the two

leading, and in some cases only, operators of first-run, commercial movie theatres in parts of the metropolitan areas of Charlotte, Raleigh, and Asheville, North Carolina. The Complaint alleged that the likely effect of the acquisition would be to lessen competition substantially for first-run commercial movie exhibition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The United States filed a proposed Final Judgment and a Stipulation signed by the United States and the defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the APPA. Pursuant to those requirements, a Competitive Impact Statement ("CIS") was filed in this court on April 30, 2008; the Proposed Final Judgment and CIS were published in the **Federal Register** on May 15, 2008; and a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, were published for seven days in the *Washington Post* on May 23, 2008 through May 29, 2008. The defendants filed the statements required by 15 U.S.C. 16(g) on May 19, 2008 and June 18, 2008, respectively.

The sixty-day comment period ended on July 28, 2008. Two comments, described below, were received.

II. The United States' Investigation and Proposed Resolution

After Regal and Consolidated announced their plans to merge, the United States Department of Justice (the "Department") conducted an extensive investigation into the competitive effects of the proposed transaction. As part of this investigation, the Department obtained documents and information from the merging parties, and conducted interviews with competitors and other individuals with knowledge of the industry. Among the third parties the Department interviewed during its investigation was one of the commenters, Mr. Bruner, who shared his concerns about the competitive impact of the proposed merger in the Charlotte area.

On the basis of its investigation and prior experience with markets for first-run commercial movie exhibition, the Department concluded that the proposed transaction would lessen competition for the theatrical exhibition of first-run, commercial movies in four North Carolina markets—Southern Charlotte, Northern and Southern Raleigh, and Asheville.[1] As more fully explained in the Complaint and CIS, the proposed transaction likely would lead to higher ticket prices for moviegoers and would reduce the newly merged entity's incentives to maintain, upgrade, and renovate its theatres in the relevant markets, to improve its theatres' amenities and services, and to license the highest revenue movies, thus reducing the quality of the viewing experience in those four areas. As alleged in the Complaint, these outcomes are likely because, in each of the relevant markets, Regal and Consolidated were each other's most important competitor, given the close proximity of their theatres to one another and to moviegoers.

The proposed Final Judgment is designed to preserve competition in the four markets. It requires divestitures as viable ongoing businesses of a total of four theatres in three metropolitan areas: the Crown Point 12 in Southern Charlotte; the Raleigh Grand 16 in Northern Raleigh; the Town Square 10 in Southern Raleigh; and the Hollywood 14 in Asheville. Sale of these theatres will preserve existing competition between the defendants' theatres that are or would have been each other's most significant competitor in the theatrical exhibition of first-run movies in Southern Charlotte, Northern and Southern Raleigh, and Asheville.

III. Standard of Review

Upon the publication of the public comment and this Response, the United States will have fully complied with the Tunney Act and will move the Court for entry of the proposed Final Judgment as being "in the public interest." 15 U.S.C. 16(e), as amended. In making the "public interest" determination, the Court should review the proposed Final Judgment in light of the violations charged in the complaint, *see, e.g., Mass. Sch. of Law at Andover, Inc.* v. *United States,* 118 F.3d 776, 783 (D.C. Cir. 1997) (quoting *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1462 (D.C. Cir. 1995)), and be "deferential to the government's predictions as to the effect of the proposed remedies." *Microsoft,* 56 F.3d at 1461.

The Tunney Act states that the Court shall consider in making its public interest determination:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). *See generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 11 (D.D.C. 2007) (concluding that the 2004 amendments to the Tunney Act "effected minimal changes" to the court's scope of review under Tunney Act, and that review is "sharply proscribed by precedent and the nature of Tunney Act proceedings").[2]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62 (D.C. Cir. 1995). With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (*citing United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. *The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest."* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

[1] The other locations where Consolidated owned a theatre that was acquired by Regal did not present competitive problems. The Complaint contains no allegations regarding these areas and no one has commented on them.

[2] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006).

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted). *Cf.* BNS, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' "). In making its public interest determination, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations because this may only reflect underlying weakness in the government's case or concessions made during negotiation." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant "due respect to the [United States'] prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case").

Court approval of a consent decree requires a standard more flexible and less strict than that appropriate to court adoption of a litigated decree following a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the district court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what the Congress that enacted the Tunney Act in 1974 intended, as Senator Tunney then explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).

IV. Summary of Public Comments and the Response of the United States

During the sixty-day comment period, the United States received two comments: one from Robert B. Bruner, the owner of the Village Theatre in Charlotte, North Carolina, and the other from The Voluntary Trade Council, Inc., a Virginia non-profit corporation. Both comments are attached in the accompanying Appendix. After reviewing both comments, the United States continues to believe that the proposed Final Judgment is in the public interest. The two comments received by the Department are summarized below:

Public Comment From Mr. Bruner[3]

Robert B. Bruner is the owner of the Village Theatre in Charlotte, North Carolina, located approximately three miles west of Regal's Stonecrest 22. The Village Theatre is a five-plex, stadium-seating theatre located on the third floor of a mixed-use shopping center and offers reserved seating, beer and wine, and upscale concessions. The Village Theatre is one of the six theatres the Department alleged to compete in the Southern Charlotte market for first-run motion picture exhibition, and Mr. Bruner's comment is limited to this geographic market.

Mr. Bruner's comment contends that the United States should have sought additional relief in the Southern Charlotte market, and he proposes in particular that appropriate relief would have included freeing the Village Theatre from pre-existing limitations (referred to as "clearances" and discussed below) on the films that distributors were willing to license to that theatre.

Mr. Bruner first argues that divestiture of Regal's Crown Point 12 (as required by the proposed Final Judgment) will not prevent the merger from increasing concentration in the Southern Charlotte market, in part because the market should have been alleged to exclude his Village Theatre and to include an additional theatre operated by Consolidated.[4] He submits that, had the United States alleged the "proper" market, additional relief of the sort he proposes would be required to remedy sufficiently the increase in concentration from the merger.

As explained below, Mr. Bruner's comment should be given no weight in the context of this Tunney Act review of the remedy obtained by the United States. Mr. Bruner acknowledges that the required divestiture of the Crown Point 12 furthers the objective of remedying the harm to competition in Southern Charlotte alleged in the United States' complaint; indeed, Mr. Bruner would retain this component of the United States' remedy. Mr. Bruner does not allege that this remedy was

[3] Mr. Bruner made two written submissions during the comment period. His second comment, which he describes as a Supplement, makes largely the same points as the first comment, but provides additional information arising out of a lawsuit he filed against Consolidated and Regal in North Carolina state court. Mr. Bruner's lawsuit does not allege that Regal's acquisition of Consolidated violates the antitrust laws. Rather, Mr. Bruner's claims are based entirely on the effect of the transaction on his contract with Consolidated pursuant to which that company has managed certain aspects of the Village Theatre's operation. According to Mr. Bruner's complaint, upon acquiring Consolidated, Regal informed Mr. Bruner that it would assign the management contract to another theatre chain, which Mr. Bruner believes violates his agreement.

[4] For the Court's convenience, we have attached as Exhibit A a map showing the locations of theatres in the Southern Charlotte area.

insufficiently related to the allegations in the Complaint, or was unclear, or that enforcement mechanisms are insufficient, or that the relief will harm third parties. *See Microsoft,* 56 F.3d at 1457–58. Mr. Bruner's argument is that the United States should have obtained *additional* relief, but this assertion does not satisfy the standards set forth in cases such as *Bechtel,* 648 F.2d. at 666, *AT&T,* 552 F. Supp. at 151, and *Alcan,* 605 F. Supp. at 622, that the secured remedy is outside "the reaches of the public interest." Moreover, in criticizing the United States' allegations regarding market definition, Mr. Bruner is questioning the validity of the United States' Complaint, an exercise that is beyond the scope of the Tunney Act review. *See SBC Commc'ns,* 489 F. Supp. at 15; *Microsoft,* 56 F.3d at 1459.

When considered in light of the applicable legal standards, the United States' remedy more than satisfies the public interest requirements set forth in the Tunney Act.

A. Divestiture of the Crown Point 12 Adequately Restores Competition Lost as a Result of the Merger

Mr. Bruner asserts that divestiture of the Crown Point 12 is inadequate relief to remedy the merger's concentrating effect. Mr. Bruner claims that divestiture of this theatre does not sufficiently reduce the merger's concentrating effect in Southern Charlotte, and that, even after the divestiture of the Crown Point, the Southern Charlotte market would still be so highly concentrated that additional relief is required. Mr. Bruner also argues that the Crown Point will not be an effective competitor against Regal because it is located on the eastern edge of the Southern Charlotte market, five miles from its nearest competitor, the Arboretum 12, with no other competing theatres to the north, south or east.

Mr. Bruner is correct that divestiture of the Crown Point would not ensure that concentration levels in Southern Charlotte were no higher than their pre-merger level, but that fact does not mean that the relief obtained by the United States is inadequate. The Department determined that the anticompetitive effects of the transaction in Southern Charlotte would flow from the elimination of competition among three theatres that were most vigorously competing against each other pre-merger: Regal's Crown Point, Consolidated's Arboretum 12 (which, as Mr. Bruner correctly points out, is five miles from the Crown Point to the south), and Consolidated's Philips 10 (which is located approximately seven miles from the Crown Point to the west). The divestiture of the Crown Point to an independent viable competitor would restore the competition among those theatres that was lost due to the combination of Regal and Consolidated.

With respect to the sufficiency of the proposed remedy, a district court must accord due respect to the United States's views of the nature of the case, its perception of the market structure, and its predictions as to the effect of proposed remedies. *E.g., SBC Commc'ns,* 489 F. Supp. 2d at 17 (United States is entitled to "deference" as to "predictions about the efficacy of its remedies"). The United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *Id.*

Mr. Bruner places great emphasis on the concentration statistics in making his argument that the relief obtained is inadequate. While a merger's impact on concentration in a market is a useful indicator of the likely potential competitive effects of a merger, it is by no means the end of the analysis. The Department gathered and considered considerable other evidence, much of which is not publicly available, bearing on the likely effects of combining Regal and Consolidated theatres in Southern Charlotte, and the effect of preserving the independence of the Crown Point theatre via an appropriate divestiture. The United States concluded, and subsequently alleged in the Complaint, that the merger would cause harm by eliminating competition for moviegoers between particular Regal and the Consolidated theatres in Southern Charlotte, rather than by considering market-wide concentration levels. The United States explained in its Complaint the competitive dynamics that would be impaired by Regal's acquisition of Consolidated. Specifically, as noted above, the Department found that the principal competitor of both Consolidated theatres in Southern Charlotte—the Arboretum 12 and the Phillips 10—was Regal's Crown Point theatre, and that the Phillips 10 also competed to a lesser degree with Regal's Stonecrest theatre. The United States alleged that, without the merger, if these Regal or Consolidated theatres were to increase ticket prices, and the theatres of the other firm did not follow, the exhibitor that increased price would likely suffer financially as a substantial number of its patrons would patronize the other exhibitor's theatre. *See* Complaint, ¶ 34. That competition would be lost as a result of an unremedied merger, because the newly-combined entity could increase prices at all of its theatres, or be sure that its other theatres would capture sales lost to the theatre that raised prices, thus making profitable price increases that would have been unprofitable pre-merger. *Id.*

The United States also found that, for various reasons, the other theatres in Southern Charlotte would be unable to attract enough moviegoers that were served by the Regal and Consolidated theatres to make a post-merger price increase or reduction in quality unprofitable. For example, as alleged in the Complaint, those other theatres are located further away from those moviegoers, are smaller in size or have fewer screens, or offer a lower quality viewing experience than the Regal and Consolidated theatres. *See Id.* at ¶ 36. The relief obtained by the United States flowed directly from this analysis of the merger's likely effects, and that relief will prevent those effects from being realized. Not only is Regal's Crown Point 12 the principal competitor to Consolidated's two theaters in Southern Charlotte, it is one of the largest theatres in the market, with 12 screens and stadium seating, making it competitive in quality with the other theatres in the area.

B. Criticism of the United States' Allegation of the Proper Geographic Market for First-Run Commercial Movie Exhibition of Southern Charlotte Is Beyond the Scope of Tunney Act Review

Much of Mr. Bruner's comment is devoted to arguments that the allegations in the United States' complaint do not properly define the South Charlotte market. Mr. Bruner claims that the United States incorrectly excluded another Consolidated theatre from the market, and improperly included his Village Theatre in the market. Mr. Bruner asserts that these changes support a conclusion that the merger caused an even greater increase in concentration, and thus provide further support for his position that the relief obtained by the United States was inadequate.

Mr. Bruner's arguments should be rejected. In essence, Mr. Bruner is claiming that the United States should have brought a different case—founded upon different market allegations—than the one alleged in the Complaint. As explained by this Court, however, in a Tunney Act proceeding, the district court should not second-guess the prosecutorial decisions of the Department regarding the nature of the claims brought in the first instance; "[r]ather, the court is to compare the complaint filed by the [United States] with the proposed consent decree and determine whether the [proposed

decree] clearly and effectively addresses the anticompetitive harms initially identified." *United States* v. *Thomson Corp.*, 949 F. Supp. 907, 913 (D.D.C. 1996). Similarly, the Tunney Act review does not provide for an examination of possible competitive harms the United States did not allege. *See, e.g., Microsoft*, 56 F.3d at 1459 (stating that the district judge may not "reach beyond the complaint to evaluate claims that the government did not make")[5]. The reviewing court may look beyond the scope of the complaint only when the complaint has been "drafted so narrowly as to make a mockery of judicial power." *SBC Commmc'ns*, 489 F. Supp.2d at 14. That is not the case here. The United States' decision to allege a harm in a specific market is based on a case-by-case analysis that varies depending on the particular circumstances of each product and geographic market. The Complaint properly alleges the harm the transaction is likely to cause in the relevant product and geographic markets. Because Mr. Bruner is challenging the adequacy of the relief based on *his* definition of the relevant geographic market, rather than the geographic market alleged in the Complaint, his challenge should carry no weight.[6]

C. The Additional Relief Proposed by Mr. Bruner Would Be Inappropriate

Mr. Bruner argues that the United States should obtain additional relief in the form of an order requiring his competitor, Regal, to waive any opportunities it has for "clearances" of first-run movies against the Village Theatre, which Mr. Bruner asserts will enhance the Village Theatre's ability to compete against Regal's Stonecrest theatre post-merger. In the motion picture industry, "clearance" refers to a practice whereby a distributor (*i.e.*, movie studios) may elect to license only certain theatres in a geographical area to exhibit a first-run movie during some period of time. In such a case, the exhibitors that are licensed to show the movie are referred to as having "clearance" against exhibitors that do not have such rights. According to Mr. Bruner, several distributors have opted to license first-run movies only to Regal's Stonecrest Theatre in the portion (or "zone") of the Southern Charlotte market in which the Village Theatre is located, thus granting clearances against that theatre.

Mr. Bruner would have this Court order Regal not to avail itself of the exclusive rights to exhibit a movie at the Stonecrest that a distributor wishes to grant. In Mr. Bruner's view, this outcome would assure his theatre access to every first-run movie he desires and allow his five-plex theatre to compete better with Regal's 22-screen Stonecrest, to the benefit of consumers. Mr. Bruner's proposal is inappropriate for several reasons, and the United States' remedy—divestiture of the Crown Point—is more effective in addressing the merger's harm in Southern Charlotte.

First, it is important to recognize that the practice of distributors granting the Stonecrest clearance against the Village Theatre is not a result of the merger. Whatever effects those practices have on competition in the Southern Charlotte market, they are unrelated to this case and the United States' allegations of harm from the transaction at issue. Thus, factoring Mr. Bruner's concern regarding clearances into the public interest assessment here would inappropriately construct a "hypothetical case and then evaluate the decree against that case," something the Tunney Act does not authorize. *Microsoft*, 56 F.3d at 1459.

Second, Mr. Bruner's relief likely would be unworkable and inappropriately limit the licensing freedom of third parties, since its effectiveness would hinge on movie distributors choosing to license the Village Theater despite Mr. Bruner's assertion that they have not made such choices in the pre-merger world.

Finally, even if Mr. Bruner's requested relief would serve to enhance the Village Theatre's ability to compete in the market post-merger, such relief would inappropriately and unnecessarily involve the Court and the Department in supervising Regal's ongoing marketplace conduct. Mr. Bruner's proposal would limit Regal's ability to compete with the Village Theatre for the exclusive right to show a movie at the Stonecrest or the Arboretum by offering studios a better deal. The Department of Justice's Antitrust Division has previously made clear that it is unlikely to impose restrictions on a merged firm's right to compete as part of a merger remedy. Such restrictions, even as a transitional remedy, are strongly disfavored as they directly limit competition in the short term, and any long-term benefits are inherently speculative. *See* Antitrust Division Policy To Guide To Merger Remedies, dated October 21, 2004 at 19. Structural remedies such as the divestiture the Department has required in this case, are preferred in merger cases because they are relatively clean and certain, and generally avoid government entanglement in the market that conduct remedies require. A carefully crafted divestiture decree is "simple, relatively easy to administer, and sure" to preserve competition. *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 331 (1961). Divestiture of an ongoing business to a new, independent, and economically viable competitor has proved to be the most successful remedy in maintaining competition that would have been lost due to the merger. *See California* v. *American Stores Co.*, 495 U.S. 271, 280–81 (1990) ("[I]n Government actions divestiture is the preferred remedy for an illegal merger or acquisition.").

Public Comment From the Voluntary Trade Council, Inc.

The Voluntary Trade Council ("VTC") describes itself as "a research center dedicated to antitrust and competition regulation * * * working in the tradition of the Austrian School of Economics * * * offer[ing] free-market criticism of the Department of Justice, the Federal Trade Commission and other agencies that intervene to prevent the voluntary exchange of goods, services and ideas." VTC argues that the Department should not have alleged a market for first-run movie distribution, contends that the Department should ignore any increase in price resulting from the transaction so long as consumers were willing to pay higher prices, and opposes any remedies to ameliorate the competitive harm that the United States alleges would otherwise occur as a result of Regal's acquisition of Consolidated. VTC urges the Court to reject the proposed Final

[5] Were a court to reject a proposed decree on the grounds that it failed to address harm not alleged in the complaint, it would offer the United States what the Court of Appeals for the D.C. Circuit referred to as a "difficult, perhaps Hobson's choice," in that the United States would have to either redraft the complaint and pursue a case it believed had no merit, or drop its case and allow conduct it believed to be anticompetitive to go unremedied. *Microsoft*, 56 F.3d at 1456.

[6] In any case, the Department properly excluded the Park Terrace from the relevant geographic market. Past investigations involving competition among movie theatres revealed that moviegoers typically will not travel more than 5 to 10 miles from their homes to see a movie. At approximately 10 miles from Regal's Crown Point, the Park Terrace is at the outer range. In addition, the Park Terrace is not located near a freeway exit, increasing the travel time. The Department's examination of the merging parties' data, as well as interviews with market participants, confirmed that the Park Terrace and the Crown Point draw moviegoers from very different areas.

The Department also properly included Mr. Bruner's Village Theatre in the market. Although that theatre may not show as many first-run movies as other theaters as result of the clearances that Mr. Bruner describes, it nevertheless provides some competition for the same group of moviegoers as the Stonecrest, which is less than three miles away.

Judgment as inconsistent with the public interest.

It appears that VTC is philosophically opposed to the existence of and enforcement of the antitrust laws in any case. *See http://voluntarytrade.org.* All of VTC's arguments in this case are directed toward the United States' decision to file the Complaint alleging a Section 7 violation, and its related decision to require that the Defendants divest certain theatres in order to restore competition and avoid the need to litigate this matter.[7] As such, none of VTC's arguments is directed to any issue relevant under the Tunney Act, *i.e.*, whether, in light of the violations charged in the Complaint, the terms of the proposed Final Judgment are inconsistent with the public interest. *Microsoft*, 56 F.3d at 1462. The Court should accordingly ignore VTC's comment.

V. Conclusion

After careful consideration of the public comments, the United States concludes that the entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint and is therefore in the public interest. Accordingly, after publication in the **Federal Register** pursuant to 15 U.S.C. 16(b) and (d), the United States will move this Court to enter the Final Judgment.

Dated: September 24, 2008.

Respectfully Submitted,

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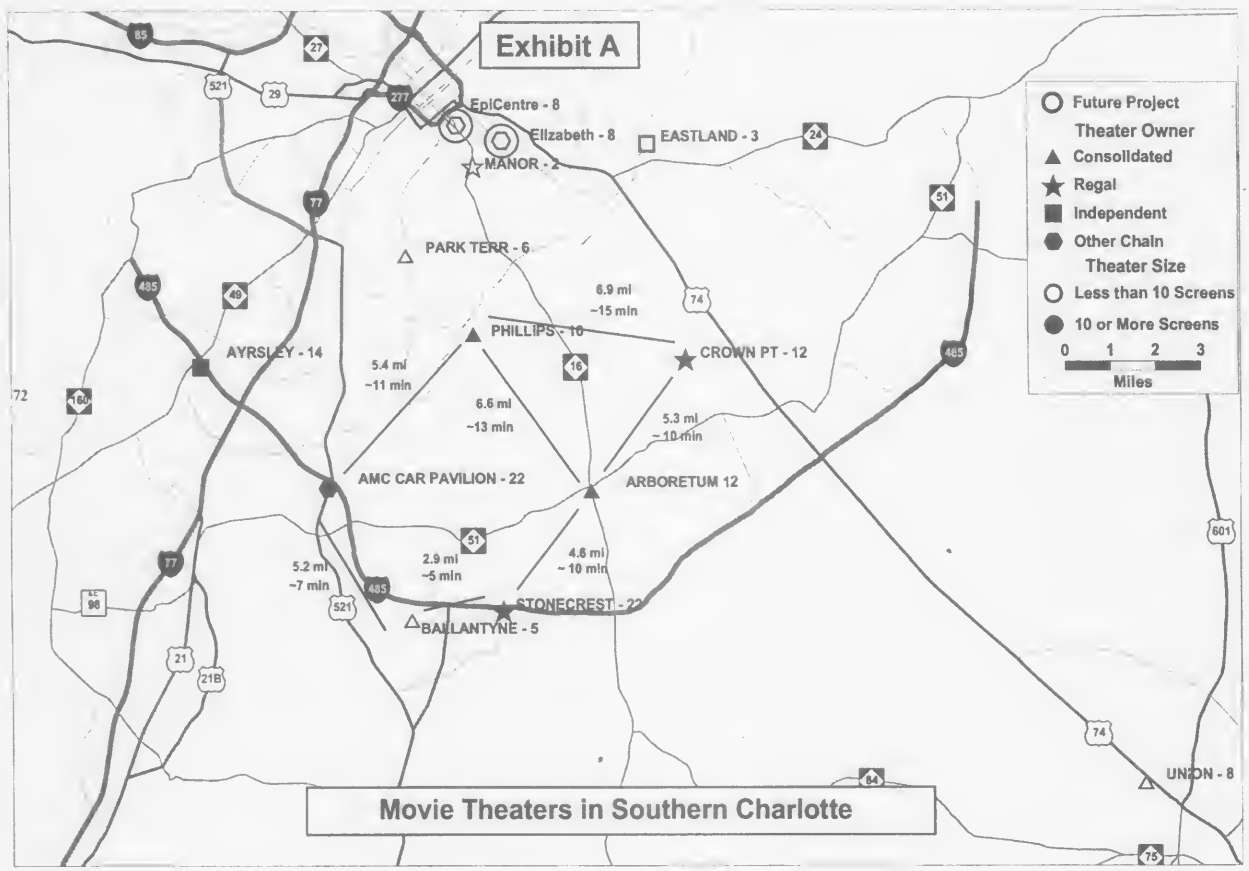

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Appendix

Public Comment from Robert B. Bruner (June 26, 2008) ..... A

Public Comment from Robert B. Bruner (July 22, 2008) ..... B

Public Comment from Voluntary Trade Council, Inc. (July 13, 2008) C

A

June 26, 2008

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This letter is a public comment to the proposed Final Judgment regarding the merger of Regal Cinemas, Inc. ("Regal") and Consolidated Theatres, GP ("Consolidated") (the "Merger"). More specifically it focuses on the competitive effect of the Merger in the

[7] The Department's conclusion that first-run, commercial movie exhibition is a proper relevant market, *see* Complaint at ¶ 17, was based on the application of standard antitrust principles to the visual entertainment options available to consumers in the areas where Regal and Consolidated operate movie theatres, as set forth in the Department's Merger Guidelines. *See* Horizontal Merger Guidelines, 57 Fed. Reg. 41,552, 41,555, § 1.1 (1992). Contrary to VTC's assertion, the mere existence of other forms of visual entertainment would not prevent a monopolist movie exhibitor from profitably raising prices or reducing quality relative to competitive levels.

Southern Charlotte, North Carolina, market area.

As noted below, even after the divesture of the Crown Point 12 the HHI for the Southern Charlotte market will be 5,032 points, nearly three times the 1,800 point threshold for a highly concentrated market set forth in the Merger Guidelines. Further, the Merger will still cause a HHI increase of 1,281 points, more than 25 times the 50 point increase for highly concentrated markets that the guidelines specify potentially raise significant competitive concerns and more than 12 times the 100 point increase threshold that the guidelines specify create a presumption of the creation or enhancement of market power or the facilitation of its exercise. Merger Guidelines Sec. 1.51c.

As discussed in detail below, to obtain an accurate view of the competitive effect of the Merger in the Southern Charlotte market, the inclusion of the Park Terrace Theatre in the market and the exclusion of the Village Theatre in the market is required. With these two adjustments, the Herfindahl Hirschman Index ("HHI") will more accurately reflect the market concentration and the competitive effect of the Merger in Southern Charlotte. As this revised HHI clearly shows the divestiture by Regal of the Crown Point 12 does not eliminate the noncompetitive effects of the Merger in the Southern Charlotte market.

Thus, additional changes to the proposed Final Judgment are necessary to reduce the market concentration of Regal in the Southern Charlotte market area. Because of its location, the entry of the Village Theatre into Southern Charlotte as a true first-run commercial movie theatre will, in reality, most likely be more beneficial to the consumers than the divestiture of Crown Point 12. The elimination or waiver of Regal's Stonecrest's clearance will allow the Village Theatre to enter the first-run commercial movie market in Southern Charlotte which will provide additional consumers a choice of venues [1] for first-run commercial movies in Southern Charlotte and help to deconcentrate the market and offset the anticompetitive effects of the Merger.[2]

The Complaint

On April 29, 2008, the United States of America brought a civil antitrust action to enjoin the proposed Merger of Regal and Consolidated and to obtain equitable relief (the "Compliant"). As stated by the United States in the Complaint, the Merger would substantially lessen competition and tend to create a monopoly in the theatrical exhibition of first-run commercial movies [3] in the Southern Charlotte market area in violation of Section 7 of the Clayton Act. Regal is the largest operator of theatres in the United States. Consolidated is the largest operator of theatres in the Southern Charlotte area.

As stated in Paragraphs 14–17 of the Complaint, tickets at theatres exhibiting first-run commercial movies usually cost significantly more than tickets at sub-run theatres. Art movies are released less widely than first-run commercial movies. The relevant product market within which to access the competitive effects of the Merger is the exhibition of first-run commercial movies.

Paragraph 19 of the Complaint sets forth the theatres in Southern Charlotte that the United States used in its review of the competitive impact in this market area, including its calculation of the HHI. As discussed below, Paragraph 19 of the Complaint wrongly includes the five screen Village Theatre in the relevant market and excludes the six screen Park Terrace.

Paragraph 30 of the Complaint states that the newly merged entity would control four of the six first-run commercial theatres in the Southern Charlotte area, with 56 out of 83 total screens and a 75% share of the 2007 box office receipts. The market concentration as measured by the HHI would increase 2,535 points to 6,050 points; substantially above the merger guidelines.

The Complaint also states that the Merger is likely to lead to higher ticket prices for moviegoers (*see* Paragraph 34 of the Complaint) and that the entry of a first-run commercial movie theatre in the Southern Charlotte area is unlikely (*see* Paragraph 37 of the Complaint).

The Complaint states that the likely effect of the Merger would be to lessen competition substantially for first-run commercial motion picture exhibition in violation of Section 7 of the Clayton Act, 15 U.S.C. Section 18.

The Proposed Final Judgment

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment stating that it will eliminate the anticompetitive effects of the Merger. In the Southern Charlotte market area, under the proposed Final Judgment, Regal is required to divest its ownership of the Crown Point 12 theatre.

In the Southern Charlotte market the exhibitors of film product are highly concentrated and the HHI for that area greatly exceeds the merger guidelines. Even after the divestiture of assets proposed by the United States the HHI in the Southern Charlotte market will increase by almost 130% from the pre-merger HHI.

Comment—The Final Judgment Does Not Adequately Reduce or Eliminate the Anticompetitive Effects of the Merger in Southern Charlotte

United States has found that the Merger would substantially lessen competition in the Southern Charlotte market and is in violation of Chapter 7 of the Clayton Act. *See* Exhibit 1.[4] The post-Merger HHI shows an excessive concentration of the market in Southern Charlotte as a result of the Merger. After divesture by Regal of the Regal Crown Point 12 Theatre the post-Merger HHI would still be an extremely high 5,032 points, reflecting an excessive concentration of the market after the Merger. *See* Exhibit 2.

In Paragraph 34 of its Complaint, the United States asserts that the Merger will enable price increases by the merged firm to be profitable because of the lack of remaining competition in the market Paragraph 37 of the Complaint notes the unlikelihood of new entry in Southern Charlotte to reduce the market power of the merged firm. However, the United States' Competitive Impact Statement, which orders the divestiture of the Crown Point 12, provides no analysis or data as to how that action will reduce or eliminate the substantial market concentration and anticompetitive effects of the Merger in Southern Charlotte. It provides only a conclusionary statement that the divestiture will "preserve existing competition between the defendant's theatres that are or would have been each others' most significant competitor. * * *" This statement is in error with respect to the Southern Charlotte market because the Crown Point 12 is on the periphery of the market on the far eastern edge of the Southern Charlotte market area, approximately five miles from its nearest competitor, the Arboretum 12 located to the west of the Crown Point 12. There are no competing theatres to the north, south or east.

Thus, the divestiture of the Crown Point 12 will have no real effect on competition in the Southern Charlotte market. The merged firm, Regal, will still have the power to raise prices and the likelihood of new entry will remain unlikely. The HHI of over 4,577, still an increase of, at a minimum, 1,000 to a maximum (see below) of over 3,000 points is still overwhelmingly establishes a Section 7 violation, particularly with entry barriers admittedly very high.

Comment—Competitive Effects in the Southern Charlotte Market

The review by the United States of the competitive effects of the Merger in the Southern Charlotte market is incomplete and inaccurate. The determination of which theatres show first-run commercial movies is important in assessing the competitive impact on the Southern Charlotte market. All facts and circumstances must be evaluated to determine the relevant market as a precondition to finding a violation of Chapter 7 of the Clayton Act. In determining whether a particular theatre (which may not clearly be a "first-run commercial theatre") shall be considered a "first-run commercial theatre", the public interest compels inclusion of theatres which are truly first-run competitors and the exclusion of theatres which are not.

[1] The five screen Village Theatre is Charlotte's only luxury theatre while Regal's Stonecrest is a 22 screen multiplex.

[2] Since these calculations were based upon the 2007 box office revenues and since the box office revenues for the Village Theatre should increase after the clearance is eliminated, the market share for the Village Theatre should increase and the competitive effect of the merger in the Southern Charlotte market will be reduced even further than that shown on Exhibit 5.

[3] The Complaint did not define the term first-run commercial movies. Generally, as stated in the Complaint, art movies are released less widely than commercial first-run movies. For purposes of this Comment Letter, the term first-run, commercial movies will include those movies with an initial release of more than 1,500 prints. This is the lower end of a release of what is typically a first-run commercial movie.

[4] The United States did not publish the details of their calculation of the HHI. Therefore, the numbers shown in this Public Comment Letter will not exactly match those of the United States; but there are no significant variations.

Consolidated's Park Terrace Should be Included in the Relevant Market. The United States wrongly excludes the Park Terrace Theatre from the Southern Charlotte market. The Park Terrace Theatre, acquired by Regal in the Merger, primarily shows first-run commercial movies. The Park Terrace Theatre is located in the Southern Charlotte market near the Phillips Place Theatre. It has stadium seating and its ticket prices are the same as at other first-run commercial theatres in the Southern Charlotte market area. Prior to the Merger both the Park Terrace Theatre and the Phillips Place theatre were owned by Consolidated. Because the Park Terrace 6 is in the same film zone as Phillips Place 10 (also a part of the Merger) and, more importantly, because the Phillips Place Theatre has only 10 screens, the Park Terrace 6 and the Phillips Place 10 share films.[5]

Most films start their run at Phillips Place and conclude the required run (usually four to five weeks) at Park Terrace. *See* Paragraph 12 of the Complaint. This relationship is critical. Since Phillips Place has only 10 screens sharing films with Park Terrace allows Phillips Place to exhibit more first-run commercial movies than it otherwise could show. This arrangement allows the film distributors to license more first-run commercial movies to Phillips Place/Park Terrace. Without the ability to "move over" films from Phillips Place to Park Terrace a substantial portion of the Southern Charlotte market would be deprived of many of the best first-run commercial movies. The first-run movies at the Park Terrace Theatre that are "moved over" from Phillips Place are still being shown on their first run at other first-run commercial theatres in Southern Charlotte.[6] Thus, Phillips Place 10 and Park Terrace 6 should be treated, for purposes of determining the competitive effect of the Merger in the Southern Charlotte market, as the Phillips Place/Park Terrace 16. Since the Park Terrace is a theatre that is being acquired by Regal in the Merger, its inclusion in the relevant market will result in a more accurate picture of the competitive effect of the Merger in the Southern Charlotte market.

Village Theatre Should be Excluded from the Relevant Market. The United States wrongly includes the Village Theatre from the Southern Charlotte market.

Background. The independently owned Village Theatre is a two year old five-plex stadium theatre with state of the art projectors and sound systems. The Village Theatre is the only luxury theatre in Southern Charlotte (and probably the entire Carolinas). It offers an array of amenities for the moviegoers, including valet parking, gourmet desserts, wine and beer, and luxury reserved seating. The Village Theatre has been voted the Critics' Choice award as the best theatre in Charlotte. It is a showcase venue and had hosted numerous world premieres of non-commercial movies. Numerous restaurants are in the theatre building and fronting plaza, all with the option of outdoor seating. The Village Theatre is the centerpiece of a $75mm mixed-use shopping center.

Regal's Stonecrest Theatre is in a competitive film zone[7] with the Arboretum Theatre[8] and the Village Theatre. The distance from Regal's Stonecrest to Arboretum is less than three miles (as the crow flies) and from Regal's Stonecrest to the Village Theatre is approximately 2.6 miles (as the crow flies).[9] The Arboretum was in operation before Regal's Stonecrest was built. Upon Regal's Stonecrest's opening, there was an agreement between Regal's Stonecrest and the Arboretum that there would be no clearance given to either theatre in that film zone and that each theatre would show the same movies on a "day-and-date" basis.[10] Even though the Village Theatre has only five screens compared to the 22 screens at Regal's Stonecrest, since the Village Theatre opened in March 2006 (much after the opening of Regal's Stonecrest), Regal's Stonecrest has invoked clearance against the Village Theatre on every first-run commercial movie shown at Regal's Stonecrest while continuing to not invoke clearance against the bigger competitor—the 12 screen Arboretum Theatre.

The Village Theatre is the most centrally located of all the first-run commercial movie theatres in the Southern Charlotte area. It has the ability to become an attractive option for customers desiring to see first-run commercial movies in this market.

Exclude the Village Theatre. Village Theatre has desired to exhibit first-run commercial movies since it opened but because it is in a competitive or split zone with Regal's Stonecrest and there has been no allocation of product between the Village Theatre and Regal's Stonecrest, Regal's Stonecrest has invoked the benefits of clearance to prevent the Village Theatre from showing virtually all first-run commercial movies.

Thus, Regal's Stonecrest's use of clearance has effectively kept the Village Theatre from being a first-run commercial movie theatre. Since June 1, 2006 the Village Theatre has shown only three first-run commercial movies while Regal's Stonecrest has shown over 300 first-run commercial movies. For example, for the summer of 2008 the Village Theatre has not been able to obtain *Indiana Jones, Get Smart, The Hulk, Ironman, Sex and the City, Hancock* or any other first-run commercial movie. Therefore, for purposes of determining the competitive effect of the proposed Merger, Village Theatre cannot be considered as a first-run commercial movie theatre and it should not be included in the relevant market or the calculation of the HHI. As discussed below, the Village Theatre should only be included in the calculation of HHI if the clearance of Regal's Stonecrest is eliminated so that the Village Theatre can show first-run commercial movies on a "day and date" basis with the Regal's Stonecrest Theatre.

Impact on Market Concentration in the Southern Charlotte Market Area. Based on the facts above, the Park Terrace Theatre should have been included in the review of the competitive impact on market concentration in the Southern Charlotte market area and the Village Theatre should have been excluded. Exhibits 3 and 4 set forth the revised figures for the competitive effect of the Merger with the inclusion of the Park Terrace Theatre and the exclusion of the Village Theatre. Exhibits 3 and 4 show a major increase in the market concentration from that set forth in Paragraph 30 of the Complaint. The benchmark for determining the competitive effects of the Merger on the Southern Charlotte market is the HHI before the Merger. After giving effect to these changes (before the divestiture of Crown Point 12), after the Merger, Regal would control five of the six first-run, commercial theatres in the Southern Charlotte market area (instead of four of six as shown in the Complaint), with 62 out of 84 total screens (instead of 56 of 83 as shown in the Complaint), and a 78% share of the 2007 box office receipts (instead of 75% as shown in the Complaint). The market concentration as measured by the HHI would increase 2,867 points to 6,618 points as compared to the increase of 2,535 points to 6,050 points as set forth in Paragraph 30 of the Complaint, a substantial additional increase in the Regal's actual post-Merger market concentration.

Exhibit 6 is a summary of the Competitive Effects of the Merger on the Southern Charlotte market. As discussed above, Paragraph 30 of the Complaint erroneously included the Village Theatre and excluded the Park Terrace Theatre. Exhibits 3 and 4 accurately reflect the competitive effects before the Merger, after the Merger and after the divestiture of Crown Point 12 by including the Park Terrace Theatre and excluding the Village Theatre.

Comment—New Entry Into the Southern Charlotte Market

The entry of an additional first-run commercial movie theatre in the Southern Charlotte market is beneficial from a competitive effects point of view because the new entry will obtain a share of the market, thereby reducing Regal's market concentration. More importantly it will give moviegoers in Southern Charlotte another

[5] Although Phillips Place has only 10 screens, from June 1, 2006 to present it has showed 235 first-run commercial movies. This is compared to the 325 first-run commercial movies shown on the 22 screens at the Regal's Stonecrest, its nearest competition. If Phillips Place and Park Terrace were not sharing movies then, because of required commitments to the film distributors to show a film for a certain length of time (typically four to five weeks), Phillips Place would have been able to show less than 150 films over this time period.

[6] For example, on June 26, 2008 all six movies exhibited at Park Terrace were also on their first-run at the AMC Carolina Pavilion, four of the six were on their first-run at Regal's Stonecrest.

[7] The industry standard for a film zone is a five mile radius around the theatre in question. The only exceptions to the five mile standard are urban areas that are densely populated like New York City.

[8] Prior to the Merger, the Arboretum Theatre was a Consolidated theatre; Regal acquired ownership of the Arboretum Theatre as part of the Merger.

[9] Competitive zones are calculated upon mileage "as the crow flies" and not based upon road driving distance between the two theatres because the purpose of a competitive zone is to effect upon the moviegoers within that area.

[10] The term "day and date" refers to the right of two or more theatres located within the same film zone to exhibit the same movie at the same time. In that case there can be no clearance.

real choice of venues [11] for viewing first-run commercial movies in a market in which, as the United States states in Paragraph 37 of its Complaint, the entry of an additional first-run commercial movie theatre in Southern Charlotte is very unlikely.

However, there is an opportunity to have a new entry exhibiting first-run commercial movies in the Southern Charlotte market. With the elimination of clearance between Regal's Stonecrest and the Village Theatre,[12] the Village Theatre would enter the Southern Charlotte market as an additional first-run commercial movie theatre. The entry of the Village Theatre as an additional first-run commercial movie theatre in the Southern Charlotte market benefits competition because the Village Theatre will obtain a share of the market and thereby reduce Regal's market concentration. The impact of this action on the market is shown on Exhibit 5. It will benefit consumers by giving them an additional choice of venues for first-run commercial movies in a heavily concentrated market. Eliminating clearance is a more effective way to increase competition and give moviegoers a choice of venues than divesting the Crown Point 12.

Comment—Conclusion

The Competitive Impact Statement filed by the United States in *United States* v. *Regal Cinemas, Inc. and Consolidated Theatres Holdings, GP* is in error with respect to the Southern Charlotte first-run commercial movie market. It wrongly asserts that the divestiture of the Regal Crown Point 12 will preserve existing competition between the merging entities and eliminate the anticompetitive effects of the Merger. In point of fact, the divestiture will have little effect on the extremely concentrated market because of the location of the Crown Point 12 on the periphery of the market. Further, the divestiture will not begin to overcome the presumption contained in the Merger Guidelines which follows from the very substantial increase in the HHI in a highly concentrated market like Southern Charlotte.

The Competitive Impact Statement also wrongly excludes the six screen Park Terrace Theatre and includes the five screen Village Theatre in the Southern Charlotte market, rendering the market definition inaccurate and less concentrated than actually is the case. The post-Merger HHI is actually about 6,618 points if the market is correctly defined and remains at an alarming 5,032 points even after the divesture of the Crown Point 12.

Although the United States asserts that new entry for a first-run commercial movie theatre is unlikely there is one potential new entrant, the independently owned five screen Village Theatre, waiting in the wings in a prime location in the Southern Charlotte market. As shown on Exhibit 5, this new entry will have a positive effect on the post-Merger market concentration of Regal.

The United States should therefore act to assure a more competitive market and provide additional consumer choice by enabling the Village Theatre to become a viable first-run commercial movie venue in Southern Charlotte. To do so, clearance for first-run commercial movies that Regal's 22 screen Stonecrest exercises against the Village Theatre in Regal's Stonecrest's film zone must be eliminated. The elimination or waiver of Regal's Stonecrest's clearance will permit the Village Theatre to enter the first-run commercial movie market in Southern Charlotte, will provide additional consumer choice of venues [13] for first-run commercial movies in Southern Charlotte, will eliminate Regal's unreasonable restraint of trade, and will help to deconcentrate the market and offset the anticompetitive effects of the Merger.[14]

The Final Judgment should therefore be amended to enhance consumer choice and allow entry of the Village Theatre into the Southern Charlotte first-run commercial movie market by eliminating the exercise of clearance by Regal's Stonecrest Theatre.

Sincerely submitted,

Robert B. Bruner,
14825 John J. Delaney Dr.,
Suite 240,
Charlotte, North Carolina 28277,
704/369–5001.

Appendix A—Clearance as It Relates to the Village Theatre

Clearance in General. "Clearance" refers to an agreement between a theatre and a film distributor that a particular film will not be played simultaneously for a particular period of time at two different theatres located the same film zone. *See United States* v. *Paramount Pictures*, 334 U.S. 131, 145 (1948). Clearance agreements are allowed in the film exhibition industry for the legitimate business purpose of ensuring that a particular theatre's income from a film will not be greatly diminished because the film is also being shown at a nearby competing theatre. *See id.* If clearances are reasonable, they are considered allowable restraints of trade. *See id.* at 146. Clearances between theatres not in substantial competition are per se unreasonable. *See id.* at 145–46.

Thus, clearance is a reasonable restraint of trade only when each of the following factors are met: (1) The clearance is used for the legitimate business purpose of ensuring the exhibitor that its income from a film will not be greatly diminished because the film is also being shown at a nearby competing theatre, and (2) the theatres which are subjected to clearance are in substantial competition. As discussed below, the clearance between Regal's Stonecrest and the Village Theatre does not satisfy either condition.

Regal's Stonecrest and the Village Theater are not in Substantial Competition. As stated above, there should be no clearance between theatres not in substantial competition.[15] *United States* v. *Paramount*, 334 U.S. 131 at 145–46.

The Village Theatre cannot be considered a first-run commercial movie theatre, since it has shown only three first-run commercial movies since June 1, 2006 as compared to Regal's Stonecrest's showing of 300-plus first-run commercial movies in the same period. Thus, Regal's Stonecrest and the Village Theatre are not in substantial competition, and the use of clearance by Regal's Stonecrest against the Village Theatre is an unreasonable restraint of trade and should be prohibited.

Regal's Stonecrest's invocation of clearance against the Village Theatre is not for a proper business purpose. As stated above, even if Regal's Stonecrest and the Village Theatre were determined to be in substantial competition, clearance can be reasonable only if it is necessary to ensure the exhibitor's expected income will not be greatly diminished because the film is also being shown simultaneously or soon thereafter at a nearby competing theatre. *See United States* v. *Paramount Pictures*, 334 U.S. 131 at 145. Regal's Stonecrest's invocation of clearance against the Village Theatre is unjustified. *See Theee Movies of Tarzana* v. *Pacific Theatres Inc.*, 828 12d 1395, 1399 (9th Cir. 1987).

First, the Village Theatre has only five screens while Regal's Stonecrest has 22 screens. Having only five screens will reduce the number of first-run commercial movies that the Village Theatre will be able to exhibit at any one time. With 22 screens, Regal's Stonecrest has the ability to exhibit practically every first-run commercial movie that is available. This summer Regal's Stonecrest has shown some of the blockbuster movies (which are the most popular and thus the most profitable) on up to six screens. Obviously, with only five screens the Village Theatre cannot show a movie on six screens. Given the requirements of the film distributors that films show for a four to five week run, the Village Theatre does not have the capacity to greatly diminish the expected income at Regal's Stonecrest. *See* Paragraph 12 of the Complaint.

Second, Regal's Stonecrest's voluntary waiver of clearance against the Arboretum, a theatre with over twice the number of screens as the Village Theatre, demonstrates that Regal's Stonecrest does not need clearance in its film zone to ensure that it's expected income will not be greatly diminished. *See Id.*

Third, Regal's Stonecrest's use of clearance discriminatorily against the Village Theatre while waiving it as to the Arboretum thus

[11] The five screen Village Theatre is Charlotte's only luxury theatre while Regal's Stonecrest is a 22 screen multiplex.

[12] See Appendix A for a discussion of clearance as it relates to the Village Theatre.

[13] The five screen Village Theatre is Charlotte's only luxury theatre while Regal's Stonecrest is a 22 screen multiplex.

[14] Since these calculations were based upon the 2007 box office revenues and since the box office revenues for the Village Theatre should increase after the clearance is eliminated, the market share for the Village Theatre should increase and the competitive effect of the merger in the Southern Charlotte market will be reduced even further than that shown on Exhibit 5.

[15] The use of clearance presumes that there is an allocation of first-run commercial movies between all of the theatres within the same film zone. Clearly, if one theatre is able to obtain the entire film product, there is no need for that theatre to have clearance to protect against another theatre's showing of the film simultaneously in the same zone. As amply demonstrated above, in the instant case, the Village Theatre has no allocation of product, and Regal's Stonecrest has no need for clearance against the Village Theatre.

operates to deprive movie consumers of choice, injures the Village Theatre and unreasonably restricts competition between the theatres in the zone. *Id.; U.S.* v. *Paramount Pictures,* 66 F. Supp. 323, 346 (S.D.N.Y. 1946), opinion issued, 70 F. Supp. 53 (S.D.N.Y. 1946) and judgment aff'd in part, rev'd in part on other grounds, 334 U.S. 131, 68 S. Ct. 915, 92 L. Ed. 1260 (1948). Therefore, the use of clearance by Regal's Stonecrest against the Village Theatre is an unreasonable restraint of trade and should be prohibited.

The Clearance between Regal's Stonecrest and the Village Theatre is an Unreasonable Restraint of Trade. The clearance between Regal's Stonecrest and the Village Theatre cannot be justified on the grounds that the theatres are in substantial competition and that clearance is being used to assure Regal's Stonecrest that a distributor will not license a competitor to show a movie at the same time or so soon thereafter that the Regal's Stonecrest's expected income will be greatly diminished. *See Theee Movies of Tarzana,* 828 F.2d 1395 at 1399.

Regal's Stonecrest and the Village Theatre are not in substantial competition because the Village Theatre cannot be considered a first-run commercial move theatre. Moreover, clearance is not necessary to ensure Regal's Stonecrest's expected income will not be greatly diminished. *See Id.* This is obviously true because the Village Theatre has only five screens compared to the 22 at Regal's Stonecrest. Also, Regal's Stonecrest has voluntarily waived clearance against another theatre, the Arboretum Theatre, in the same film zone with which it is substantially competitive, and the invocation of clearance against the Village Theatre operates primarily to injure the Village Theatre and overly restrict competition between theatres in the zone.[16] *Id.* The clearance is, therefore, an unreasonable restraint of trade. *See United States* v. *Paramount,* 334 U.S. 131 at 145–46; see *Theee Movies of Tarzana,* 828 F.2d 1395 at 1399.

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Exhibit 1
HHI Calculations
Southern Charlotte Market

Per DOJ Calculations - After the Merger; Before the sale of Crown Point 12

Theatre		# screens	2007 box office revenues	Market Share	HHI Before the Merger	HHI Afer the Merger
Regal						
Stonecrest		22	$6,446,957	37.23%		
Crown Point		12	$1,973,133	11.39%		
	Total	34	$8,420,090	48.62%	2364	
Consolidated						
Phillips Place		10	$2,751,090	15.89%		
Arboretum		12	$1,724,889	9.96%		
	Total	22	$4,475,979	25.85%	668	
Regal & Consolidated Total		56	$12,896,069	74.47%		5546
Other						
AMC South Blvd		22	$3,668,978	21.19%	449	449
Village		5	$751,695	4.34%	19	19
	Total	27	$4,420,673	25.53%		
Grand Total		83	$17,316,742	100.00%	3500	6014

[16] Even if Regal's Stonecrest and the Village Theatre were in substantial competition and Regal's Stonecrest had demonstrated a need to protect against diminution of its income, as opposed to demonstrating the opposite by waiving clearance against the Arboretum, the clearance Regal's Stonecrest is invoking against the Village Theatre is unduly extended as to duration. *See United States* v. *Paramount,* 334 U.S. 131 at 145–46. The common duration of dearance is generally fourteen days. See, e.g., *Westway Theatre* v. *Twentieth Century-Fox Film Corporation,* 30 F.Supp. 830, 836 D.C. MD. 1940. (fourteen-day period for clearance was not uncommon in duration and did not, under the particular facts of the case, constitute an unreasonable restraint of trade).

Exhibit 2
HHI Calculations
Southern Charlotte Market

Per DOJ Calculations - After the Merger; After the sale of Crown Point 12

Theatre	# screens	2007 box office revenues	Market Share	HHI After the Sale of Crown Point 12
Regal/Consolidated				
Stonecrest	22	$6,446,957	37.23%	
Phillips Place	10	$2,751,090	15.89%	
Arboretum	12	$1,724,889	9.96%	
Total	**44**	**$10,922,936**	**63.08%**	**3979**
Other				
AMC South Blvd	22	$3,668,978	21.19%	449
Village	5	$751,695	4.34%	19
Crown Point	12	$1,973,133	11.39%	130
Total	**39**	**$6,393,806**	**36.92%**	
Grand Total	**83**	**$17,316,742**	**100.00%**	**4577**

Exhibit 3
HHI Calculations
Southern Charlotte Market

Include Park Terrrace 6; Exclude Village 5 - After the Merger; Before the Sale of Crown Point 12

Theatre	# screens	2007 box office revenues	Market Share	HHI Before the Merger	HHI Afer the Merger
Regal					
Stonecrest	22	$6,446,957	37.88%		
Crown Point	12	$1,973,133	11.59%		
Total	**34**	**$8,420,090**	**49.47%**	**2447**	
Consolidated					
Phillips Place	10	$2,751,090	16.17%		
Arboretum	12	$1,724,889	10.14%		
Park Terrace	6	$452,652	2.66%		
Total	**62**	**$4,928,631**	**28.97%**	**839**	
Regal & Consolidated Total		**$13,348,721**	**78.44%**		**6153**
Other					
AMC South Blvd	22	$3,668,978	21.56%	465	465
Grand Total	**84**	**$17,017,699**	**100.00%**	**3751**	**6618**

Exhibit 4

HHI Calculations

Southern Charlotte Market

Include Park Terrrace 6; Exclude Village 5 - After the Merger; After the Sale of Crown Point 12

Theatre	# screens	2007 box office revenues	Market Share	HHI After the Sale of Crown Point 12
Regal/Consolidated				
Stonecrest	22	$6,446,957	37.88%	
Phillips Place	10	$2,751,090	16.17%	
Arboretum	12	$1,724,889	10.14%	
Park Terrace	6	$452,652	2.66%	
Regal & Consolidated Total	**50**	**$11,375,588**	**66.85%**	**4433**
Other				
AMC South Blvd	22	$3,668,978	21.56%	465
Crown Point	12	$1,973,133	11.59%	134
Grand Total	**84**	**$17,017,699**	**100.00%**	**5032**

Exhibit 5

HHI Calculations

Southern Charlotte Market

Include Park Terrrace 6; Include Village 5 - After the Merger; After the Sale of Crown Point 12

Theatre	# screens	2007 box office revenues	Market Share	HHI After the Sale of Crown Point 12
Regal/Consolidated				
Stonecrest	22	$6,446,957	36.28%	
Phillips Place	10	$2,751,090	15.48%	
Arboretum	12	$1,724,889	9.71%	
Park Terrace	6	$452,652	2.55%	
Regal & Consolidated Total	**50**	**$11,375,588**	**64.02%**	**4099**
Other				
AMC South Blvd	22	$3,668,978	20.65%	426
Crown Point	12	$1,973,133	11.10%	123
Village	5	$751,695	4.23%	18
Grand Total	**89**	**$17,769,394**	**100.00%**	**4666**

Exhibit 6

Summary of Competitive Effects of the Merger
Southern Charlotte Market

	Post-Merger					
	Theatres	Screens	Share of 2007 Box Office Revenues	HHI Before the Merger	HHI After the Merger	Increase in HHI
Paragraph 30 of the Complaint						
As set forth in the Complaint (1)	4 of 6 (67%)	56 of 83 (67%)	75%	3,523	6,058	2,535
After the divestiture of Crown Point 12 (2)	3 of 6 (50%)	44 of 83 (53%)	63%		4,577	1,054
Include Park Terrace 6; Exclude Village Theatre						
Before divestiture of Crown Point 12 (3)	5 of 6 (83%)	62 of 84 (74%)	78%	3,751	6,618	2,867
After the divestiture of Crown Point 12 (4)	4 of 6 (67%)	50 of 84 (59%)	67%		5,032	1,281
Include Park Terrace 6; Include Village Theatre						
After the divestiture of Crown Point 12 (5)	4 of 7 (57%)	50 of 89 (56%)	64%		4,666	915

(1) See Exhibit 1
(2) See Exhibit 2
(3) See Exhibit 3
(4) See Exhibit 4
(5) See Exhibit 5

Antitrust Division/Litigation III,
450 5th Street, NW., Suite 4000,
Washington, DC 20530.

This letter is Supplement #1 to my letter dated June 26, 2008 (the "Comment Letter") commenting on the proposed Final Judgment regarding the merger of Regal Cinemas, Inc. ("Regal") and Consolidated Theatres, GP ("Consolidated") (the "Merger"). The Comment Letter and this Supplement #1 focus on the competitive effect of the Merger in the Southern Charlotte, North Carolina, market area. For purposes of this Supplement #1 all terms used herein shall have the same meanings as used in the Comment Letter.

On July 9, 2008, in the case styled as *Village Theatre, LLC,* v. *Consolidated Theatres Management, LLC, et al.,* Civil Action No. 008–CVS–11031, currently pending in the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina, Regal filed a Motion to Dismiss, Answer and Counterclaims, in which they declared as follows:

"The [Village] Theatre has been operated as an independent art film theatre since its March 2006 opening date."

Therefore, Regal admits that the Village Theatre, as it operates today, should not be treated as a "first-run commercial movie theatre" in the Southern Charlotte market.

This allegation is in direct conflict with the Department of Justice's proposed Final Judgment, which is predicated in part upon the fact that the Village Theatre was a "first-run commercial movie theatre". Since this is not the case then the relevant market is incorrectly defined in the proposed Final Judgment.

From an anti-trust point of view, the Merger remains highly suspect. The Merger was determined by the United States to be illegal and in violation of Section 7 of the Clayton Act. As stated in the Comment Letter and as shown in the Exhibits to the Comment Letter, the exclusion of the Village Theatre as a first-run commercial movie theatre further increases the market concentration of Regal's Stonecrest Theatre in the Southern Charlotte market. Without the inclusion of the Village Theatre as a "first-run commercial movie theatre", the post-Merger market concentration of Regal in the Southern Charlotte area (even after the sale of the Crown Point 12 Theatre and irrespective of the treatment of the Park Terrace Theatre) will be excessively high. The United States should impose requirements on Regal necessary to reduce its market concentration in the Southern Charlotte market to as close to the pre-Merger level as is possible.

The most obvious, and simplest, pro-competitive, pro-consumer solution is to require Regal's Stonecrest Theatre to waive clearance against the Village Theatre. This is obvious and simple because Regal's Stonecrest Theatre has for years voluntarily waived clearance with respect to the Arboretum Theatre which is also in the Regal's Stonecrest Theatre film zone. Regal's Stonecrest Theatre's voluntary waiver of clearance against the Arboretum Theatre demonstrates that Regal's Stonecrest Theatre does not need clearance in this film zone. Since Regal's Stonecrest Theatre has already waived clearance against the 12-screen Arboretum Theatre it is not too burdensome to require the waiver of clearance in the same film zone against the much smaller five-screen Village Theatre. This small action will greatly increase consumer choice and increase competition.

Clearance must be removed so that the Village Theatre can be considered a "first-run commercial movie theatre" and, thus, reduce Regal's market concentration in the Southern Charlotte area. Requiring Regal to waive clearance with the five screen Village Theatre simply authenticates the proposed Final Judgment, greatly enhances consumer choice, and is necessary given the excessively high post-Merger market concentration of Regal.

Sincerely submitted,

Robert B. Bruner,

14825 John J. Delaney Dr., Suite 240–17, Charlotte, North Carolina 28277, 704–369–5001.

C

United States District Court for the District of Columbia

Case 1:08–cv–00746

United States of America, Plaintiff, v. *Regal Cinemas, Inc., and Consolidated Theatres Holdings, GP, Defendants;* Public Comments of the Voluntary Trade Council, Inc.

Before: Judge Richard J. Leon

Filed: July 13, 2008.

The Voluntary Trade Council, Inc., a Virginia non-profit corporation, respectfully files the following public comments regarding the Proposed Final Judgment in the above-captioned case.

Introduction and Interest of Commenter

On April 29, 2008, the Antitrust Division of the United States Department of Justice (the Division) filed with the Court a Complaint against Regal Cinemas, Inc. (Regal) and Consolidated Theatres Holdings, GP (Consolidated), alleging Regal's contract to purchase Consolidated was illegal under 15 U.S.C. 18, commonly known as the Clayton Act.

Regal and Consolidated did not contest the Division's Complaint, and they acceded to the Division's demand to sell certain assets in order to allow their merger to proceed. Accordingly, on May 15, 2008, the Division published a notice in the **Federal Register** containing a proposed Final Judgment and supporting documents. Under 15 U.S.C. 16, the proposed Final Judgment is subject to a 60-day public comment period, and the Court is required to review any comments received, along with the Division's response, before deciding whether entry of the Proposed Final Judgment is in the "public interest."

The Voluntary Trade Council, Inc.[1] (VTC), is a research center dedicated to antitrust and competition regulation. Working in the tradition of the Austrian School of economics, VTC offers free-market criticism of the Department of Justice, the Federal Trade Commission and other agencies that intervene to prevent the voluntary exchange of goods, services and ideas. In the past six years, VTC has filed public comments in dozens of DOJ antitrust cases, providing independent economic and legal analysis.[2]

Summary

The Division claims it was necessary to intervene in Regal's acquisition of Consolidated in order to preserve competition in the market for the "theatrical distribution of feature length motion picture films" in the Charlotte, Raleigh and Asheville areas of North Carolina. The Division alleges a voluntary combination of Regal and Consolidated's movie theaters in these markets would "eliminate competition" and likely lead to higher ticket prices and "reduced incentives to maintain, upgrade, and renovate their theaters." To remedy these *hypothetical* harms, the proposed Final Judgment requires Regal and Consolidated to sell four movie theaters located in the three areas to a buyer approved by the Division.

The Division's claims of consumer harm are not supported by the facts or economic principles. The Complaint presents a false and misleading analysis of the marketplace and relies heavily on an irrelevant mathematical formula to justify the violation of Regal and Consolidated's property rights. The "public interest" in this case is best served by rejecting the Division's meritless intervention. The Court should not enter the Proposed Final Judgment.

Argument

"Movies are a unique form of entertainment," according to the Division's complaint.[3] Beyond this unremarkable insight, the Division's attempt to define a "relevant market" presents a work of economic fiction that is comparable to the fantastic movies of Steven Spielberg (or even his "non-union Mexican equivalent"[4]). The Division misrepresents the nature of

[1] Formerly known as Citizens for Voluntary Trade.

[2] For a compilation of VTC's public comments, see *http://www.voluntarytrade.org/joomla15/index.php/docs/cat_view/12-voluntary-trade-council-documents/23-public-comments.*

[3] Complaint para. 11.

[4] With apologies to Al Jean, Mike Reiss and Ken Keeler.

consumer time preference, confuses products with methods of distribution and wastes an inordinate amount of energy on "special effects" in the form of a useless mathematical formula. In short, there is no economic substance to the Division's complaint—and thus no rational basis for seeking the relief contained in the proposed Final Judgment.

A. Method of Distribution Is Not a Distinct Product

Thomas A. Lambert, an associate professor at the University of Missouri School of Law, responding to the Federal Trade Commission's lawsuit against the merger of Whole Foods Market, Inc. and Wild Oats Markets, Inc. (which this court rejected [5]), said, "defining markets to consist of specific types of distribution channels, rather than groups of products and services, opens the door to finding narrow 'markets' (and thus market power) everywhere." [6] The essence of marketing, Lambert writes, is when sellers "distinguish their products or services by offering them differently than their competitors." [7]

The Division repeats the FTC's *Whole Foods* error in this case by improperly defining a method of distribution as a distinct product market. Regal and Consolidated do not manufacture the product—motion pictures—but rather provide distinct venues for their distribution. Like Whole Foods, Regal and Consolidated offer a place where sellers (movie producers) and buyers (movie consumers) meet to engage in voluntary exchange. But the distinctiveness of the venue should not be confused with the nature of the products themselves.

A motion picture can be distributed through several channels: First-run theatrical exhibition, sub-run theatrical exhibition, television (including over-the-air broadcast, basic cable, pay and premium cable, and satellite), and direct sales and rentals (VHS, DVD, Blu-Ray, iTunes). A theatrical producer can utilize one, several or all of these channels depending on the nature of the motion picture and its expected audience. Many films begin their journey to the consumer in first-run theatres like those operated by Regal and Consolidated. Others are marketed directly to the consumer, such as the Walt Disney Company's practice of straight-to-video sequels of its classic animated films. However a particular film is marketed to the consumer, the product is the film and not the *method* of distribution.

The Division argues there's a "significant difference between viewing a newly-released, first-run movie and an older sub-run movie," because first-run theatres usually charge higher ticket prices. Sub-run theatres show films that "are no longer new releases, and moviegoers generally do not regard sub-movies as an adequate substitute for first-run movies * * *" It's not clear what "moviegoers" the Division interviewed or surveyed to reach this conclusion. Without any empirical data or deductive arguments, the Division simply concludes there are wholly distinct markets for "first-run" and "sub-run" moviegoers, and never the two shall meet. This argument is just plain wrong.

What distinguishes one movie-distribution channel from another is consumers' aggregate time preference. Many consumers will pay a premium to see a "first-run" movie when it is first released, while others may wait and spend less to view the film in a "sub-run" theatre; and others will wait even longer and spend even less to view the film on home video.

The problem, which the Division fails to acknowledge, is that time preference varies from product to product—that is, from movie to movie. Some films perform poorly in first-run theatres only to enjoy greater success in later distribution channels (hence the phenomenon of "cult" films). Other films enjoy overwhelming first-run success and spawn one or more sequels, such as the James Bond, Star Trek and Star Wars films. In the case of these movie franchises, time preference is such that moviegoers will purchase tickets well in advance of these films' release. In other cases, an unknown film may start out with modest sales and gather momentum as "word of mouth" spreads.

First-run theatres clearly compete against other distribution channels by persuading consumers that their entertainment demand is best satisfied by paying a premium to see a particular movie now rather than paying less to see it in another distribution channel later. To that end, first-run theatres always have an incentive to improve the quality of their product regardless of the number of first-run theatres in a given geographical area. The Division itself makes a big deal about movie theaters having "stadium seating"—which was an innovation developed in response to *competition from other distribution channels* such as home video and pay per view cable.

Similarly, movie producers are now promoting 3D projection as the future of first-run exhibition. Jeffrey Katzenberg, CEO of DreamWorks Animation, recently announced that his studio's future films will be exclusively in 3D. Disney and its subsidiary Pixar Animation Studios also plan to release (and re-release) future films in 3D. (And the same weekend as this comment was filed, Walden Media released a 3D version of "Journey to the Center of the Earth".) Kevin Maney explains in the July 2008 issue of *Portfolio* that,

> Studios are latching onto 3–D for much the same reason that Bob Dole took Viagra. Most of Hollywood's businesses are making money—for all Katzenberg's complaining, DreamWorks' first-quarter profit was up 69 percent—but the sector that makes Hollywood feel best about itself, theatrical showings, is deflating, in large part because *the difference between seeing a movie in your local multiplex and on a 52-inch high-definition TV in your family room is not that vast.*
>
> The Motion Picture Association of America claims that 2007 was a good year for the cinema business, with U.S. box office revenue up 5 percent to $9.6 billion. But that's unsupportable spin. *The jump can be almost entirely attributed to a bump in ticket prices.* The number of tickets sold in the U.S. stayed flat from 2006 to 2007, at 1.5 billion. (In 1950, while TV was taking off, US. theaters sold 3 billion tickets a year—and the population was half what it is today.) Meanwhile, 379 screens were added between 2006 and 2007. Do the math and movies are doing worse than ever in theaters.[8] (Emphasis added)

The Division incorrectly believes that intra-theater competition between Regal and Consolidated drive innovation and hold ticket prices down. That's not the case, and the Court should not accept the Division's "market definition" at face value.

B. The Division's Market Definition Improperly Excluded Other Types of Motion Pictures and Entertainment

The Division argues, "The experience of viewing a movie in a theatre is an inherently different experience from live entertainment (*e.g.*, a stage production), a sporting event, or viewing a movie in the home (*e.g.*, on a DVD or via pay-per-view)," [9] But the question isn't whether these are different experiences; it's whether they are *competing* experiences that

[5] *Federal Trade Commission* v. *Whole Food Market, Inc.*, Civil Action No. 07–1021 (D.D.C. Aug. 16, 2007).

[6] Thom Lambert, "Ignoring the Lessons of *Von's Grocery:* Some Thoughts on the FTC's Opposition to the Whole Foods/Wild Oats Merger," eSapience Center for Competition Policy June 2007).

[7] *Id.*

[8] Kevin Meaney, "The 3–D Dilemma," available at *http://www.portfolio.com/culture-lifestyle/culture-inc/arts/2008/06/16/Hollywoods-3-D-Cinema-Dreams.*

[9] Complaint para. 11.

individuals consider when allocating scarce time and money towards entertainment. The Division treats consumers as a monolith that considers *only* first-run movie theaters to the exclusion of all other forms of entertainment. This approach insults consumers by reducing them to a reactionary mob and has no empirical or deductive foundation.

In the Division's perfect economic world, no consumer ever asks, "Should I go to a movie tonight or stay home and watch the football game?" Nor does anyone think, "I really don't want to see that chick flick with my wife and her friends, so I'll shoot pool with the guys." Perfect consumers behave in unison—like background characters in an animated film—and in direct, negative response to short-term price increases.

The Division goes to great lengths to explain why "moviegoers do not regard" art and foreign language movies "as adequate substitutes for first-run commercial movies," thus justifying their exclusion from the market definition. Again, the Division misses the point. Every consumer has individual preferences. Sure, many consumers don't watch art and foreign films. But other consumers never watch animated films. Or war films. Or "chick flicks." Or films featuring Mike Myers. And it's unlikely that any moviegoer anytime, anywhere has said, "Honey, I want to see a first-run commercial movie tonight, *and nothing else will suffice*!"

The Division's attempted market definition also ignores the cross-competition that occurs within the entertainment industry. "First-run commercial movies" are not a closed system. Many popular commercial films are derived from other entertainment sources. In 2008 alone, several number-one U.S. box office films were derived from non-film sources: *Hellboy II, The Incredible Hulk* and *Iron Man* were based on popular comic books; *Sex and the City* was based on a long-running premium cable series (which itself was based on a compilation of popular newspaper columns); and *Horton Hears a Who!* and *The Chronicles of Narnia: Prince Caspian* were based on popular books.[10] Demand for non-film entertainment drives demand for motion pictures, and vice versa. And once again, the number of first-run theatres in a given geographic area is *irrelevant* to the market's competitiveness.

[10] *See* "Box office number-one films of 2008 (USA)," *http://en.wikipedia.org/wiki/Box_office_number-one_films_of_2008_(USA).*

C. The Herfindahl Index Proves Nothing Aside From the Division's Ability To Perform Basic Multiplication

Relying on its misleading market definition, the Division offers a lengthy series of random numbers purportedly representing the "Herfindahl-Hirschman Index" (HHI), which the Division claims is a "measure of market concentration."[11] For example, in part of Charlotte, North Carolina, the Division alleges the Regal Consolidated merger would "yield a post-merger HHI of approximately 6,058, representing an increase of roughly 2,535 points."[12] The implication is that a higher HHI indicates a greater likelihood of post-merger consumer "injury" in the form of higher prices. But even assuming that the HHI figures given in the complaint are valid, this alone does not prove the existence of "market power" or justify the Division's proposed Final Judgment. As economics professor Dominick T. Armentano has explained, there is no economic merit to the HHI:

> Although the general public has the impression that there must be some good reason for the antitrust authorities' choice of particular limits in the Herfindahl Index of market concentration, those limits are completely arbitrary. No one—and certainly not the antitrust authorities—can ever know whether a merger of firms that creates, say, a 36-percent market share, or one that raises the Herfindahl Index by 150 points, can create sufficient economic power to reduce market output and raise market price. No one knows, or can know, whether monopoly power begins at a 36 percent market share or a 36.74-percent market share. Neither economic theory nor empirical evidence can justify any merger guideline or prohibition.[13]

D. Consumers Were Never in Danger of the Type of "Injury" Alleged in the Complaint

Ultimately, the Division's complaint rests on the ridiculous proposition that consumers would have been injured by higher post-merger prices but for the redistribution of property mandated in the proposed Final Judgment. The Division's argument is that "[o]ver the next two years, the demand for more movie theatres in [the identified geographic areas] is not likely to support entry of a new theatre," and without additional theaters there would be "an increase in movie ticket prices or a decline in theatre quality."[14] The decline in quality issue has already been addressed and dismissed above. As for a *hypothetical* increase in ticket prices, it's unclear how this would "injure" consumers who are willing to pay. There's no question of fraud: Ticket prices are generally posted and well known to the customer before purchase. Nor has the Division explained how "competitive" ticket prices should be determined outside of, well, the competitive process of the market. The Division simply draws an arbitrary line where pre-merger prices are assumed to be "competitive" and any hypothetical future increase—regardless of cause—is "anticompetitive." By this reasoning, the most logical course of action would be for the Division to simply fix ticket prices, which of course would violate Section 1 of the Sherman Act.

The Division's real concern, which it states, is that it fears consumers won't immediately respond to an increase in ticket prices by reducing demand sufficiently to make the increase "unprofitable." But that has *nothing* to do with consumer injury. Consumers are not legally obligated to adjust their spending habits to accommodate the Division's mathematical models. Nor should sellers be punished because there's insufficient demand to support the number of competing sellers that the Division deems ideal. Ultimately, real markets don't function according to the whims of government lawyers.

[11] Complaint para. 30.

[12] *Id.*

[13] Dominick T. Armentano *Antitrust: The Case for Repeal*, at 85–86 (2d ed., Ludwig von Mises Institute 1999).

[14] Complant para. 37.

Conclusion

The proposed Final Judgment is built on a series of false, misleading and laughably nonsensical arguments. Just as the "movie palaces" of the 1930s gave way to the multiplexes of the late 20th century, which in turn yielded to the "stadium seating" megaplexes at issue in this case, the subset of the entertainment industry dedicated to first-run theatrical exhibition continually evolves to satisfy shifting consumer demand. This process works best with a minimum of government intervention, especially from unqualified mid-level Justice Department attorneys. The Court can best serve the public interest by rejecting the proposed Final Judgment and ordering the Division to spend less time pretending they're movie theatre executives and more time * * * well, going to the movies.

Dated: July 13, 2008.

Respectfully Submitted,

S.M. Oliva,

President, The Voluntary Trade Council, Inc., Post Office Box 100073, Arlington, Virginia 22210, (703) 740–8309, info@voluntarytrade.org.

[FR Doc. E8–23357 Filed 10–20–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,022]

Honeywell International Formerly Known as Hand Held Products Scanning and Mobility Including On-Site Leased Workers From Manpower Skaneateles Falls, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 22, 2008, applicable to workers of Honeywell International, Scanning and Mobility, including on-site leased workers from Manpower, Skaneateles Falls, New York. The notice was published in the **Federal Register** on October 8, 2008 (73 FR 58981).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of bar code scanners.

New information shows that before December 21, 2007, Honeywell International, Scanning and Mobility, Skaneateles Falls, New York was known as Hand Held Products. Some of the workers wages at the subject firm are being reported under a separate Unemployment Insurance (UI) tax account for Hand Held Products.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Honeywell International, formerly known as Hand Held Products, Scanning and Mobility who were adversely affected by increased imports following a shift in production of bar code scanners to Taiwan and China.

The amended notice applicable to TA–W–64,022 is hereby issued as follows:

"All workers of Honeywell International, formerly known as Hand Held Products, Scanning and Mobility, including on-site leased workers from Manpower, Skaneateles Falls, New York, who became totally or partially separated from employment on or after September 9, 2007 through September 22, 2010, through June 16, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC, this 8th day of October 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–24865 Filed 10–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,154]

Hewlett Packard, ISB Marketing; Corvallis, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 2, 2008 in response to a worker petition filed with the Trade Act Representative on behalf of workers of ISB Marketing, Hewlett Packard, Corvallis, Oregon.

The petitioning group of workers is covered by an active certification, (TA–W–63,939) which expires on September 19, 2010. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 9th day of October 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–24857 Filed 10–20–08; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–079)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive, worldwide license to practice the invention described in Invention Disclosure KSC–12236 entitled "Flame Suppression Agent, System and Uses" to C Parrish Consulting, having its principal place of business in Trinity, Florida. The patent rights in this invention are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: October 14, 2008.

Michael C. Wholley,

General Counsel.

[FR Doc. E8–25107 Filed 10–20–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to

provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed collection of information about outdoor arts festivals in the United States. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before December 19, 2008. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Sunil Iyengar, Director, Office of Research & Analysis, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5424 (this is not a toll-free number), fax (202) 682–5677.

Kathleen Edwards,

Support Services Supervisor, Administrative Services, National Endowment for the Arts.

[FR Doc. E8–24949 Filed 10–20–08; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) #1203

Dates & Times: November 5, 2008; 6 p.m.–9 p.m., November 6, 2008; 8 a.m.–6:30 p.m., November 7, 2008; 8 a.m.–3 p.m.

Place: Tuskegee University, Tuskegee, Alabama.

Type of Meeting: Part-Open.

Contact Person: Dr. Rama Bansil, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–8562.

Purpose of Meeting: To provide advice and recommendations concerning further support of the Partnerships for Research and Education in Materials (PREM).

Agenda

Wednesday, November 5, 2008

6 p.m.–9 p.m. Executive Session and Dinner for Site Visit Team (Closed).

Thursday, November 6, 2008

8–8:30 Breakfast with PREM Director, co-PIs and faculty (Closed).
8:30–4:30 Presentations by PREM Director, co-PIs, Institutional Representatives and program participants (Open) .
4:30–6:30 Executive Session for Site Visit Team (Closed).

Friday, November 7, 2008

8 a.m.–3 p.m. Executive Session and Director's Response to Feedback, Debriefing with PREM Director and co-PIs (Closed).

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 16, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–24992 Filed 10–20–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Agenda

TIME AND DATE: 9:30 a.m., Tuesday, October 28, 2008.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED:

5300E Most Wanted Transportation Safety Improvements—October 2008 Progress Report and Update on Federal Issues.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, October 24, 2008.

The public may view the meeting via a live or archived Web cast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: October 17, 2008.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E8–25170 Filed 10–17–08; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses; Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 25, 2008 to October 8, 2008. The last biweekly notice was published on October 7, 2008 (73 FR 58669).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D44, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which supports the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in

accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document.

The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: August 27, 2008.

Description of amendments request: The amendment would change the containment buffering agent from trisodium phosphate (TSP) to sodium tetraborate in order to minimize the potential for sump screen blockage due to potential adverse chemical interactions between TSP and certain insulation materials used in containment under post loss-of-coolant accident conditions. This amendment is one of the remaining modifications required for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 to achieve full compliance with the requirements of Generic Letter 2004–02, "Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized-Water Reactors" (Agencywide Documents Access and Management System (ADAMS) Accession Number ML042360586).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response–No.

The proposed amendment does not involve a significant increase in the probability of an accident previously evaluated because the containment buffering agent is not an initiator of any analyzed accident. The proposed change does not impact any failure modes that could lead to an accident. The proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated. The buffering agent in Containment is designed to buffer the acids expected to be produced after a loss-of-coolant accident (LOCA) and is credited in the radiological analysis for iodine retention. Utilizing the required quantity of sodium tetraborate decahydrate (STB) as a buffering agent ensures the post-LOCA containment sump mixture will have a pH ≥ 7.0. The proposed change of replacing trisodium phosphate (TSP) with STB results in the radiological consequences remaining within the limits of 10 CFR 50.67. There is no dose change with the pH ≥ 7.0.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?*

Response–No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The STB is a passive component that is proposed to be used as a buffering agent to increase the pH of the initially acidic post-LOCA containment water to a more neutral pH. Changing the proposed buffering agent from TSP to STB does not constitute an accident initiator or create a new or different kind of accident than previously analyzed. The proposed amendment does not involve operation of any required systems, structures, or components in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the changes being requested. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does the proposed change involve a significant reduction in a margin of safety?*

Response–No.

The proposed amendment does not involve a significant reduction in a margin of safety. The proposed amendment of changing the buffering agent from TSP to STB results in equivalent control of maintaining sump pH at ≥ 7.0, thereby controlling containment atmosphere iodine and ensuring the radiological consequences of a LOCA are within regulatory limits. The change of buffering agent from TSP to STB also reduces the amount of calcium phosphate precipitate generated thereby reducing the overall amount of precipitate that may be formed in a postulated LOCA. The buffer change would minimize the potential chemical effects and should enhance the ability of the Emergency Core Cooling System to perform the post-LOCA mitigating functions.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group LLC, 750 East Pratt Street, 17th Floor, Baltimore, MD 21202.

NRC Branch Chief: Mark G. Kowal.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: July 21, 2008.

Description of amendment request: The amendment proposes a change to the Arkansas Nuclear One, Unit 1 (ANO–1) Technical Specifications (TSs) to support adoption of Technical Specification Task Force (TSTF) 359, "Increased Flexibility in Mode Restraints." The NRC approved adoption of TSTF–359 for ANO–1 in TS Amendment 232. The overall intent of TSTF–359 was to eliminate exceptions to Limiting Condition for Operation (LCO) 3.0.4 within individual specifications and provide requirements within LCO 3.0.4 to control mode changes when TS-required equipment is inoperable. Following implementation of TS Amendment 232, Entergy discovered that one of the marked-up TS pages which contained an LCO 3.0.4 exception was not provided to the NRC for review in the original submittal.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), as part of the Consolidated Line Item Improvement Process (CLIIP), on possible amendments to revise the plant-specific TS to modify requirements for model change limitations in LCO 3.0.4 and SR 3.0.4.

The NRC staff subsequently issued a notice of availability of the models for Safety Evaluation and No Significant Hazards Consideration Determination for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the CLIIP, including the model No Significant Hazards Consideration Determination, in its application dated October 22, 2007.

The proposed TS changes are consistent with NRC-approved Industry TSTF STS change, TSTF–359, Revision 8, as modified by 68 FR 16579. TSTF–359, Revision 8, was subsequently revised to incorporate the modifications discussed in the April 4, 2003, **Federal Register** notice and other minor changes. TSTF–359, Revision 9, was subsequently submitted to the NRC on April 28, 2003, and was approved by the NRC on May 9, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the NRC staff analysis of the issue of no significant hazards consideration is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

Response: No.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition

statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS Limiting Conditions for Operation (LCO). The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the request for amendment involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: December 13, 2007.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) Section 4.3.1, "Criticality," to add a new requirement to use a blocking device in spent fuel storage rack cells that cannot maintain the effective neutron multiplication factor, K_{eff}, requirements specified in TS Section 4.3.1.1.a. In addition, the proposed change revises TS Section 4.3.3 to reflect that the LaSalle County Station, Unit 2 spent fuel storage capacity is limited to no more than a combination of 4078 fuel assemblies and blocking devices.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds an additional requirement to the TS to ensure that the effective neutron multiplication factor K_{eff}, is less than or equal to 0.95, if fully flooded with borated water. The additional requirement is to insert a blocking device into unusable storage rack cell locations. Since the proposed change pertains only to the spent fuel pool (SFP), only those accidents that are related to movement and storage of fuel assemblies in the SFP could be potentially affected by the proposed change.

The probability that a misplaced fuel assembly would result in an inadvertent criticality is unchanged since the process and procedural controls governing fuel cell movement in the SFP will not be changed. The current criticality analysis for the LSCS Unit 2 SFP credits the neutron absorbing properties of the Boraflex neutron poison material in the spent fuel storage racks. The current analysis demonstrates: (1) Adequate margin to criticality for all spent fuel storage cells, (2) adequate margin for fuel assemblies inadvertently placed into locations adjacent to the spent fuel racks, and (3) adequate margin for assemblies accidentally dropped onto the spent fuel racks. The dose consequences of the most limiting drop of a fuel assembly in the spent fuel pool is limited by the number of the fuel rods damaged and other engineered features unaffected by the proposed change, including the fuel design, fuel decay time, water level in the spent fuel pool, water temperature of the spent fuel pool, and the engineering features of the Reactor Building Ventilation System.

The revised analysis does not result in a significant increase in the probability of an accident previously analyzed. The revised analysis takes no credit for the Boraflex material. The use of a blocking device prevents an inadvertent action to insert a spent fuel assembly, and prevents an assembly that is accidentally dropped to penetrate into the empty spent fuel cell. In addition to this blocking device, administrative controls will be implemented to prevent insertion of a bundle into a cell that is blocked. The probability that a fuel assembly would be inadvertently placed into a location adjacent to the racks is unchanged, and the probability that a fuel assembly would be dropped is unchanged by the revised analysis. These events involve failures of administrative controls, human performance, and equipment failures that are unaffected by the presence or absence of Boraflex and the blocking devices.

The revised analysis does not result in a significant increase in the consequence of an accident previously analyzed. The revised analysis demonstrates adequate margin to criticality for unblocked cells in the LSCS Unit 2 SFP, adequate margin for assemblies inadvertently placed into locations adjacent to the spent fuel racks, and adequate margin for assemblies accidentally dropped onto the spent fuel racks. Placing a spent fuel assembly into a location containing a blocking device is not a credible event since there are diverse and redundant administrative and physical barriers to prevent that.

The revised analysis does not affect the consequences of a dropped fuel assembly. The consequences of dropping a fuel assembly onto any other fuel assembly or other structure, other than a blocking device, are unaffected by the change. The consequences of dropping a fuel assembly onto a blocking device are bounded by the event of dropping an assembly onto another assembly, both for criticality and for radiological consequences. For criticality, the blocking device prevents the dropped assembly from entering the blocked cell. For radiological consequences, the number of rods damaged when a fuel assembly is accidentally dropped onto a blocking device is bounded the by the number of rods damaged by an assembly dropped onto another assembly. The change does not affect the effectiveness of the other engineered design features to limit the offsite dose consequences of the limiting fuel assembly drop accident.

The proposed change to clarify that the capacity of the Unit 2 SFP is limited to no more than a combination of 4078 fuel assemblies and blocking devices does not affect the probability or consequences of an accident previously analyzed because no physical modifications to the storage racks are proposed. The proposed change will reduce the number of allowable fuel assembly storage locations.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Onsite storage of spent fuel assemblies in the SFP is a normal activity for which LSCS has been designed and licensed. As part of assuring that this normal activity can be performed without endangering public health and safety, the ability to safely accommodate different possible accidents in the SFP, such as dropping a fuel assembly or misloading a fuel assembly, have been analyzed. The proposed fuel storage configuration does not change the methods of fuel movement or fuel storage. No structural or mechanical change to the racks or fuel handling equipment is being proposed. The proposed change allows for partial use of storage rack locations that have been determined unusable based on the existing criticality analysis.

The blocking devices are passive devices. These devices, when inside a spent fuel storage rack cell, perform the same function of a spent fuel assembly in that cell. These devices do not add any limiting structural loads or affect the removal of decay heat from the other assemblies. The devices are resistant to corrosion and will maintain their structural integrity over the life of the plant. These devices are not under any structural load during normal operations. They are only challenged by an accidental fuel assembly drop. The existing fuel handling accident, which assumes the drop of a fuel bundle, bounds the drop of a blocking device.

This change does not create the possibility of a misloaded assembly into a blocked cell. Placing a spent fuel assembly into a location containing a blocking device is not a credible event since there are diverse and redundant administrative and physical barriers to prevent that.

Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

LSCS TS 4.3.1 .1 requires the spent fuel storage racks to maintain the effective neutron multiplication factor, K_{eff}, less than or equal to 0.95 when fully flooded with unborated water, which includes an allowance for uncertainties. Therefore, for criticality, the required safety margin is 5% including a conservative margin to account for engineering uncertainties.

The proposed change adds a requirement to use a blocking device to ensure that K_{eff} continues to be less than or equal to 0.95; thus, the required safety margin of 5% is preserved. The proposed change also clarifies that the capacity of the Unit 2 SFP is limited to no more than a combination of 4078 fuel assemblies and blocking devices. This clarification does not impact the required safety margin of 5%.

The current analysis assumes an infinite array of fuel with all fuel at the peak reactivity (i.e., the highest combination of initial enrichment, gadolinium, and fuel burnup that maximizes the reactivity of the fuel). The revised analysis demonstrates the same margin to criticality of 5%, including a conservative margin to account for engineering uncertainties, is maintained assuming an infinite array of fuel with all fuel at the peak reactivity. In addition, the margin of safety for radiological consequences of a dropped fuel assembly are unchanged because the event involving a dropped fuel assembly onto a blocking device is bounded by the consequences of a dropped fuel assembly onto another fuel assembly.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: May 30, 2008, as supplemented on July 17 and September 10, 2008.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) Table 3.3.8.1–1, "Loss of Power Instrumentation," specifically to change the maximum allowable voltage of the 4.16-kV Emergency Bus Undervoltage function from less-than-or-equal to 3899 V to less-than-or-equal-to 3822 V.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS change to the maximum allowable voltage for the 4160 volt Emergency Bus Undervoltage relays affects when an Emergency Bus that is experiencing degraded voltage will disconnect from offsite power and transfer to an emergency diesel generator. While the maximum allowed voltage that initiates this action will be lowered, the function remains the same. The maximum allowed voltage has been analyzed to ensure spurious trips will be avoided. The proposed change will not affect any accident initiators or precursors. As a result, the probability of any accident previously evaluated is not significantly increased.

The consequences of any accident previously evaluated are not increased since the 4160 volt Emergency Bus Undervoltage relays will continue to meet their required function to transfer the 4160 volt Emergency Buses to the emergency diesel generators in the event of a degraded voltage condition on the offsite power supply. This transfer will ensure that the electrical equipment is capable of performing its function to meet the requirements of the accident analyses.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The proposed TS change to the maximum allowable voltage for the 4160 volt Emergency Bus Undervoltage relays does not affect existing or introduce any new accident precursors or modes of operation. The relays will continue to detect undervoltage conditions and transfer the Emergency Buses to the emergency diesel generators at a voltage adequate to ensure proper safety equipment performance and to prevent equipment damage. The function of the relays remains the same.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed TS change to the maximum allowable voltage for the 4160 volt Emergency Bus Undervoltage relays will allow all safety loads to have sufficient voltage to perform their intended safety functions while ensuring spurious trips are avoided. Thus, the results of the accident analyses will not be affected as the input assumptions are protected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. R. E. Helfrich, Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Lois M. James.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 19, 2008.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) requirements for mode change limitations in accordance with NRC-approved TS Task Force (TSTF) traveler TSTF–359, Revision 9, "Increase Flexibility in MODE Restraints," and revise TS Section 1.4, "Frequency," in accordance with NRC-approved traveler TSTF–485, Revision 0, "Correct Example 1.4–1."

The NRC staff issued a "Notice of Availability of Model Application Concerning Technical Specification Improvement To Modify Requirements Regarding Mode Change Limitations Using the Consolidated Line Item Improvement Process" in the **Federal Register** on April 4, 2003 (68 FR 16579). The notice referenced a model safety evaluation and a model no significant hazards consideration (NSHC) determination published in the **Federal Register** on August 2, 2002 (67 FR 50475). In its application dated August 19, 2008, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee regarding TSTF–359 is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the

applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS Limiting Conditions for Operation (LCO). The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

In its application dated August 19, 2008, the licensee also affirmed the applicability of the NSHC approved by the NRC in TSTF–485, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Section 1.4, Frequency, Example 1.4–1, to be consistent with Surveillance Requirement (SR) 3.0.4 and Limiting Condition for Operation (LCO) 3.0.4. This change is considered administrative in that it modifies the example to demonstrate the proper application of SR 3.0.4 and LCO 3.0.4. The requirements of SR 3.0.4 and LCO 3.0.4 are clear and are clearly explained in the associated Bases. As a result, modifying the example will not result in a change in usage of the Technical Specifications (TS). The proposed change does not adversely affect accident initiators or precursors, the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Therefore, this change is considered administrative and will have no effect on the probability or consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the change does not impose any new or different requirements or eliminate any existing requirements. The change does not alter assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change is administrative and will have no effect on the application of the Technical Specification requirements. Therefore, the margin of safety provided by the Technical Specification requirements is unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based upon this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves NSHC.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Michael T. Markley.

Nine Mile Point Nuclear Station, LLC, (NMPNS) Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1 (NMP1), Oswego County, New York

Date of amendment request: August 15, 2008.

Description of amendment request: The proposed amendment would revise NMP1 Technical Specification (TS) 6.5.7, "10 CFR 50 [Part 50 of Title 10 of the *Code of Federal Regulations*] Appendix J Testing Program Plan," to allow a one-time extension of the Integrated Leak Rate Test (ILRT) interval for no more than five (5) years. The proposed amendment would allow the next ILRT for NMP1 to be performed within 15 years from the last ILRT as opposed to the current 10-year interval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves a one-time extension of the primary containment ILRT interval from 10 to 15 years. The proposed change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The primary containment function is to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment itself and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve any accident precursors or initiators. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased by the proposed change.

Continued containment integrity is assured by the established programs for local leak rate testing and inservice/containment

inspections, which are unaffected by the proposed change. As documented in NUREG–1493, "Performance-Based Containment Leak-Test Program," dated September 1995, industry experience has shown that local leak rate tests (Type B and C) have identified the vast majority of containment leakage paths, and that ILRTs detect only a small fraction of containment leakage pathways.

The potential consequences of the proposed change have been quantified by analyzing the changes in risk that would result from extending the ILRT interval from 10 years to 15 years. The increase in risk in terms of person-rem per year within 50 miles resulting from design basis accidents was estimated to be of a magnitude that NUREG–1493 indicates is imperceptible. NMPNS has also analyzed the increase in risk in terms of the frequency of large early releases from accidents. The increase in the large early release frequency resulting from the proposed change was determined to be within the guidelines published in NRC Regulatory Guide 1.174. Additionally, the proposed change maintains defense-in-depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. NMPNS has determined that the increase in conditional containment failure probability due to the proposed change would be insignificant. Therefore, it is concluded that the proposed one-time extension of the primary containment ILRT interval from 10 years to 15 years does not significantly increase the consequences of an accident previously evaluated.

Based on the above discussion, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves a one-time extension of the primary containment ILRT interval. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (i.e., no new or different type of equipment will be installed) or a change in the manner in which the plant is operated or controlled.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed one-time extension of the primary containment ILRT interval does not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The specific requirements and conditions of the 10 CFR [Part] 50 Appendix J Testing Program Plan, as defined in the TS, exist to ensure that the degree of primary containment structural integrity and leak-tightness that is considered in the plant safety analyses is maintained. The overall containment leakage rate limit specified by the TS is maintained, and Type B and C containment leakage tests will continue to be performed at the frequency currently required by the TS.

NMP1 and industry experience strongly support the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by the ILRT is small. Containment inspections performed in accordance with other plant programs serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by an ILRT. Additionally, the on-line containment monitoring capability that is inherent to inerted boiling[-]water reactor containments allows for the detection of gross containment leakage that may develop during power operation. This combination of factors ensures that the margin of safety that is inherent in plant safety analyses is maintained. Furthermore, a risk assessment using the current NMP1 Probabilistic Risk Assessment interval events model concluded that extending the ILRT test interval from 10 to 15 years results in a very small change to the NMP1 risk profile.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Mark G. Kowal.

Nine Mile Point Nuclear Station, LLC (NMPNS), Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2 (NMP2), Oswego County, New York

Date of amendment request: August 14, 2008.

Description of amendment request: The proposed amendment would (1) revise the NMP2 Technical Specification (TS) Surveillance Requirement (SR) frequency in TS 3.1.3, "Control Rod Operability," and (2) revise Example 1.4–3 in TS Section 1.4, "Frequency," to clarify the applicability of the 1.25 surveillance test interval extension. The proposed changes are consistent with Nuclear Regulatory Commission (NRC)-approved Revision 1 to TS Task Force (TSTF) Change Traveler, TSTF–475, "Control Rod Notch Testing Frequency and SRM [Source Range Monitor] Insert Control Rod Action." The availability of this TS improvement was announced in the **Federal Register** on November 13, 2007 (72 FR 63943) as part of the consolidated line item improvement process. The licensee affirmed the applicability of the model no significant hazards consideration determination in its application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change generically implements TSTF–475, Revision 1, "Control Rod Notch Testing Frequency and SRM Insert Control Rod Action." TSTF–475, Revision 1 modifies NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6) STS. The changes: (1) Revise TS testing frequency for surveillance requirement (SR) 3.1.3.2 in TS 3.1.3, "Control Rod OPERABILITY," (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, Required Action E.2, "Source Range Monitoring Instrumentation" (NUREG–1434 only), and (3) revise Example 1.4–3 in Section 1.4 "Frequency" to clarify the applicability of the 1.25 surveillance test interval extension. The consequences of an accident after adopting TSTF–475, Revision 1 are no different than the consequences of an accident prior to adoption. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously analyzed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

TSTF–475, Revision 1 will: (1) [revise the TS SR 3.1.3.2 frequency in TS 3.1.3, "Control Rod OPERABILITY," (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, "Source Range Monitoring Instrumentation," and (3)] revise

Example 1.4–3 in Section 1.4 "Frequency" to clarify the applicability of the 1.25 surveillance test interval extension. [The GE Nuclear Energy Report, "CRD Notching Surveillance Testing for Limerick Generating Station," dated November 2006, concludes that extending the control rod notch test interval from weekly to monthly is not expected to impact the reliability of the scram system and that the analysis supports the decision to change the surveillance frequency.] Therefore, the proposed changes in TSTF–475, Revision 1 are acceptable and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Mark G. Kowal.

Nine Mile Point Nuclear Station, LLC (NMPNS) Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1 (NMP1), Oswego County, New York

Date of amendment request: August 18, 2008.

Description of amendment request: The proposed amendment would revise the NMP1 Technical Specification (TS) Section 3/4.1.1, "Control Rod System," to increase the Surveillance Requirement (SR) frequency associated with control rod exercising. The proposed change would revise the required SR frequency from once each week to once every 31 days. The proposed change is consistent with Nuclear Regulatory Commission (NRC)-approved Revision 1 to TS Task Force (TSTF) Change Traveler, TSTF–475, "Control Rod Notch Testing Frequency and SRM [Source Range Monitor] Insert Control Rod Action," and NUREG–1433, "Standard Technical Specifications General Electric Plants, BWR/4," Revision 3.1. The availability of the TS improvement was announced in the **Federal Register** on November 13, 2007 (72 FR 63943) as part of the consolidated line item improvement process. The licensee affirmed the applicability of the model no significant hazards consideration determination in its application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change generically implements TSTF–475, Revision 1, "Control Rod Notch Testing Frequency and SRM Insert Control Rod Action." TSTF–475, Revision 1 modifies NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6) STS. The changes: (1) revise TS testing frequency for surveillance requirement (SR) 3.1.3.2 in TS 3.1.3, "Control Rod OPERABILITY," (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, Required Action E.2, "Source Range Monitoring Instrumentation" (NUREG–1434 only), and (3) revise Example 1.4–3 in Section 1.4 "Frequency" to clarify the applicability of the 1.25 surveillance test interval extension. The consequences of an accident after adopting TSTF–475, Revision 1 are no different than the consequences of an accident prior to adoption. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously analyzed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

TSTF–475, Revision 1 will: (1) [revise the TS SR 3.1.3.2 frequency in TS 3.1.3, "Control Rod OPERABILITY," (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, "Source Range Monitoring Instrumentation," and (3)] revise Example 1.4–3 in Section 1.4 "Frequency" to clarify the applicability of the 1.25 surveillance test interval extension. [The GE Nuclear Energy Report, "CRD Notching Surveillance Testing for Limerick Generating Station," dated November 2006, concludes that extending the control rod notch test interval from weekly to monthly is not expected to impact the reliability of the scram system and that the analysis supports the decision to change the surveillance frequency.] Therefore, the proposed changes in TSTF–475, Revision 1 are acceptable and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Mark G. Kowal.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: July 11, 2008.

Description of amendment request: The proposed amendments would establish Conditions, Required Actions, and Completion Times in the Prairie Island Nuclear Generating Plant, Units 1 and 2, Technical Specifications (TSs) for the condition where one steam supply to the turbine-driven auxiliary feedwater (AFW) pump is inoperable concurrent with an inoperable motor-driven AFW train. The proposed amendments would also make changes to the TSs that establish specific Actions for when the turbine-driven AFW train is inoperable either (a) due solely to one inoperable steam supply, or (b) due to reasons other than the one inoperable steam supply.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on March 19, 2007 (72 FR 12845), on possible amendments concerning the consolidated line item improvement process (CLIIP), including a model safety evaluation and a model no significant hazards consideration (NSHC) determination. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on July 17, 2007 (72 FR 39089), as part of the CLIIP. In its application dated July 11, 2008, the licensee affirmed the applicability of the following determination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The Auxiliary/Emergency Feedwater (AFW/EFW) System is not an initiator of any design basis accident or event, and therefore the proposed changes do not increase the probability of any accident previously evaluated. The proposed changes to address the condition of one or two motor driven AFW/EFW trains inoperable and the turbine

driven AFW/EFW train inoperable due to one steam supply inoperable do not change the response of the plant to any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems, and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not result in a change in the manner in which the AFW/EFW System provides plant protection. The AFW/EFW System will continue to supply water to the steam generators to remove decay heat and other residual heat by delivering at least the minimum required flow rate to the steam generators. There are no design changes associated with the proposed changes. The changes to the Conditions and Required Actions do not change any existing accident scenarios, nor create any new or different accident scenarios.

The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Lois M. James.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: September 4, 2008.

Brief description of amendments: The proposed amendment will delete the Technical specification (TS) requirements related to hydrogen recombiners and hydrogen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide (RG) 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2.

Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors," eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated September 4, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to 17 approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization or the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner

and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: L. Raghavan.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: January 14, 2008.

Description of amendment request: The proposed amendment would modify the Technical Specification (TS) requirements related to control room envelope habitability in accordance with TS Task Force (TSTF) traveler TSTF–448–A, "Control Room Habitability," Revision 3.

The NRC staff issued a "Notice of Availability of Technical Specification Improvement to Modify Requirements Regarding Control Room Envelope Habitability Using the Consolidated Line Item Improvement Process" in the **Federal Register** on January 17, 2007 (72 FR 2022). The notice referenced a model safety evaluation, a model no significant hazards consideration (NSHC) determination, and a model license amendment request published in the **Federal Register** on October 17, 2006 (71 FR 61075). In its application dated January 14, 2008, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based upon this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves NSHC.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the

action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: July 30, 2008.

Description of amendment request: This amendment revises the Indian Point Nuclear Generating Unit No. 2 Technical Specification 3.8.1, Required Action A.4, to allow a one time extension to the completion time for the loss of one offsite power circuit from 72 hours to 144 hours. This change will ensure that there is enough time for the failed oil cooling pump on the station auxiliary transformer to be removed, and for the new oil cooling pump to be installed and tested.

Date of publication of individual notice in ***Federal Register***: August 27, 2008.

Expiration date of individual notice: October 27, 2008.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: March 10, 2008, as supplemented by letters dated June 30, 2008, and September 29, 2008.

Description of amendment request: The amendment revised the Oyster Creek Technical Specifications (TSs) 3.3, "Reactor Coolant." Specifically, the amendment relocated the pressure and temperature limit curves to the licensee controlled document, "Pressure and Temperature Limits Report" (PTLR). Additionally, the amendment introduced supporting definitions and adds controls regarding the PTLR to Section 6.0, "Administrative Controls."

Date of issuance: September 30, 2008.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 269.

Facility Operating License No. DPR–16: The amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: June 17, 2008 (73 FR 34339). The supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's initial proposed no significant hazards determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2008.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendment: August 15, 2007, as supplemented on May 27, 2008, July 24, 2008, and September 3, 2008.

Brief description of amendment: The proposed amendment modified Technical Specification (TS) 3.3.3.1, "Radiation Monitoring," TS 3.4.6.1, "Reactor Coolant System Leakage Detection Systems," and Surveillance Requirements 4.4.6.1, "Reactor Coolant System Leakage Detection Systems." Specifically, the proposed amendment removed credit for the gaseous radiation monitor for Reactor Coolant System leakage detection. Improvements in nuclear fuel reliability over time have resulted in the reduction of effectiveness of the monitors in detecting very small leaks and very small changes in the leak rate. The proposed change also addressed the condition when the remaining monitoring systems are all inoperable.

Date of issuance: September 30, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 306 and 244.

Renewed Facility Operating License Nos. DPR–65 and NPF–49: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: June 17, 2008 (73 FR 34341). The supplements dated May 27, 2008, July 24, 2008, and September 3, 2008, clarified the application, did not expand the scope of the application as originally noticed, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2008.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: May 8, 2008, as supplemented by letter dated August 14, 2008.

Brief description of amendment: This amendment request contains sensitive unclassified non-safeguards

information. The changes allow for interim alternate steam generator tube repair criterion, as specified in the Millstone Power Station, Unit 3 (MPS3) technical specifications. The interim alternate repair criterion is for the upcoming refueling outage and the subsequent operating cycle. The amendment also adds three reporting criteria to the MPS3 technical specifications for steam generator tube inspections.

Date of issuance: September 30, 2008.

Effective date: As of the date of issuance and shall be implemented prior to Mode 5 startup.

Amendment No.: 245.

Renewed Facility Operating License No. NPF–49: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register****:* July 8, 2008 (73 FR 39054). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2008.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: December 20, 2007.

Brief description of amendment: The amendment reflects the direct transfer of the undivided ownership interest of the Saluda River Electric Cooperation, Inc., in Catawba Nuclear Station, Unit 1, to Duke Energy Carolinas, LLC, a current owner and operator, and the North Carolina Electric Membership Corporation, a current owner.

Date of issuance: September 30, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 245.

Facility Operating License Nos. NPF–35: Amendment revised the license.

Date of initial notice in ***Federal Register****:* July 21, 2008 (73 FR 42375). The supplement dated May 29, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 2008.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: July 26, 2007, as superseded by application dated August 8, 2007, and as supplemented by letters dated November 19, 2007, and June 5 and July 21, 2008.

Brief description of amendment: The amendment revises the requirements of Technical Specification (TS) 3.3.5.2, "Reactor Core Isolation Cooling (RCIC) System Instrumentation," and TS 3.5.2, "ECCS [Emergency Core Cooling System]-Shutdown," to increase the Condensate Storage Tank level.

Date of issuance: September 30, 2008.

Effective date: As of its date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 210.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* August 28, 2007 (72 FR 49572).

The supplements dated November 19, 2007, and June 5 and July 21, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2008.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 22, 2008, as supplemented by letters date July 2, July 22, and September 24, 2008.

Brief description of amendment: The amendment modified Technical Specification (TS) 1.0, "Definitions," Limiting Conditions for Operation and Surveillance Requirement Applicability Section 3.4.9, "RCS [Reactor Coolant System] Pressure and Temperature (P–T) Limits," and Section 5.0, "Administrative Controls," to delete reference to the pressure and temperature curves, and include reference to the Pressure and Temperature Limits Report (PTLR). This change adopted the methodology of SIR–05–044–A, "Pressure-Temperature Limits Report Methodology for Boiling Water Reactors," for preparation of the pressure and temperature curves, and incorporated the guidance of TSTF–419–A, "Revise PTLR Definition and References in ISTS [Improved Standard Technical Specifications] 5.6.6, RCS PTLR."

Date of issuance: October 3, 2008.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 292.

Facility Operating License No. DPR–59: The amendment revised the License and the Technical Specifications.

Date of initial notice in ***Federal Register****:* July 1, 2008 (73 FR 37503). The supplemental submissions dated July 2, July 22, and September 24, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2008.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station (Byron), Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendment: June 17, 2008.

Brief description of amendment: The amendments revise Technical Specification (TS) 5.5.9, "Steam Generator (SG) Program," and TS 5.6.9, "Steam Generator (SG) Tube Inspection Report." For TS 5.5.9, the amendments incorporate a one-cycle interim alternate repair criteria in the provisions for SG tube repair criteria during Byron, Unit No. 2, refueling outage 14 and the subsequent operating cycle. For TS 5.6.9, the amendments revise the current reporting requirements. These changes only affect Byron, Unit No. 2; however, this action is docketed for both Byron units because the TS are common to both units.

Date of issuance: October 1, 2008.

Effective date: As of the date of issuance and shall be implemented prior to the return to service from Byron, Unit No. 2, fall 2008 Refueling Outage 14.

Amendment Nos.: Unit 1—158; Unit 2—158.

Facility Operating License Nos. NPF–37 and NPF–66: The amendment revised the TSs and License.

Date of initial notice in ***Federal Register***: August 5, 2008 (73 FR 45485).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 1, 2008.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: July 16, 2007, as supplemented May 20 and August 26, 2008.

Brief description of amendments: Amendments modified the technical specification requirements related to control room envelope habitability in accordance with Technical Specification Task Force (TSTF) Traveler TSTF–448, Revision 3, "Control Room Habitability."

Date of Issuance: September 30, 2008.

Effective Date: Unit 1—Amendment is effective as of the date of its issuance and shall be implemented following implementation of the Amendment No. 152, regarding Alternative Source Term and with the completion of the installation and testing of the plant modifications described in the licensee's application, including letters dated July 16, 2007, February 14, March 18, April 14, June 2, July 11, and August 13, 2008. Unit 2—This license amendment is effective as of the date of its issuance and shall be implemented following implementation of License Amendment No. 152.

Amendment Nos.: 205 and 153.

Renewed Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: August 28, 2007 (72 FR 49578). The supplements dated May 20 and August 26, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 2008.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: July 16, 2007, as supplemented by letters dated February 14, March 18, April 14, June 2, July 11, and August 13, 2008.

Brief description of amendment: The amendment modifies the facility's operating licensing bases to adopt the alternative source term as allowed in 10 CFR 50.67, and as described in Regulatory Guide 1.183. The licensee revised the plant licensing basis through reanalysis of the radiological consequences of the following Updated Final Safety Analysis Report Chapter 15 accidents: Loss-of-Coolant Accident, Fuel-Handling Accident, Main Steam Line Break, Steam Generator Tube Rupture, Reactor Coolant Pump Shaft Seizure, Control Element Assembly Ejection, Letdown Line Break, and Feedwater Line Break.

Date of issuance: September 29, 2008.

Effective date: Effective as of the date of issuance and shall be implemented within 180 days.

Amendment No.: 152.

Renewed Facility Operating License No. NPF–16: The amendment revises the Technical Specifications and the Renewed Facility Operating License.

Date of initial notice in ***Federal Register***: June 12, 2008 (73 FR 33460). The supplements dated February 14, March 18, April 14, June 2, July 11, and August 13, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

Public comments received as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2008.

Attorney for licensee: M. S. Ross, Managing Attorney, Florida Power and Light Company, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (NMP1 and NMP2), Oswego County, New York

Date of application for amendment: December 20, 2007.

Brief description of amendments: The amendments revise NMP1 Technical Specification (TS) Section 6.3, "Unit Staff Qualifications," and NMP2 TS Section 5.3, "Unit Staff Qualifications," to update requirements that have been superseded due to the accreditation of the NMPNS licensed operator training program and due to promulgation of the revised Title 10 of the *Code of Federal Regulations* (10 CFR), Part 55, "Operators' Licenses," which became effective on May 26, 1987 (52 FR 9453). Additionally, the amendment for NMP1 revises the TSs by eliminating the qualification requirement exceptions listed for the position of Manager Operations which were previously approved by the NRC staff. The position of Manager Operations would meet the minimum qualification requirements as required in American National Standard Institute Standard NI8.1–1971, "American National Standard for Selection and Training of Nuclear Power Plant Personnel."

Date of issuance: September 29, 2008.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 198 and 127.

Renewed Facility Operating License No. DPR–63 and NPF–069: Amendments revise the License and TSs.

Date of initial notice in ***Federal Register***: January 28, 2008 (73 FR 5225).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2008.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 3, 2007.

Brief description of amendments: The amendments revised a footnote in Technical Specifications Table 3.3.2.1–1, "Control Rod Block Instrumentation," such that a new banked position withdrawal sequence shutdown sequence could be utilized. Associated changes are made to the TS Bases. This operating license improvement was made available by the NRC staff on May 23, 2007, as part of the consolidated line item improvement process.

Date of issuance: October 1, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—258, Unit 2—202.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: November 6, 2007 (72 FR 62691).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 1, 2008.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 5, 2007.

Brief description of amendments: The amendments revise the TSs completion times (CTs) for TS Limiting Condition of Operation (LCO) 3.8.1, Conditions B and C, by specifying when maintenance restrictions need to be met and by adding a 72-hour CT for the swing DG 1B.

Date of issuance: October 2, 2008.

Effective date: As of the date of issuance and shall be implemented within 45 days from the date of issuance.

Amendment Nos.: Unit 1—259, Unit 2—203.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: November 6, 2007, (72 FR 62691).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 2008.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: June 12, 2008.

Brief description of amendments: The amendments revised the Technical Specifications requirement for the Plant Manager or the Operations Manager regarding the holding of a Senior Reactor Operator license.

Date of issuance: October 7, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Farley Unit 1—179; Unit 2—171; Hatch Unit 1—260; Unit 2—204; Vogtle Unit 1—153; Unit 2—134.

Facility Operating License Nos. NPF–2 and NPF–8; DPR–57 and NPF–5; NPF–68 and NPF–81: Amendments revised the licenses and the technical specifications.

Date of initial notice in **Federal Register**: July 1, 2008, 73 FR 37505.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 7, 2008.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: April 14, 2008.

Brief description of amendment: The amendment revises the list of topical reports referenced in Technical Specification Section 6.9.1.14.a for use in preparing the core operating limits report by adding EMF–2103P–A, "Realistic Large Break LOCA Methodology for Pressurized Water Reactors." The change will be utilized in core loading designs for Unit 1 fuel-load configurations in future operating cycles.

Date of issuance: September 24, 2008.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 320.

Facility Operating License No. DPR–77: Amendment revises the technical specifications.

Date of initial notice in ***Federal Register***: June 10, 2008 (73 FR 32746). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 2008.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 10th day of October 2008.

For the Nuclear Regulatory Commission.

Joseph Gitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–24896 Filed 10–20–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of October 20, 27, November 3, 10, 17, 24, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 20, 2008

Wednesday, October 22, 2008

9:30 a.m. Briefing on New Reactor Issues—Construction Readiness, Part 1 (Public Meeting) (Contact: Roger Rihm, 301 415–7807).

1:30 p.m. Briefing on New Reactor Issues—Construction Readiness, Part 2 (Public Meeting) (Contact: Roger Rihm, 301 415–7807).

Both parts of this meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, October 23, 2008

9:25 a.m. Affirmation Session (Public Meeting) (Tentative). a. Pacific Gas and Electric Co. (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI, Decision on the Merits of San Luis Obispo Mothers for Peace's Contention 2 (Tentative).

Week of October 27, 2008—Tentative

There are no meetings scheduled for the week of October 27, 2008.

Week of November 3, 2008—Tentative

Thursday, November 6, 2008

1:30 p.m. Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson, 301 415–0202).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Friday, November 7, 2008

2 p.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting); (Contact: Tanny Santos, 301 415–7270).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of November 10, 2008—Tentative

There are no meetings scheduled for the week of November 10, 2008.

Week of November 17, 2008—Tentative

There are no meetings scheduled for the week of November 17, 2008.

Week of November 24, 2008—Tentative

There are no meetings scheduled for the week of November 24, 2008.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

Dated: October 16, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–25142 Filed 10–17–08; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Week of October 20, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of October 20, 2008

Thursday, October 23, 2008

9:25 a.m. Affirmation Session (Public Meeting) (Tentative) a. Pacific Gas and Electric Co. (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI, Decision on the Merits of San Luis Obispo Mothers for Peace's Contention 2 (Tentative).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

ADDITIONAL INFORMATION: Affirmation of "Pacific Gas and Electric Co. (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI, Decision on the Merits of San Luis Obispo Mothers for Peace's Contention 2" was tentatively scheduled on October 6, 2008 and postponed. It has been rescheduled on October 23, 2008.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

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* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 15, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–25143 Filed 10–17–08; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Janet Smith, Center for Human Capital Management Services, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606–4473.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

Michael W. Hager,

Acting Director.

The following have been designated as members of the Performance Review Board of the U.S. Office of Personnel Management:

Howard Weizmann, Deputy Director—Chair.

Patricia Hollis, Chief of Staff and Director of External Affairs.

Mark Reger, Chief Financial Officer.

Kay Ely, Associate Director, Human Resources Products and Services Division.

Nancy Kichak, Associate Director, Strategic Human Resources Policy Division.

Kevin Mahoney, Acting Associate Director, Human Capital Leadership and Merit System Accountability Division.

Kathy Dillaman, Associate Director, Federal Investigative Services Division.

Ronald Flom, Associate Director, Management Services Division and Chief Human Capital Officer.

John Maher, General Counsel.

Mark Reinhold, Deputy Associate Director for Human Capital Management Services—Executive Secretariat.

[FR Doc. E8–24952 Filed 10–20–08; 8:45 am]

BILLING CODE 6325–45–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8977; 34–58788; IC–28438; IA–2798]

Resubmission of Comment Letters

AGENCY: Securities and Exchange Commission.

ACTION: Resubmission of comments.

SUMMARY: A small number of public comments submitted by commenters in connection with certain proposed Commission rules, proposed rule changes by self-regulatory organizations, and other matters were not received by the Commission through the Federal eRulemaking Portal and through the Commission's Web site due to software issues. A list of those matters and the number of comment letters not received is attached as Appendix A. The Commission is providing an opportunity for commenters whose comments were not received to resubmit their comments with respect to the matters identified in Appendix A.

DATES: Resubmit comments on or before October 29, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet submission form (*http://www.sec.gov/rules/other.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include the file number for the specific matter being commented upon on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper statements in triplicate to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to the file number for the specific matter being commented upon. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Florence E. Harmon, Acting Secretary, at (202) 551–5400, Office of the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

SUPPLEMENTARY INFORMATION: A small number of public comments submitted by commenters in connection with the matters identified in Appendix A were not received by the Commission through the Federal eRulemaking Portal and through the Commission's Web site due to software issues. The Commission has been informed by the agency responsible for the Federal eRulemaking Portal and the staff responsible for maintaining the Commission's Web site that these issues have been resolved. The Commission is providing an opportunity for commenters to resubmit those comments.[1] Because the identities of the commenters whose submissions were affected by these software issues are not retrievable, the Commission requests that if you commented on any of the matters listed in Appendix A you review the Commission's Web site posting for the particular matter to determine whether your comment letter has been posted. If it has not been posted and you wish to resubmit your comment letter, you may do so via any of the methods described above. If your comment letter has been posted, there is no need to resubmit it.

The Commission will consider all comment letters that are resubmitted. Although the Commission has taken action on some of these matters, the Commission will evaluate whether further action is necessary or appropriate in response to comments received.

[1] The Commission recently reopened the comment period for one of the matters listed in Appendix A, Indexed Annuities and Certain Other Insurance Contracts, Securities Act Release No. 8933 (June 25, 2008) (73 FR 37752 (July 1, 2008)). Any commenters whose comments on this matter were not received can resubmit comments until the end of the reopened comment period. *See* Indexed Annuities and Certain Other Insurance Contracts, Securities Act Release No. 8976 (Oct. 10, 2008).

Dated: October 15, 2008.

Florence E. Harmon,

Acting Secretary.

APPENDIX A

List of Matters and Number of Comment Letters Not Received

- References to Ratings of Nationally Recognized Statistical Rating Organizations (File No. S7–19–08) [3 comments].
- Security Ratings (File No. S7–18–08) [2 comments].
- References to Ratings of Nationally Recognized Statistical Rating Organizations (File No. S7–17–08) [2 comments].
- Exemption of Certain Foreign Brokers or Dealers (File No. S7–16–08) [3 comments].
- Modernization of the Oil and Gas Reporting Requirements (File No. S7–15–08) [6 comments].
- Indexed Annuities and Certain Other Insurance Contracts (File No. S7–14–08) [37 comments].
- Interactive Data to Improve Financial Reporting (File No. S7–11–08) [1 comment].
- Amendment to Regulation SHO (File No. S7–19–07) [18 comments].
- Naked Short-Selling Anti-Fraud Rule (File No. S7–08–08) [4 comments].
- Revisions to the Cross-Border Tender Offer, Exchange Offer, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions (File No. S7–10–08) [1 comment].
- Commission Guidance Regarding the Duties and Responsibilities of Investment Company Board of Directors with respect to Investment Adviser Portfolio Trading Practices (File No. S7–22–08) [1 comment].
- Roundtable on Fair Value Accounting Standards (File No. 4–560) [1 comment].
- Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Schedule of Fees and Charges for Exchange Services in order to Revise Certain Transaction Fees (File No. SR–NYSEARCA–2008–75) [1 comment].
- Notice of Filing of Proposed Rule Change of Amended Proposed Rule Change Amending FAST and DRS Limited Participant Requirements for Transfer Agents (File No. SR–DTC–2006–16) [1 comment].

[FR Doc. E8–24975 Filed 10–20–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58778; File No. SR–CBOE–2008–90]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change Related to Trades in Restricted Classes

On August 29, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with 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 proposed rule change to amend CBOE Rules 6.25 and 24.16 (collectively, the "Obvious Error Rules") to permit the nullification of opening transactions that do not satisfy the requirement of CBOE Rule 5.4 (withdrawal of approval of underlying security) and to clarify certain provisions in CBOE Rule 5.4 and the Obvious Error Rules. The proposed rule change was published for comment in the **Federal Register** on September 13, 2008.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

The Exchange proposes to amend the Obvious Error Rules to permit the nullification of opening transactions in "restricted series" that do not satisfy the requirements of CBOE Rule 5.4.[4] Currently, when the Exchange makes a determination that trading in a series is restricted pursuant to CBOE Rule 5.4, the Exchange notifies the membership of that determination through issuance of a regulatory circular. In addition, the Exchange's systems are programmed to automatically restrict the entry of electronic opening transactions. However, opening orders entered in open outcry are not systemically prevented and, in addition, opening market-maker activity is still permitted both electronically and in open outcry. As a result, it is possible that an opening transaction that does not satisfy the requirements of CBOE Rule 5.4 may occur inadvertently. In order to address these scenarios, the Exchange proposes to permit the nullification of opening transactions in CBOE Rule 5.4 restricted series provided notification is received by designated personnel in the Exchange's control room from any member or person associated with a member that believes it participated in such transaction within the timeframes prescribed in CBOE Rules 6.25(b)(1) and 24.16(b)(1). In addition, absent unusual circumstances, designated personnel in the control room (either on their own motion or upon request of a member) would initiate action within sixty (60) minutes of such a transaction. Such actions would be reviewed and determinations rendered by the senior official in the control room. Any determinations rendered by the senior official would be subject to the same review procedures as determinations rendered by Trading Officials.

The Exchange also proposes to permit a member to initiate an Obvious Error Rule action by contacting either a Trading Official or designated personnel in the control room. Under the current rule, a member is only permitted to contact Trading Officials to initiate such action. Once either a Trading Official or a control room designee is contacted, all reviews and determinations will continue to be rendered by Trading Officials except that, as proposed herein, actions to nullify an opening trade in a restricted series will be reviewed and determinations rendered by the senior official in the control room.

Lastly, the Exchange proposes to clarify in the text of CBOE Rule 5.4 that the restrictions on opening transactions contained in the rule, as well as the related exceptions, apply to both opening purchases and opening sales in restricted series. The Exchange notes that its intention is that the restrictions, and related exceptions, also apply to opening sales; however, the current rule text indicates that the restrictions are applicable only to opening purchase transactions. Proposed changes to the rule text make this clear.

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) of the Act[5] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[6] in that the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that, in approving proposals relating to adjustment or nullification of trades involving obvious errors, it has stated that the determination of whether an obvious error has occurred and the process for reviewing such a determination should be based on specific and objective criteria and subject to specific and objective procedures.[7] The Commission believes that the CBOE's proposal provides specific and objective criteria for determining when transactions in restricted classes should be nullified. Specifically, under the rule, opening transactions that do not satisfy the requirement of CBOE Rule 5.4 will be nullified. Market participants will be on notice that trading in a series is restricted pursuant to CBOE Rule 5.4 through a regulatory circular. The Commission also believes that other proposed changes to the Obvious Error Rules and Rule 5.4 are specific and objective.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2008–90) is hereby approved.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 58460 (September 4, 2008), 73 FR 53060.

[4] In relevant part, CBOE Rule 5.4 provides that, whenever the Exchange determines that an underlying security previously approved for Exchange option transactions does not meet the then current requirements for continuance of such approval or for any other reason should no longer be approved, the Exchange will not open for trading any additional series of options of the class covering that underlying security and therefore two floor officials, in consultation with a designated senior executive officer of the Exchange, may prohibit any opening purchase transactions in series of options of that class previously opened (except that (i) opening transactions by Market-Makers executed to accommodate closing transactions of other market participants and (ii) opening transactions by CBOE member organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with paragraph (b) or (d) of CBOE Rule 6.74, *Crossing Orders*, may be permitted), to the extent it deems such action necessary or appropriate (such series are referred to herein and in the proposed new text in CBOE Rules 6.25 and 24.16 as "restricted series"); provided, however, that where exceptional circumstances have caused an underlying security not to comply with the Exchange's current approval maintenance requirements, regarding number of publicly held shares or publicly held principal amount, number of shareholders, trading volume or market price the Exchange, in the interest of maintaining a fair and orderly market or for the protection of investors, may determine to continue to open additional series of option contracts of the class covering that underlying security.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See, e.g.*, Securities Exchange Release Nos. 54228 (July 27, 2006), 71 FR 44066 (August 3, 2006) (SR–CBOE–2006–14) (approving revisions to CBOE's Obvious Error Rule) and 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (SR–CBOE–2003–10) (approving revisions to CBOE's Obvious Error Rule).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–24971 Filed 10–20–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58757A; File No. SR–DTC–2008–12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change as Amended To Increase Liquidity Resources

October 14, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 26, 2008, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on September 9, 2008 and on September 30, 2008, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is seeking to increase its liquidity resources to ensure that it has sufficient liquidity to cover the failure of a family of financially affiliated DTC participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change seeks to increase the liquidity resources of DTC to ensure it has sufficient liquidity to cover the failure of a financial family of affiliated DTC Participants ("Affiliated Family").[3] An Affiliated Family means a Participant that controls another Participant or other Participants and each Participant that is under the control of the controlling Participant. For purposes of this definition, "control" means the direct or indirect ownership of more than 50% of the voting securities or other voting interests of any entity.[4]

To ensure that DTC is able to complete its settlement obligations each day in the event of a Participant's inability to settle with DTC, DTC currently maintains liquidity resources of $2.5 billion composed of a $600 million all-cash Participants Fund and a committed line of credit in the amount of $1.9 billion with a consortium of banks. DTC's committed line of credit was recently increased from $1.4 billion. Given that financial firms have become increasingly interdependent, DTC recognizes that there is a possibility of "contagion" among several related Participants. Financial problems at one Participant may impact the stability of another related Participant, potentially causing both to fail simultaneously. Because of concerns about this potential, DTC and its regulators have agreed that DTC should increase its available liquidity resources so that DTC would be able to withstand the failure of a financial family of affiliated DTC Participants.[5] In order to address these concerns, DTC is proposing to (i) increase by $700 million the total cash deposits to DTC's all-cash Participants Fund, so that the aggregate amount of the required cash deposits to DTC's Participant Fund and the required preferred stock investments of Participants would be increased to $1.3 billion from $600 million and (ii) limit the aggregate maximum net debit cap[6] for any Affiliated Family to $3 billion.

The following variables are currently used in the determination of each Participant's required Fund deposit:

(1) The six largest intra-day net debit peaks for a Participant over a rolling 60-business day period.

(2) Minimum Fund Deposit: $10,000.

(3) Fund Size: $600 Million.

DTC will continue to employ these variables to calculate the first $600 million of the required $1.3 billion Fund. The remaining $700 million will be allocated proportionately among the Affiliated Families whose aggregate net debit caps per family exceed $2.3 billion.[7] An Affiliated Family whose net debit cap exceeds $2.3 billion would be required to contribute a portion of the remaining $700 million calculated by dividing the amount by which the Affiliated Family's net debit cap exceeds $2.3 billion by the sum of the amount by which each Affiliated Family's net debit cap exceeds $2.3 billion.[8] Once an Affiliated Family's additional Participant's Fund requirement has been established, DTC will allocate this sum among the Participants comprising the Affiliated Family in proportion to each Participant's adjusted net debit cap.[9] This algorithm will be systematically used to calculate the allocations for the Participants of Affiliated Families, unless each of the Participants that comprise an Affiliated Family provides DTC with written instructions to allocate the aggregate net debit cap differently. While the Participants of an

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] DTC currently has 332 Participants, most of which are broker-dealers or banks with one Participant account. Large integrated organizations, however, typically have several "legal entities" that each are DTC Participants (*e.g.*, a bank custodian entity and a separate securities firm entity).

[4] Under this definition, DTC currently has 47 Affiliated Families.

[5] The Commission is the primary federal regulator of DTC as a clearing agency. DTC is also a limited purpose trust company established under New York Banking Law and a state member bank of the Federal Reserve System. As such, the The Federal Reserve Bank of New York (FRBNY) and the New York State Department of Banking have regulatory authority over DTC.

[6] DTC ensures that timely settlement can be completed in the event of an inability to settle by a Participant with the largest settlement obligation, by setting limits (called net debit caps) for each Participant. A Participant's net debit is limited throughout the processing day to a net debit cap that is the lesser of four amounts: (1) An amount based on the average of the three largest net debits that the Participant incurred over a rolling 70 business day period, (2) an amount, if any, determined by the Participant's settling bank, (3) an amount, if any, determined by DTC, or (4) $1.8 billion.

[7] In accordance with its current practice, DTC would continue to maintain a liquidity cushion of $200 million between its largest net debit cap and its liquidity resources (*i.e.*, DTC's current liquidity of $2.5 billion minus the $200 liquidity cushion it maintains).

[8] DTC will adjust the net debit caps of the Participants that comprise the Affiliated Families so that the aggregate affiliated net debit cap does not exceed $3 billion. Currently 18 Affiliate Families consisting of 57 DTC Participants would be subject to these Affiliated Family provisions. Thirteen Affiliated Families would be required to reduce their overall Net debit cap.

[9] The proposed DTC Affiliated Family Algorithm can be viewed on the Commission's Web site at *http://www.sec.gov/rules/sro/dtc/2008/34-58757.pdf* and at DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2008/dtc/2008-12.pdf*.

Affiliated Family may give instructions to reapportion their net debit caps among themselves, they cannot reallocate to any one Participant a debit cap that is greater than the DTC system calculated net debit cap for that Participant.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [10] and the rules and regulations thereunder applicable to DTC because it should assure the safeguarding of securities and funds in DTC's custody or control or for which it is responsible by increasing DTC's liquidity resources to enable it to complete settlement in the event of a failure of a financial family of affiliated Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The risk mitigation effects of the proposed change do not impose any unreasonable or inappropriate burden on competition. The revised net debit cap limits and increased Participant Fund are allocated among those entities whose interdependencies have raised concern.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been discussed with several Participants. Written comments relating to the proposed rule change have been received by DTC and are addressed by the proposed rule change. DTC will notify the Commission if it receives additional comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety 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 such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[10] 15 U.S.C. 78q–1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2008–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2008–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2008/dtc/2008–12.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2008–12 and should be submitted on or before November 12, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–24972 Filed 10–20–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58770; File No. SR–NYSEArca–2008–103]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services That Apply to the Primary Only Plus Order

October 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2008, NYSE Arca, Inc. ("NYSE Arca" 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 substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to add new fees to the Schedule of Fees and Charges for Exchange Services (the "Schedule") that apply to the new Primary Only Plus ("PO+") Order type. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently filed for approval by the Commission a new order type known as the PO+ Order.[5] The PO+ Order is an enhanced version of the Primary Only ("PO") Order, which is a market or limit order that is routed to the primary, listing market, without sweeping the NYSE Arca book.[6] PO Orders are a form of directed order, and are only eligible for participation in the primary listing market's opening. The PO+ Order allows Equity Trading Permit ("ETP") Holders to route an order to the primary listing market at any time during the primary market's trading session. The PO+ Order is intended to provide additional flexibility and increased system functionality for NYSE Arca Users[7] by modifying the operability and eligibility of PO Orders.

In anticipation of the approval of the PO Plus Order type filing by the Commission, the Exchange proposes to add new fees to the Schedule. The proposal establishes a fee of $0.0008 for PO+ Orders routed to the NYSE during the core trading session that remove liquidity from the NYSE Order Book. No fee will be charged for Primary Only ("PO") and PO+ Orders routed to the NYSE for participation in the opening. Additionally, there will be no fee charged for PO+ Orders routed to the NYSE that provide liquidity the NYSE Order Book. The Exchange proposes a $0.0004 per share fee for PO+ Market-On-Close and Limit-On-Close Orders routed to the NYSE. Finally, the Exchange proposes a $0.0004 per share fee for odd-lots and partial odd-lots in PO Orders and PO+ Orders routed to the NYSE.

The Exchange believes that the proposed fees will foster additional flexibility and increased system functionality for NYSE Arca Users. The Exchange further believes that the proposed fees and credits are reasonable and that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(4) of the Act,[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed fees and credits are reasonable. The proposed rates further the objectives of Regulation NMS by promoting competition and granting fair and equal access to all exchange participants. The Exchange also believes that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder,[11] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–103. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2008–103 and should be submitted on or before November 12, 2008.

[5] *See* Securities Exchange Act Release No. 58431 (August 27, 2008), 73 FR 51681 (September 4, 2008) (notice of filing for SR–NYSEArca–2008–90).

[6] *See* NYSE Arca Equities Rule 7.31(x).

[7] *See* NYSE Arca Equities Rule 1.1(yy) for the definition of "User." Under Rule 1.1(yy), the term User means any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Marketplace pursuant to NYSE Arca Equities Rule 7.29. PO Orders, similar to all other order types offered by the Exchange, are available only to authorized Users.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–24739 Filed 10–20–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

e-Smart Technologies, Inc.; Order of Suspension of Trading

October 17, 2008.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of e-Smart Technologies, Inc. ("e-Smart," trading symbol ESMT). Questions have arisen concerning the accuracy and adequacy of publicly-available information about the company, particularly concerning: (1) e-Smart's statements concerning a large supply contract for 20 million units of its product, contained in a February 26, 2008, press release, a March 13, 2008, Current Report on Form 8–K and a May 15, 2008, news article, all of which are available on e-Smart's Web site; and (2) e-Smart's failure to make required periodic filings with the Commission of information required pursuant to the Securities Exchange Act of 1934 for any period since the period ending September 30, 2007. Questions have also arisen concerning a possible distribution of e-Smart's common stock without registration under the Securities Act of 1933.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period of 9:30 a.m. EDT on October 17, 2008, through 12:59 p.m. EDT on October 30, 2008.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8–25144 Filed 10–17–08; 4:15 pm]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11430 and #11431]

Texas Disaster Number TX–00308

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1791–DR), dated 09/13/2008.

Incident: Hurricane Ike.

Incident Period: 09/07/2008 through 10/02/2008.

EFFECTIVE DATE: 10/09/2008.

Physical Loan Application Deadline Date: 11/12/2008.

EIDL Loan Application Deadline Date: 06/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 09/13/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Gregg, Harrison, Shelby, Smith, Rusk.

Contiguous Counties/Parishes: (Economic Injury Loans Only):

Texas: Marion, Panola, Upshur, Van Zandt, Wood.

Louisiana: Caddo, DeSoto.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–25001 Filed 10–20–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11469 and #11470]

Illinois Disaster Number IL–00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1800–DR), dated 10/03/2008.

Incident: Severe Storms and Flooding.

Incident Period: 09/13/2008 and continuing through 10/05/2008.

EFFECTIVE DATE: 10/05/2008.

Physical Loan Application Deadline Date: 12/02/2008.

EIDL Loan Application Deadline Date: 07/03/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Illinois, dated 10/03/2008 is hereby amended to establish the incident period for this disaster as beginning 09/13/2008 and continuing through 10/05/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–25003 Filed 10–20–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11432 and #11433]

Louisiana Disaster Number LA–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1792–DR), dated 09/13/2008.

Incident: Hurricane Ike.

Incident Period: 09/11/2008 and continuing.

EFFECTIVE DATE: 10/10/2008.

Physical Loan Application Deadline Date: 11/12/2008.

EIDL Loan Application Deadline Date: 06/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance,

U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Louisiana, dated 09/13/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Parishes: (Physical Damage and Economic Injury Loans): Allen, Livingston, Orleans, Saint Martin, Saint Tammany, Tangipahoa.

Contiguous Parishes/Counties: (Economic Injury Loans Only):

Louisiana: Ascension, East Baton Rouge, Pointe Coupee, Saint Helena, Washington.

Mississippi: Amite, Hancock, Pearl River, Pike.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–25005 Filed 10–20–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6413]

Culturally Significant Objects Imported for Exhibition Determinations: "Reopening of the Medieval Europe Gallery"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Reopening of the Medieval Europe Gallery," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about November 17, 2008, for up to four years, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 14, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–25006 Filed 10–20–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6405]

Notice of Meeting of the Advisory Committee on International Law

A meeting of the Advisory Committee on International Law will take place on Friday, November 7, 2008, from 10 a.m. to approximately 4 p.m., in Room 1105 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, John B. Bellinger, III, and will be open to the public up to the capacity of the meeting room. It is anticipated that the agenda of the meeting will cover a range of current international legal topics, including the recent claims settlement with Libya; legal issues involving Kosovo; issues regarding the International Criminal Court; and international legal issues for the incoming administration. Members of the public will have an opportunity to participate in the discussion.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public who wish to attend the session must, by Wednesday, November 5, 2008, notify the Office of the Assistant Legal Adviser for Claims and Investment Disputes (telephone: 202–776–8343) of their name, date of birth; citizenship (country); ID number, *i.e.*, U.S. government ID (agency), U.S. military ID (branch), passport (country) or driver's license (state) number; professional affiliation, address and telephone number in order to arrange admittance. This includes admittance for government employees as well as others. All attendees must use the "C" Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated: October 15, 2008.

Sharla Draemel,

Attorney-Adviser, Office of Claims and Investment Disputes, Office of the Legal Adviser, Executive Director, Advisory Committee on International Law, Department of State.

[FR Doc. E8–25015 Filed 10–20–08; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Transportation Border Congestion Relief Program

AGENCY: Department of Transportation (DOT).

ACTION: Notice; announcement of the designated projects under the Transportation Border Congestion Relief Program.

SUMMARY: The Department of Transportation (DOT) announces the selection of the Transportation Border Congestion Relief (TBCR) Program applications to be designated as the TBCR Projects. The DOT has identified three surface transportation projects, two on the United States/Mexico border and one on the United States/Canada border, which can help improve border travel times.

FOR FURTHER INFORMATION CONTACT: Mr. Marcus J. Lemon, Chief Counsel and Ms. Alla C. Shaw, Special Counsel, (202) 366–0740, *Alla.Shaw@dot.gov*, HCC–3, Room E84–301, 1200 New Jersey Avenue, SE., Washington, DC 20590, HCC Team Leader, or Mr. Roger Petzold, Team Leader, Border, Interstate, and GIS Program, (202) 366–4074, *Roger.Petzold@dot.gov*, HEPI–10, Room E74–312, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Electronic Access:* An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background: On May 30, 2008, the DOT published a notice in the **Federal Register** seeking applications from interested international land border States, bridge, and tunnel operators, and

private entities. (73 FR 31183). The DOT received 10 applications. The applications were reviewed for technical merit by a multiagency Technical Review Panel (TRP) comprised of staff from the DOT, the General Services Administration, and the U.S. Customs and Border Protection agency with expertise in the areas of project development and finance, infrastructure, and facility operation. The TRP evaluated each application based on the applicant's responsiveness to the elements set forth in the May 30 **Federal Register** notice. The TRP also noted factors affecting likelihood of success, such as the current status of the proposed project and the benefits of the project to its users and the economy. A second tier review of the applications was conducted by a Management Review Panel (MRP) comprised of senior DOT, Federal Highway Administration, Federal Motor Carrier Safety Administration, and Federal Railroad Administration staff. The MRP reviewed the TRP's preliminary assessments of the applications and evaluated each application against the primary goals of the TBCR Program: (1) Improved cross-border travel times (congestion reduction) and (2) use of innovative project delivery and finance. Based on the technical review conducted by TRP and further evaluation of the MRP, DOT identified three projects designated as the Transportation Border Congestion Relief Projects.

1. Cascade Gateway Expanded Cross-border Advanced Traveler Information System—Submitted by the Washington State Department of Transportation.

2. State Route 11/Otay Mesa East Port of Entry (San Diego, California)—Submitted by the California Department of Transportation.

3. East Loop Bypass Rail Crossing (Laredo, Texas)—Submitted by the Kansas City Southern Railway Company.

The DOT encourages State departments of transportation and other project sponsors to continue to advance those ideas contained in the applications that were not selected.

Authority: 49 U.S.C. 101.

Issued on: September 18, 2008.

Thomas J. Barrett,

Deputy Secretary.

[FR Doc. E8–25060 Filed 10–20–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: 2006–25867]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Receipt of Application of Chicago Midway International Airport, Chicago, Illinois; Commencement of 60-Day Public Review and Comment Period; Notice of Public Meeting.

SUMMARY: The Federal Aviation Administration (FAA) received the final application from the City of Chicago for the participation of Chicago Midway International Airport (MDW) in the Airport Privatization Pilot Program and has determined that the final application is substantially complete and accepted for review. The FAA is seeking information and comments from interested parties on the final application. In furtherance of this effort, a public meeting will be held Saturday, November 8, 2008.

Title 49 U.S.C. section 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. The application procedures require the FAA to publish a notice of receipt of the final application in the **Federal Register** and accept public comment on the final application for a period of 60 days.

DATES: Comments must be received by December 22, 2008. Comments that are received after that date will be considered only to the extent possible.

Comments Invited

On Saturday, November 8, 2008, the Department of Transportation, Federal Aviation Administration, will conduct a public meeting to receive oral comments about the Chicago Midway final application; the Transportation Security Administration will also be participating.

The meeting will be held at The Marriott Chicago Midway, Midway Hotel Center, 65th and Cicero, Bedford Park, Illinois, 10 a.m. to 3 p.m.

Individuals wishing to address the Federal panel can sign up at the public meeting beginning at 9:30 a.m. The Federal panel will begin accepting comments at 10 a.m.

ADDRESSES: You may also send written comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

You must identify the docket number "FAA Docket No 2006–25867" at the beginning of your comments.

Examining the Application

The final application has been filed under FAA Docket Number 2006–25867. You may examine the final application on the Internet at *http://www.regulations.gov* or on the FAA's Web site *http://www.faa.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Operations Office (800–647–5527) is located at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. The Docket contains the preliminary and final applications, the agreements, any comments received and other information. The City of Chicago has also made copies of the final application available at the following locations:

Harold Washington Library Center, Government Publications Division (5th Floor), 400 S. State Street, Chicago, IL 60605, (312) 747–4300. Monday through Thursday, 9 a.m. to 9 p.m. Friday/Saturday, 9 a.m. to 5 p.m. Sunday, 1 p.m. to 5 p.m.

Archer Heights Library, Front Desk, 5055 S. Archer Avenue, Chicago, IL 60632, (312) 747–9241. Monday through Thursday, 9 a.m. to 9 p.m. Friday/Saturday, 9 a.m. to 5 p.m. Closed Sunday.

West Lawn Library, Front Desk, 4020 W. 63rd Street, Chicago, IL 60629, (312) 747–7381. Monday through Thursday, 9 a.m. to 9 p.m. Friday/Saturday, 9 a.m. to 5 p.m. Closed Sunday *http://www.ChicagoPublicLibrary.org.*

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Compliance Specialist, Airport Compliance Division, ACO–100, Office of Airport Compliance and Field Operations, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591. Telephone: 202–267–8741.

SUPPLEMENTARY INFORMATION: Title 49 of the U.S. Code Section 47134 authorizes

the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On September 16, 1997, the Federal Aviation Administration issued a notice of procedures to be used in applications for exemption under Airport Privatization Pilot Program (*Notice of final application procedures for the Airport Privatization Pilot program: Application Procedures*, 62 FR 48693–48708 (September 16, 1997) (Notice) (as modified, 62 FR 63211, Nov. 26, 1997). A request for participation in the Pilot Program must be initiated by the filing of either a preliminary or final application for exemption with the FAA.

The City of Chicago submitted a preliminary application to the Airport Privatization Pilot Program for Chicago Midway International Airport on September 14, 2006, the filing date of the preliminary application. The preliminary application was posted on the Docket Management System (now Regulations.gov) on September 15, 2006 at Docket No. 2006–25867 and readily available for public review. On October 3, 2006, the FAA informed the City that the application met the procedural requirements for participation in the airport privatization pilot program. This letter, posted on the Docket Management System on October 10, 2006, advised the City that the FAA accepted the application for review and that the City may select a private operator, negotiate an agreement and submit a final application to the FAA.

On October 14, 2008, the City of Chicago filed its final application. The City selected Midway Investment and Development Company LLC ("MIDCo") to operate the Airport under a 99-year lease. The City will receive $2.521 billion upon signing the lease. In the final application, the City requested an exemption under 49 U.S.C. section 47134(b)(1) to permit the City to use revenue from the lease of airport property for non-airport purposes and under 49 U.S.C. section 47134(b)(2) to forego the repayment of Federal grants; and MIDCo requested an exemption under 49 U.S.C. section 47134(b)(3) to permit MIDCo to earn compensation from the operation of the airport.

The purpose of the public meeting scheduled for Saturday, November 8, 2008, is to accept oral comments on the Chicago Midway final application for inclusion in Docket No. 2006–25867. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket. The Federal panel will not be able to discuss the application or the pending agency decision because the Midway final application is presently before the agency for a decision. Sign and oral interpretation can be made available at the meeting, if requested 10 calendar days before the meeting. The Federal panel will begin accepting comments at 10 a.m.

The FAA has determined that the application is substantially complete. As part of its review of the final application, the FAA will consider all comments and written information submitted by interested parties during the 60-day comment period for this notice.

Issued in Washington, DC, on October 16, 2008.

Randall Fiertz,

Director, Office of Airport Compliance and Field Operations.

[FR Doc. E8–25050 Filed 10–20–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for McCarran International Airport, Las Vegas, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Clark County, Nevada under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On July 10, 2007 (72 FR 40357), the FAA determined that the noise exposure maps submitted by Clark County under Part 150 were in compliance with applicable requirements. On September 18, 2008, the FAA approved the McCarran International Airport noise compatibility program. All of the recommendations of the program were approved. One Noise Abatement Measure relating to new or revised flight procedures for noise abatement was proposed by the airport operator.

DATES: *Effective Date:* The effective date of the FAA's approval of the McCarran International Airport noise compatibility program is September 18, 2008.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Regional Environmental Protection Specialist, Federal Aviation Administration, Western Pacific Region, Mailing address: P.O. Box 92007, Los Angeles, CA 90009–2007. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Telephone 310/725–3615. Documents reflecting this FM action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for McCarran International Airport, effective September 18, 2008.

Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of 14 CFR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Burlingame, California.

The Clark County submitted to the FAA on January 17, 2007, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 2002 through June 2006. The McCarran International Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on July 10, 2007. Notice of this determination was published in the **Federal Register** on July 24, 2007 (72 FR 40357).

The McCarran International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions (from 2004 to beyond the year 2009). It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 U.S.C. 47504 of the Act.

The FAA has formally received the noise compatibility program for LAS, effective on June 9, 2008. The FAA began its review of the program on June 9, 2008, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 22 proposed actions for noise abatement and noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved, by the Manager of the Airports Division, Western-Pacific Region, effective September 18, 2008.

Outright approval was granted for eleven (11) of the 13 noise abatement measures. FAA approved all nine (9) noise mitigation measures. Two Noise Abatement Measures were disapproved.

The approved noise abatement measures included: Maintain and clarify the existing informal preferential runway use program: Encourage the use of existing noise abatement flight tracks to ensure that aircraft fly over historic flight corridors: Continue to use designated engine run-up areas at the airport for maintenance purposes: Continue to support the use of general aviation reliever airports in the Clark County Airport System: Continue the biannual noise monitoring program for fixed-wing aircraft and annual noise monitoring for helicopter tour traffic: Conduct a study to determine if the use of advanced navigational technologies could enable pilots to follow more predictable and precise flight tracks, thereby minimizing over flights and noise in areas developed with noise-sensitive land uses: Conduct a study to determine the feasibility and noise reduction benefits of establishing continuous descent approach (CDA) procedures at the airport: Conduct a study of the "distant" noise abatement departure profile (NADP) as described in FAA Advisory Circular 91–53A, Noise Abatement Departure Profiles, to determine the potential for reducing aircraft noise exposure in the airport environs: Continue to encourage airlines to use quieter aircraft and establish a recognition program for airlines that adhere to the principles of the Department of Aviation's "fly quiet and safely" program; Continue to support legislation that establishes quieter engine standards for all aircraft types; Continue to pursue the construction of a Southern Nevada Regional Heliport; Expand the public information program related to the NCP for LAS and publish a "fly quietly and safely" program brochure.

Approved noise mitigation measures include: Establish a voluntary program to acquire properties developed with airport-incompatible land uses that will be exposed to aircraft noise of DNL 70 dB and higher based on the 2011 noise exposure map; Establish a voluntary program to acquire properties developed with airport-incompatible land uses that will be exposed to aircraft noise of DNL 65–70 dB based on the 2011 noise exposure map and adjacent properties, as appropriate, to prevent neighborhood abandonment; Establish a voluntary sound insulation and/or transaction assistance program for properties developed with airport-incompatible land uses that will be exposed to aircraft noise DNL 65 to DNL 70 based on the 2011 noise exposure map; Continue to work with the Clark County Department of Comprehensive Planning, the City of Henderson Community Development Department, the University of Nevada, Las Vegas (UNLV), and other appropriate agencies to amend land use and/or master plans to discourage the introduction of noise-sensitive and otherwise incompatible land uses in areas exposed to aircraft noise of DNL 60 and higher; Continue to support redevelopment in areas exposed to aircraft noise of DNL 65 and higher that are transitioning from noise sensitive land uses to airport-compatible land uses; Update the Airport Environs Overlay District (AEOD) map to reflect changes in aircraft noise patterns that have occurred since the AEOD was last updated, and add a new AE–60 subdistrict; Revisit land use compatibility requirements codified in the AEOD ordinance and update sections of the ordinance, as necessary, to include a new AE–60 subdistrict and to reflect sound attenuation requirements recently adopted as part of the MUOD ordinance; Continue to actively support enforcement of the AEOD through ongoing review of development applications and condition airport related issues as appropriate; Pursue the establishment of airport

noise disclosure requirements at the local or state level.

FAA disapproved the following two Noise Abatement measures: Continue to support legislation that establishes quieter engine standards for all aircraft types: Request that FAA increase the length of the final straight-in approach segment for arrivals on Runways 1 L, 1 R, 7L and 7R during visual meteorological conditions (VMC).

These determinations are set forth, in detail, in the Record of Approval signed by the Manager of the Airports Division, Western-Pacific Region, on September 18, 2008. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Clark County Department of Aviation. The Record of Approval will be available on-line at: *http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/part_150/states/*.

Issued in Hawthorne, California, on September 29, 2008.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region, AWP-600.

[FR Doc. E8–24817 Filed 10–20–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Meadows Field Airport, Bakersfield, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by County of Kern, Department of Airports under the provisions of Title I of the Aviation Safety and Noise Abatement Act, as amended, (Public Law 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 9652 (1980). On January 16, 2008, the FAA determined that the noise exposure maps submitted by County of Kern, Department of Airports under Part 150 were in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's approval of the Noise Compatibility Program for Meadows Field Airport is September 18, 2008.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Federal Aviation Administration, Los Angeles Airports District Office, P.O. Box 92007, Los Angeles, CA 90009–2007, Telephone: 310/725–3637. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Meadows Field Airport, effective September 18, 2008. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, as amended (hereinafter referred to as the "Act") [recodified as 49 U.S.C. 47504], an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Hawthorne, California.

The County of Kern, Department of Airports submitted to the FAA on August 28, 2007, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 19, 2005 through August 28, 2007. The Meadows Field Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on January 16, 2008. Notice of this determination was published in the **Federal Register** on February 20, 2008 (73 FR 940 1–9402).

The Meadows Field Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions (from October 10, 2005 to beyond the year 2010). It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 U.S.C. 47504 (formerly Section 104(b) of the Act). The FAA began its review of the program on June 23, 2008 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such

program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained ten (10) proposed actions for noise abatement, land use planning and program management on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved, by the Manager of the Airports Division, Western-Pacific Region, effective September 18, 2008.

Outright approval was granted for all ten (10) specific program measures. The approved measures included such items as: Continue Voluntary Policies That Limit Turbojet Training Operations; Continued Informal Preferential Use of Runways 30 LJR; Continue To Use Intersection Takeoffs for Single and Twin-Engine Aircraft at the Taxiway F Intersection on Runway 30R; Revise Airport Land Use Compatibility Plan (ALUCP) Zones To Reflect the Ultimate Runway Configuration if the Third Parallel Runway Is Included in the Master Plan and Pursued by the County; Maintain Compatibility Planned Areas Within the Airport Influence Area; Maintaining Compatible Zoning Within Airport Influence Area (AlA); Amend Section 4.8 of the Airport Land Use Compatibility Plan (ALUCP) To Include Compatibility Criteria That Explicitly Identify Compatible Land Uses; Amend Section 4.8 of the Airport Land Use Compatibility Plan (ALUCP) To Incorporate Prescriptive Noise Standards To Address Airport Noise Concerns in New Construction and Major Alterations to Existing Structures; Continue Noise Complaint Tracking Program; Update Noise Exposure Maps and Noise Compatibility Program; Monitor Implementation of Updated F.A.R. Part 150 Noise Compatibility Program.

These determinations are set forth in detail in the Record of Approval signed by the Manager of the Airports Division, Western-Pacific Region, on September 18, 2008. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the County of Kern Department of Airports, Meadows Field. The Record of Approval also will be available on-line at: *http://www.faa.gov/airports_airtraffic/airports/environmentai/airport_noise/part_150/states/* .

Issued in Hawthorne, California on September 29, 2008.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. E8–24814 Filed 10–20–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2008–0047]

Notice of Buy America Waiver Request by the Massachusetts Bay Transportation Authority for Final Assembly of Rail Rolling Stock

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Buy America waiver request and call for comment.

SUMMARY: The Massachusetts Bay Transportation Authority (MBTA) has asked the Federal Transit Administration (FTA) to waive its Buy America requirements on the basis of public interest to permit Vossloh España S.A. (Vossloh) to manufacture and assemble two pilot locomotives in Spain. MotivePower, Inc., a domestic competitor to Vossloh has asked FTA to deny MBTA's request. FTA seeks public comment before deciding whether to grant MBTA's request. This Notice sets forth MBTA's arguments for and MotivePower's arguments against a public interest waiver and seeks comment thereon.

DATES: Comments must be received by October 28, 2008. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following means, identifying your submissions by docket number FTA–2008–0047. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov*. Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) *Web site: http://www.regulations.gov*. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

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

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the "Federal Transit Administration" and include docket number FTA–2008–0047. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *www.regulations.gov*. For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For questions please contact Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to seek public comment on whether the Federal Transit Administration should waive its Buy America requirements of 49 CFR Part 661 for two prototype locomotives to be manufactured and assembled in Spain by Vossloh España S.A. (Vossloh) for the Massachusetts Bay Transportation Authority (MBTA).

The Massachusetts Bay Transportation Authority (MBTA) is procuring 28 new diesel electric locomotives. These locomotives will replace the older portion of its commuter rail locomotive fleet as well as to meet the increasing demand on [its] commuter rail system. MBTA has asked for delivery of these locomotives to commence in 2011, at which time fifty-four percent of its fleet of eighty locomotives will have reached its useful life of twenty-five years.

Two parties submitted proposals—MotivePower, Inc. (MotivePower) and Vossloh España S.A. (Vossloh). These parties prepared and submitted their Best and Final Offers (BAFO) on May 6, 2008. Vossloh's BAFO was for a new-design locomotive. With its BAFO, Vossloh certified non-compliance with the Federal Transit Administration's (FTA) Buy America requirements for the assembly of pilot locomotives. Vossloh asked MBTA to petition FTA for a waiver of its Buy America requirements.

By letter dated September 3, 2008, MBTA forwarded Vossloh's request for

a public interest waiver from the requirements of 49 U.S.C. 5327(j) and the applicable Buy America regulations at 49 CFR part 661. Specifically, MBTA has asked FTA to allow Vossloh to assemble two pilot locomotives in Spain.

Without the waiver, Vossloh estimates that the geographic separation between the design-engineering department in Spain and the final assembly facility in Mayfield, Kentucky, would result in an unacceptable increase in labor costs to Vossloh. A waiver for final assembly of two pilot locomotives would limit the cost, advance the schedule, and therefore reduce Vossloh's bid price for the entire procurement.

Vossloh and MBTA believe that such a waiver is in the public interest because it will enable Vossloh "to submit a competitive bid with respect to price and schedule," and because it will "expand the competitive range to include Vossloh as a compliant bidder."

With certain exceptions, FTA's "Buy America" requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States. 49 U.S.C. 5323(j)(1). One such exception is if applying the Buy America requirements "would be inconsistent with the public interest." 49 U.S.C. 5323(j)(2)(A). Before granting such waiver, FTA must issue a detailed written statement justifying why the waiver is in the public interest, and must publish this justification in the **Federal Register**, providing the public with a reasonable time for notice and comment of not more than seven calendar days. 49 CFR 661.7(b). This notice satisfies the aforementioned requirement.

MotivePower, Inc. (MotivePower), a competitor to Vossloh, has written several letters opposing MBTA's request for a Buy America waiver. If awarded the contract, MotivePower would perform final assembly at its Boise, Idaho, facilities. According to MotivePower, a Buy America waiver in favor of Vossloh would jeopardize up to 200 current full time employees in its Boise, Idaho, facility and additional jobs in its supplier plants located across the country. MotivePower distinguishes between this procurement for passenger locomotives and those of light rail vehicles for which FTA has granted waivers in the past. Unlike the market for light rail vehicles, MotivePower states that "domestic capacity and engineering know how [with respect to passenger locomotives] has, quite fortunately, not yet been lost to foreign competition."

Before deciding whether to grant MBTA's request, FTA seeks comment from all interested parties. In the interest of transparency, FTA has published copies of MBTA's request and the letters it received from MotivePower. Interested parties may access these materials by visiting the docket site at *http://www.regulations.gov,* docket number FTA–2008–0047. Please submit comments by October 28, 2008. Late-filed comments will be considered to the extent practicable.

Issued this 15th day of October, 2008.

Severn E.S. Miller,

Chief Counsel.

[FR Doc. E8–25063 Filed 10–20–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 16, 2008.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 20, 2008 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1028.

Type of Review: Extension.

Title: INTL–941–86 (NPRM) and INTL–655–87 (Temporary) Passive Foreign Investment Companies.

Description: These regulations specify how U.S. persons who are shareholders of passive foreign investment companies (PFICs) make elections with respect to their PFIC stock.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 112,500 hours. Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Kimberly Nelson, (202) 395–3787, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E8–25007 Filed 10–20–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Proposed Information Collection (Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation, When Applicable)) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's eligibility for dependency and indemnity compensation, death compensation, and/or accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 22, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0005" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation, When Applicable), VA Form 21–535.

OMB Control Number: 2900–0005.

Type of Review: Extension of a currently approved collection.

Abstract: Surviving parent(s) of veterans whose death was service connected complete VA Form 21–535 to apply for dependency and indemnity compensation, death compensation, and/or accrued benefits. The information collected is used to determine the claimant's eligibility for death benefits sought.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,320 hours.

Estimated Average Burden Per Respondent: 1 hour 12 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,600.

Dated: October 8, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–24977 Filed 10–20–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (10–21088)]

Agency Information Collection (Survey of Veteran Enrollees (Quality and Efficiency of VA Health Care)) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 20, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–New (10–21088)" in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–New (10–21088)."

SUPPLEMENTARY INFORMATION:

Title: Survey of Veteran Enrollees Quality and Efficiency of VA Health Care, VA Form 10–21088.

OMB Control Number: 2900–New (10–21088).

Type of Review: New collection.

Abstract: VA Form 10–21088 will be used to collect data that is necessary to promote quality and efficient delivery of health care through the use of health information technology transparency regarding quality, price and better incentives for program beneficiaries, enrollees and providers.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 5, 2008 at page 45528.

Affected Public: Individuals or Households.

Estimated Annual Burden: 18,133.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 80,080.

Dated: October 9, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–24999 Filed 10–20–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Prosthetics and Special Disabilities Programs will be held November 5–6, 2008 in Room 230, at VA Central Office, 810 Vermont Avenue, NW., Washington, DC. The sessions will begin at 8:30 a.m. each day and will end at 4:30 p.m. on November 5 and at 12 noon on November 6. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on VA's prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or visual impairment, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On the morning of November 5, the Committee will be briefed by a representative from the Department of Labor, the Director of Veterans Employment Coordination Services, and the Deputy Chief Nursing Officer. In the afternoon, the Committee will receive briefings from the Director of Physical

Medicine & Rehabilitation Service, Chief Consultant for Women Veterans Health, and Associate Chief Consultant for Homeless & Residential Rehabilitation. On November 6, there will be a panel presentation on VA's Amputee System of Care.

No time will be allocated for receiving oral presentations from the public. However, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Mr. Larry N. Long, Designated Federal Officer, Veterans Health Administration, Patient Care Services, Rehabilitation Services (117D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Mr. Long at (202) 461–7354.

Dated: October 10, 2008.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–24937 Filed 10–20–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
October 21, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing 48 Species on Kauai as Endangered and Designating Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2008–0046; MO 9221050083-B2]

RIN 1018-AV48

Endangered and Threatened Wildlife and Plants; Listing 48 Species on Kauai as Endangered and Designating Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list 48 species on the island of Kauai in the Hawaiian Islands as endangered under the Endangered Species Act of 1973, as amended (Act). We also propose to designate critical habitat for 47 of these species totaling 27,674 acres (ac) (11,199 hectares (ha)). Critical habitat designation is not prudent for one species, *Pritchardia hardyi*, which is threatened by overcollection, vandalism, or other human activity. This proposed rule, if made final, would extend the Act's protections to these species.

DATES: We will accept comments received on or before December 22, 2008. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by December 5, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R1-ES-2008–0046; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the "Public Comments" section below for more information).

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Honolulu, HI 96850; telephone 808-792-9400; facsimile 808-792-9581. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties. We particularly seek comments concerning:

(1) Specific information on:

- The amount and distribution of habitat for the species included in this proposed rule,
- What areas currently occupied, and that contain features essential for the conservation of the species, we should include in the designation and why, and
- What areas not currently occupied are essential to the conservation of the species and why.

(2) Biological, commercial trade, or other relevant data concerning threats (or lack thereof) to these species.

(3) Additional information concerning the range, distribution, and population sizes of these species, including the locations of any additional populations of these species.

(4) Any information on the biological or ecological requirements of these species. The following information regarding the potential economic and other impacts of the proposed critical habitat designation is requested solely so that we may consider the potential effects of critical habitat designation in the final rule; this information will not be considered in the decision whether to list these 48 species.

(5) Land use designations and current or planned activities in the areas occupied by these species and their possible impacts on these species and proposed critical habitat.

(6) Which areas are appropriate as critical habitat for these species and why they should be proposed for designation as critical habitat.

(7) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation outweighs threats to the species caused by the designation, such that the designation of critical habitat for any particular species is prudent.

(8) Information on whether the draft economic analysis (DEA) identifies all State and local costs and benefits attributable to the proposed critical habitat designation, and information on any costs or benefits that we have overlooked.

(9) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes likely if we designate critical habitat.

(10) Information on whether the DEA identifies all costs that could result from the critical habitat designation and whether you agree with the analysis.

(11) Information on whether the DEA correctly assesses the effect on regional costs associated with any land use controls that may result from the critical habitat designation.

(12) Information on areas that the critical habitat designation could potentially impact to a disproportionate degree.

(13) Economic data on the incremental costs of designating any particular area as critical habitat.

(14) Information on any quantifiable economic benefits of the designation of critical habitat.

(15) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area in critical habitat under section 4(b)(2) of the Act.

(16) Information on economic impacts that have occurred since the previous economic analyses were completed relevant to critical habitat "overlap" areas, or that may occur in the future due to designation of critical habitat (see Economic Analysis, below, for details).

(17) Information on economic impacts relevant to areas where the proposed critical habitat does not overlap with existing critical habitat for other plants on the island of Kauai.

(18) Any foreseeable economic, national security, or other potential impacts resulting from the proposed critical habitat designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(19) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted

on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule and draft economic analysis by mail from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or by visiting the *Federal eRulemaking Portal* at *http://www.regulations.gov*.

Background

An Ecosystem-based Approach

On the island of Kauai, as on most of the Hawaiian Islands, native species that occur in the same habitat types (ecosystems) depend on many of the same biological features and on the successful functioning of that ecosystem to survive. We have therefore organized the species addressed in this proposed rule by common ecosystem. Although the listing determination for each species is analyzed separately, we have organized the specific analysis for each species within the context of the broader ecosystem in which it occurs to avoid redundancy. In addition, native species that share ecosystems often face a suite of common factors that may threaten them, and these threat factors require similar management actions to ameliorate or eliminate them. Effective management of these threat factors often requires implementation of conservation actions at the ecosystem scale to enhance or restore critical ecological processes and provide for long-term viability of those species in their native environment. Thus, by taking this approach, we hope to not only organize this proposed rule effectively, but also to more effectively focus conservation management efforts on the common threats that occur across these ecosystems, restore ecosystem function for the recovery of each species, and provide conservation benefits for associated native species, thereby potentially precluding the need to list other species under the Act that occur in these shared ecosystems.

We propose to list each of the 48 species endemic to the island of Kauai addressed in this rule as an endangered species. These 48 species (45 plants, 2 birds, and 1 picture-wing fly) are found in 6 ecosystem types: lowland mesic, lowland wet, montane mesic, montane wet, dry cliff, and wet cliff (Table 1). Although most of these species are restricted to a single ecosystem, some are found in multiple ecosystems. For each species, we identified and evaluated those factors that threaten the species and that may be common to all of the species at the ecosystem level. For example, the degradation of habitat by feral ungulates is considered a threat to each species within each ecosystem. As a result, this threat factor is considered to be a multiple ecosystem-level threat, as each individual species within each ecosystem faces a threat that is essentially identical in terms of the nature of the impact, its severity, its imminence, and its scope. We further identified and evaluated any threat factors that may be unique to certain species, and do not apply to all species under consideration within the same ecosystem. For example, the threat of avian malaria is unique to the two birds in this proposed rule, and is not applicable to any of the other species proposed for listing. We have identified such threat factors, which apply only to certain species within the ecosystems addressed here, as species-specific threats.

TABLE 1.—THE 48 KAUAI SPECIES AND THE ECOSYSTEMS UPON WHICH THEY DEPEND

Ecosystem	Species
Lowland Mesic	Plants: *Canavalia napaliensis*, *Chamaesyce eleanoriae*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Doryopteris angelica*, *Dubautia kenwoodii*, *Labordia helleri*, *Pittosporum napaliense*, *Platydesma rostrata*, *Psychotria hobdyi*, *Tetraplasandra bisattenuata*
Lowland Wet	Plants: *Chamaesyce remyi* var. *kauaiensis*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea eleelensis*, *Cyanea kolekoleensis*, *Cyanea kuhihewa*, *Cyrtandra oenobarba*, *Dubautia imbricata* ssp. *imbricata*, *Labordia helleri*, *Melicope paniculata*, *Melicope puberula*, *Phyllostegia renovans*, *Platydesma rostrata*, *Pritchardia hardyi*, *Stenogyne kealiae*, *Tetraplasandra bisattenuata*
Montane Mesic	Plants: *Chamaesyce remyi* var. *remyi*, *Diellia mannii*, *Labordia helleri*, *Myrsine knudsenii*, *Myrsine mezii*, *Platydesma rostrata*, *Psychotria grandiflora*, *Stenogyne kealiae*, *Tetraplasandra flynnii* Animals: Akekee, *Drosophila attigua*
Montane Wet	Plants: *Astelia waialeale*, *Chamaesyce remyi* var. *remyi*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *Dubautia waialeale*, *Geranium kauaiense*, *Keysseria erici*, *Keysseria helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Melicope degeneri*, *Melicope puberula*, *Myrsine mezii*, *Phyllostegia renovans*, *Platydesma rostrata*, *Psychotria grandiflora*, *Tetraplasandra flynnii* Animals: Akekee, Akikiki, *Drosophila attigua*
Dry Cliff	Plants: *Chamaesyce eleanoriae*, *Lysimachia scopulensis*, *Schiedea attenuata*, *Stenogyne kealiae*
Wet Cliff	Plants: *Chamaesyce remyi* var. *kauaiensis*, *Chamaesyce remyi* var. *remyi*, *Cyanea dolichopoda*, *Cyrtandra oenobarba*, *Cyrtandra paliku*, *Dubautia plantaginea* ssp. *magnifolia*, *Lysimachia iniki*, *Lysimachia pendens*, *Lysimachia venosa*, *Platydesma rostrata*, *Pritchardia hardyi*

Under the Act, we are required to designate critical habitat to the maximum extent prudent and determinable concurrently with the publication of a final determination that a species is endangered or threatened. In this rule, we are proposing to designate critical habitat for 47 of the 48 Kauai species. We have determined that the designation of critical habitat is not prudent for one species of native palm tree due to the increased threat of

collection that may result from such designation. The designation of critical habitat for the other 47 Kauai species is organized by common ecosystem. Although critical habitat is identified for each species individually, we have found that the conservation of each depends, at least in part, on the successful functioning of the commonly shared ecosystem. Each critical habitat unit identified in this proposed rule therefore contains the physical and biological features essential to the conservation of each species and those areas that are essential for the conservation of each associated species. Where the unit is not occupied by a particular species, we believe it is essential for the conservation of that species. All of the areas proposed for designation would constitute critical habitat for multiple species, based upon their shared habitat requirements. The identification of critical habitat also takes into account any species-specific conservation needs as appropriate. For example, the presence of specific host plants for larval development is essential for the conservation of the picture-wing fly *Drosophila attigua*, but is not a requirement shared by all species within the same ecosystem.

This approach represents a departure from our previous approaches to designating critical habitat for threatened and endangered species in Hawaii, which focused on discrete areas occupied by the species at the time of listing. Because Hawaii has 394 listed species (294 plants), the previous approach to critical habitat designations resulted in an overlapping and confusing patchwork of critical habitat areas that could be confusing to the public to interpret. More importantly, we have learned that many native Hawaiian plants and animals currently occupy areas of marginal habitat because the threats are reduced in those areas, but these species can thrive when reintroduced into historical habitats when threats are being effectively managed. For this reason, we believe it is important to designate unoccupied habitat in those cases where it is essential to the recovery of the species.

We believe the approach adopted in this proposed rule will make critical habitat in Hawaii a more useful conservation tool for land managers. Focusing on the management and restoration of habitat at the ecosystem scale and on ecosystem processes that these species require will result in more effective conservation than a designation based solely on the locations of the last few known individuals. In addition, we believe this approach will aid recovery given the uncertainties of climate change and other processes that may impact highly localized habitat conditions and essential features in the future. Critical habitat areas for multiple species may also better provide for the recovery of these species by guiding our conservation efforts as well as those of our partners, and by providing better information to the public and other entities about important conservation areas.

The Island of Kauai

The island of Kauai is the northernmost and oldest of the eight major Hawaiian Islands (Foote *et al.* 1972, p. 3). It was formed about 6 million years ago by a single shield volcano and is 553 square miles (sq mi) (1,430 sq kilometers (km)) in area. The island is characterized by deeply dissected canyons and steep ridges (Department of Geography 1998, p. 151). The large caldera, once the largest in the Hawaiian Islands, now extends about 10 mi (16 km) in diameter and comprises the elevated tableland of the Alakai Swamp (Department of Geography 1998, p. 151). To the west of the Alakai Swamp is the deeply dissected Waimea Canyon, extending 10 mi (16 km) in length and up to 1 mi (1.6 km) in width. Later volcanic activity on the southeastern flank of the volcano formed the smaller Haupu caldera. Subsequent erosion and collapse of its flank formed Haupu Ridge (Macdonald *et al.* 1983, p. 457).

The amount of rainfall on the Hawaiian Islands depends greatly on topography, and the orographic (mountain-caused) effect is revealed by the wide range in the pattern of annual rainfall, from 10 inches (in) to 450 in (25 centimeters (cm) to 1,145 cm) (Giambelluca and Schroeder 1998, p. 59). Variations in the landscape can create microclimates, with large changes in rainfall and wind patterns over very short distances (Wagner *et al.* 1999, p. 43). Mount Waialeale, Kauai's second highest point at 5,148 feet (ft) (1,569 meters (m)) in elevation (Walker 1999, p. 21) is one of the wettest spots on earth, with annual rainfall measured at more than 450 in (1,145 cm) (Department of Geography 1998, p. 151). One of the island's most famous features is the Na Pali Coast, where stream and wave action have cut deep valleys and eroded the land to form precipitous cliffs as high as 3,000 ft (910 m) (Joesting 1984, p. 14).

The current soil classification system for the Hawaiian Islands distinguishes soil types based on their measurable physical and chemical properties, and environmental factors that influenced their formation. Eleven of the 12 soil types occur in Hawaii (Gavenda *et al.* 1998, p. 96). Hawaii's basaltic rocks decompose to clay and various oxides and hydroxides when exposed to the weather in high rainfall areas. Silica and other elements are leached out, leaving the iron oxides, which are conspicuously red in color, and very evident in the eroded cliffs of Waimea Canyon. These red soils support plant life, and have low fertility and nutrient content (Walker 1999, p. 32). The soils in drier areas lack significant organic material and are characterized by deposits, called caliche, of soluble salts near the soil surface. Caliche may form concretions (solid mass or coalescence) around plant roots and stems (Walker 1999, p. 32).

Because of its age and relative isolation, levels of floristic diversity and endemism are higher on Kauai than on any other island in the Hawaiian archipelago. However, the vegetation of Kauai has undergone extreme alterations because of past and present land use. Land with rich soils was altered by the early Hawaiians and, more recently, converted to agricultural use (Gagne and Cuddihy 1999, p. 45) or pasture. Intentional and inadvertent introduction of alien plant and animal species has also contributed to the reduction in range of the native vegetation on the island of Kauai. (Throughout this rule, the terms "alien," "feral," "nonnative," and "introduced" all refer to species that are not naturally native to the Hawaiian Islands.) Most of the taxa included in this rule persist on steep slopes, precipitous cliffs, valley headwalls, and other regions where unsuitable topography has prevented urbanization and agricultural development, or where inaccessibility has limited encroachment by nonnative plant and animal species.

Kauai Ecosystems

The six Kauai ecosystems that support the species addressed in this proposed rule are described in the following sections.

Lowland Mesic

The lowland mesic ecosystem includes a variety of grasslands, shrublands, and forests, generally below 3,000 ft (1,000 m) elevation, that receive between 50 and 75 in (127 and 191 cm) annual rainfall, or in otherwise mesic substrate conditions (The Nature Conservancy (TNC) 2006b). In the Hawaiian Islands, this ecosystem is found on Hawaii, Maui, Molokai, Lanai, Oahu, and Kauai, on both windward and leeward sides of the islands. On Kauai, this ecosystem is typically found on the western slopes of the island

(Gagne and Cuddihy 1999, p. 75; TNC 2006b). Biological diversity is high in this system (TNC 2006b), and 11 of the 48 species included in this proposed rule are reported from this ecosystem (Hawaii Biodiversity and Mapping Program (HBMP) 2007; TNCH 2007).

Lowland Wet

The lowland wet ecological system is generally found below 3,000 ft (1,000 m) elevation on the windward sides of the main Hawaiian Islands, except Kahoolawe and Niihau (Gagne and Cuddihy 1999, p. 85; TNC 2006c). These areas include a variety of wet grasslands, shrublands, and forests that receive greater than 75 in (191 cm) annual precipitation, or are found in otherwise wet substrate conditions (TNC 2006c). On Kauai, this system is best developed in wet valleys and slopes adjacent to the summit plateau of Waialealae and Alakai (TNC 2006c). According to The Nature Conservancy (TNC), biological diversity is high in this system (TNC 2006c), and 16 of the 48 species included in this proposed rule are reported from this ecosystem (HBMP 2007; TNCH 2007).

Montane Mesic

A variety of natural communities (e.g., grasslands, shrublands, and forests) are found in the montane mesic ecological system. This system is found between 3,000 and 6,000 ft (1,000 and 2,000 m) elevation in areas receiving 50 to 75 in (127 to 191 cm) of precipitation yearly (TNC 2006e). The montane mesic system is found on the islands of Hawaii, Maui, Molokai, and Kauai. On Kauai, this system is best developed on the west-facing slopes. Biological diversity is ranked as moderate in the montane mesic system, according to TNC (TNC 2006e), and 11 of the 48 species included in this proposed rule are reported from this ecosystem (HBMP 2007; TNCH 2007).

Montane Wet

The montane wet ecological system is composed of natural communities (grasslands, shrublands, forests, bogs) found at elevations between 3,000 and 6,000 ft (1,000 and 2,000 m) and in areas where annual precipitation is greater than 75 in (191 cm) (TNC 2006f). This system is found on all of the main Hawaiian Islands except Niihau and Kahoolawe (TNC 2006f). On Kauai it is best developed in the summit plateau of Waialeale and Alakai. In this system, biological diversity is moderate to high (TNC 2006f), and 21 of the 48 species included in this proposed rule are reported from this ecosystem (HBMP 2007; TNCH 2007).

Dry Cliff

The dry cliff ecological system is composed of vegetation communities occupying steep slopes (greater than 65 degrees) in areas that receive less than 75 in (191 cm) of rainfall annually, or in otherwise dry substrate conditions (TNC 2006a). This system is found on all of the main Hawaiian Islands except Niihau, and on the island of Kauai is best developed in the leeward canyons. A variety of grasslands and shrublands occur within this system (TNC 2006a). Biological diversity is low to moderate in this system (TNC 2006a), and 4 of the 48 species included in this proposed rule are reported from this ecosystem (Hawaii Biodiversity and Mapping Program (HBMP) 2007; TNCH 2007).

Wet Cliff

The wet cliff ecological system is generally composed of grasslands and shrublands on near-vertical slopes (greater than 65 degrees) in areas that receive more than 75 in (191 cm) of annual precipitation, or that are in otherwise wet substrate conditions (TNC 2006d). This system is found on the islands of Hawaii, Maui, Molokai, Lanai, Oahu, and Kauai. On Kauai, this system is typically found on the windward cliffs adjacent to Waialeale (TNC 2006d). Biological diversity is low to moderate in this system (TNC 2006d), and 11 of the 48 species included in this proposed rule are reported from this ecosystem (HBMP 2007; TNCH 2007).

Description of the 48 Species

Here we provide a brief description of each of the 48 species proposed for listing, presented in alphabetical order by genus; plants are presented first, followed by animals.

Plants

Astelia waialealae (painiu), an herb in the Asteliaceae family, occurs in bogs and on bog hummocks (low mounds or ridges of vegetation) dominated by *Metrosideros polymorpha* (ohia) in the montane wet ecosystem at elevations between 4,000 and 5,000 ft (1,220 and 1,525 m) (Wagner *et al.* 1999, p. 1,461; TNCH 2007). *A. waialealae* was known historically from five locations in the Alakai Swamp region of Kauai (Wagner *et al.* 1999, p. 1,461; HBMP 2007). Between October and December 1994, botanists from the National Tropical Botanical Garden (NTBG) and the U.S. Fish and Wildlife Service (Service) undertook a systematic survey of bogs on the island of Kauai, revisiting all of the historically known locations of *A. waialealae*, as well as 16 additional bogs. At that time, *A. waialealae* was confirmed to exist in three bogs. One bog, known as Sincock Bog 1, contained three *Astelia* clumps with 3 individuals in one, 5 in another, and possibly 10 in the third, for a total of 18 individuals. Sincock Bog 2 contained two clumps, with one individual in each, and Waikoali Bog, or Circle Bog, contained two clumps with one individual in each (Perlman and Wood 1995, pp. 9-11). In 1996 and 1997, both Sincock Bog 1 and Sincock Bog 2 were fenced, followed by Circle bog in 1998. Regular monitoring of these bogs commenced, and with protection from the fences, there was an increase in numbers of clumps and individuals of *A. waialealae* found in all three bogs. By 2001, the numbers of clumps (and individuals) reached their peaks of 5 clumps (9 individuals) for Circle bog, 6 clumps (36 individuals) for Sincock Bog 1, and 2 clumps (7 individuals) for Sincock Bog 2. By 2003, numbers of individuals began dropping dramatically, with visible signs of poor health for those remaining (USFWS Kauai monitoring database 2008). Some individuals were removed at that point for preservation in local propagation facilities. Between December 2005 and January 2006, NTBG conducted botanical research around the summit bog region of Waialeale and located one clump of *A. waialealae* consisting of three individual plants. With the discovery of these three plants, the current total of *A. waialealae* is believed to be 27 individuals, possibly representing only 13 genetically distinct plants (Service 2005a; Wood 2006, pp. 8-9; USFWS Kauai monitoring database 2008).

Canavalia napaliensis (awikiwiki), a climbing plant in the pea family (Fabaceae), occurs in open sites, on talus slopes, and on gulch bottoms in mesic forest in the lowland mesic ecosystem, at elevations between 20 and 1,900 ft (6 and 579 m) (Wagner and Herbst 1999, p. 654; TNCH 2007). *C. napaliensis* was historically known from 12 locations along the northwestern coast of the island of Kauai, extending westward from Haena to Makaha ridge (HBMP 2007). Currently, this species is restricted to a small section of the Na Pali coast from Haena to Kalalau Valley (S. Perlman, pers. comm. 2000; HBMP 2007), in 5 populations totaling approximately 106 to 206 individuals (HBMP 2007). The populations are located in Hoolulu Valley (50 to 100 individuals); Waiahuaka Valley (1 individual); Pohakuao (5 individuals); Kalalau Valley (50 to 100 individuals); and Limahuli Valley (1 individual) (Wagner and Herbst 1999, p. 654; HBMP 2007).

Chamaesyce eleanoriae (akoko), a small shrub in the spurge family (Euphorbiaceae), is restricted to steep, north-facing, narrow ridge crests, outcrops, and steep rocky slopes and upper portions of basalt cliffs in the dry

cliff and lowland mesic ecosystems (Lorence and Wagner 1996, p. 68; K. Wood, NTBG, in litt. 2007a; TNCH 2007). Documented habitats include *Metrosideros-Diospyros* (ohia-lama) mesic forest, *Metrosideros* cliff shrubland, *Metrosideros* mesic shrubland, and *Eragrostis variabilis* (kawelu) coastal dry cliffs, at elevations between 885 and 3,499 ft (270 and 1,036 m) (HBMP 2007). *C. eleanoriae* was historically known from 10 populations totaling fewer than 500 individuals (K. Wood, in litt. 2007a; Lorence and Wagner 1996, pp. 68-70). Currently, three populations are known: one at the Kalalau Valley rim between 2,950 and 3,200 ft (900 and 975 m), below and between the two Kalalau lookouts; one at Alealau above Kalalau at 3,100 ft (945 m) elevation; and one at Pohakuao, an isolated hanging valley northeast of Kalalau, at elevations from 886 to 2,592 ft (270 to 790 m). As of the last monitoring visit in 2001, these 3 populations combined totaled fewer than 50 individuals (NTBG 2007).

Chamaesyce remyi var. *kauaiensis* (akoko), a shrub in the spurge family (Euphorbiaceae), is found in the lowland wet and wet cliff ecosystems in *Metrosideros polymorpha* wet forest at elevations between 1,900 and 2,297 ft (579 and 700 m) (Koutnik 1999, pp. 613-614; HBMP 2007; TNCH 2007). Little is known about the historical range of this species; however, two collections made on private lands at Kaholuamanao and near Hanapepe Falls in 1916 and 1926, respectively, indicate that its range likely extended south and west from its currently known locations on the island of Kauai (HBMP 2007). Currently, *C. remyi* var. *kauaiensis* is found in Lumahai Valley, Wainiha, Wailua River, the "Blue Hole" at the head of Wailua River in the Lihue-Koloa forest reserve, and at Iliiliula (K. Wood, pers. comm. 2005a; HBMP 2007). Based on surveys conducted from 2000 through 2004, the number of individuals at Lumahai Valley dropped from 50 to only "occasional." The number of individuals at Wailua River dropped from 500 to 200; the number of individuals at the Wainiha population increased from 200 to as many as 700; about 200 are found at "Blue Hole"; and a population of 20 individuals was found in Iliiliula (K. Wood, pers. comm. 2005a; HBMP 2007). The total number of individuals is at least 920 and possibly over 1,000 in the 5 populations.

Chamaesyce remyi var. *remyi* (akoko) is a vine-like shrub in the spurge family (Euphorbiaceae) found in the lowland mesic, lowland wet, wet cliff, montane mesic, and montane wet ecosystems in mesic to wet *Metrosideros polymorpha-Dicranopteris linearis* (ohia-uluhe) forest, at elevations between 1,200 and 4,100 ft (366 and 1,250 m) (Wood 1998; Koutnik 1999, pp. 613-614; HBMP 2007; TNCH 2007). This species is historically known from widely distributed populations on the island of Kauai (HBMP 2007). Currently *C. remyi* var. *remyi* is found in 10 populations totaling a little more than 350 individuals at Pohakupili, Makaleha, Malamamaiki, Limahuli, Lumahai, Limahuli-Hanakapiai, Kalalau-Honopu, Koaie canyon, Wahiawa drainage, and Puu Kolo (Wood 1998; K. Wood, pers. comm. 2005a; HBMP 2007).

Charpentiera densiflora (papala) is a tree in the amaranth family (Amaranthaceae) which occurs primarily in the lowland mesic ecosystem, with one record from the lowland wet ecosystem (Wagner *et al.* 1999, p. 190; HBMP 2007; TNCH 2007). This species is found in moist, closed areas, and grows along drainages and in gulches in valleys, primarily in *Diospyros-Metrosideros* (lama-ohia) mixed mesic forest, at elevations between 400 and 2,200 ft (122 and 671 m) (HBMP 2007). Historically, *C. densiflora* was found along the Kalalau trail in the Hoolulu Valley, with limited distribution in three valleys (including Hanakapiai and Hanakoa) along the Na Pali Coast of Kauai (Sohmer 1972, p. 294). Currently, 7 populations are known. totaling approximately 400 individuals, in Hanakapiai, Kalalau, Limahuli, Hoolulu, and Waiahuakua valleys, and in Pohakuao, a hanging valley between Kalalau and Hanakoa (HBMP 2007).

Cyanea dolichopoda (haha) is a shrub in the bellflower family (Campañulaceae). It is found in *Metrosideros polymorpha* lowland wet shrubland on a cliff face at approximately 2,300 ft (700 m) elevation within the wet cliff ecosystem (Lammers and Lorence 1993, p. 432; TNCH 2007). The species was first discovered in 1990 in the "Blue Hole" area below Mt. Waialeale, and the plant was last seen in 1992 (Lammers and Lorence 1993, pp. 431-432). However, additional individuals are very likely to be found in the extremely steep habitat with additional surveys (S. Perlman, in litt. 2007).

Cyanea eleeleensis (haha) is a shrub in the bellflower family (Campanulaceae) and is reported from the lowland wet ecosystem (Lammers 1992, p. 129; TNCH 2007). It was found growing in a shaded gulch in wet forest, surrounded by steep, precipitous cliffs of Pali Eleele, at an elevation of 699 ft (213 m) (HBMP 2007; Lammers 1992, p. 129). This species was discovered in Wainiha Valley on the island of Kauai in 1977, in one population noted as "fewer than 10" individuals (Lammers 1992, p. 129; K. Wood, pers. comm. 2000; HBMP 2007). Collections for genetic storage and ex situ propagation were not made at the time of the 1977 discovery. Since its discovery in 1977, subsequent surveys for this species have not been conducted in the original (type) location. Although individuals of this species were not relocated in surveys conducted in August 2001 and June 2002 in areas adjacent to the original location, much of the suitable habitat (*Metrosideros* lowland wet forest) for this species on Kauai has not been surveyed. If surveys are conducted, additional individuals are likely to be found (S. Perlman and K. Wood, pers. comm. 2007).

Cyanea kolekoleensis (haha), a shrub in the bellflower family (Campanulaceae), occurs in wet *Metrosideros polymorpha* forest in the lowland wet ecosystem at elevations of 2,125 to 2,500 ft (650 to 765 m) (Lammers 1992, p. 130; HBMP 2007; TNCH 2007). First discovered in 1987 in the Wahiawa drainage, the last known *C. kolekoleensis* was observed in 1992. Seeds were in storage and propagation for this species was attempted, but none survived (M. Clark, NTBG, in litt. 2007; Lyon Arboretum 2007). However, there are many areas within the ecosystem type in the Wahiawa drainage that have not been surveyed for this species, from Mt. Kahili to Kapalaoa and the Hanapepe Valley rim, and species experts are confident that additional individuals will be found (S. Perlman, in litt. 2007).

Cyanea kuhihewa (haha), a shrub in the bellflower family (Campanulaceae), is reported from *Metrosideros polymorpha-Dicranopteris linearis* wet forest at an elevation of 1,680 ft (512 m) in the lowland wet ecosystem (Lammers 1996, pp. 238-240; HBMP 2007; TNCH 2007). In a 1994 survey for *C. kuhihewa*, seven individuals were observed, most of which were damaged by a nonnative insect, the two-spotted leafhopper (*Sophonia rufofacia*) (NTBG Provenance Report 1994). In 2001, only one individual plant remained, and was observed dead in 2003 (Wood *et al.* 2002, p. 3; S. Perlman, pers. comm. 2003a). Prior to that time, seeds and tissue were collected for genetic storage and propagation (Wood *et al.* 2002, p. 3; Bender 2006, p. 1; N. Sugii, Lyon Arboretum, pers. comm. 2006; V. Pence, Cincinnati Zoo and Botanical Garden, pers. comm. 2007). This species is still found in cultivation at the Lyon Arboretum and the Cincinnati Zoo,

Center for Conservation and Research of Endangered Wildlife (D. Burney, NTBG, pers. comm. 2006; N. Sugii, pers. comm. 2006a; V. Pence, pers. comm. 2007).

Cyrtandra oenobarba (haiwale) is a subshrub (a lowgrowing woody shrub or perennial with a woody base) in the African violet family (Gesneriaceae) that occurs in the lowland wet and wet cliff ecosystems (Wagner *et al.* 1999, pp. 770-771; TNCH 2007). *C. oenobarba* is found on wet slopes, mossy areas, or in rock crevices near waterfalls in *Metrosideros polymorpha-Dicranopteris linearis* wet cliffs, forest and shrubland, at elevations between 1,320 and 2,800 ft (402 and 853 m) (Wood 1998, p. 3; HBMP 2007). Historically, wide-ranging collections were made of *C. oenobarba* on the island of Kauai, from the eastern side at Kekoiki ridge, the northern coast at Haena, the south-central area at Olokele and Hanapepe, and from the south at Haupu (NTBG Provenance Report 1993; HBMP 2007). Currently, populations of *C. oenobarba* in the Halelea Forest Reserve include east Mamalahoa (10 individuals), north Namolokama (15 to 200 individuals), and Hanalei Valley (scattered) on State land, and upper Lumahai Valley (50 individuals) and Wainiha (100 individuals) on private land (HBMP 2007). Populations of *C. oenobarba* in the Lihue-Koloa Forest Reserve include Wailua River (40 to 50 individuals) on State land, and Iliiliula drainage (occasional) and Wahiawa drainage (50 individuals) on private land (HBMP 2007). The 8 populations total 270 to as many as 450 individuals (NTBG Provenance Report 1993; HBMP 2007; Wood 1998, p. 3).

Cyrtandra paliku (haiwale) is a subshrub in the African violet family (Gesneriaceae) that occurs on seeping basalt rock faces of north-facing cliffs dominated by *Metrosideros polymorpha* and *Dicranopteris linearis* in the wet cliff ecosystem, at elevations between 2,200 and 2,800 ft (670 to 850 m). *C. paliku* was first discovered in 1993 on the cliffs below Kekoiki, in the Makaleha Mountains of Kauai, where approximately 70 individuals were found (Wagner *et al.* 2001, pp. 150-151; HBMP 2007; TNCH 2007). The species maintained a population of approximately 70 individuals from 1993 through 1999; however, there are currently only 10 known individuals (Perlman, in litt. 2006).

Diellia mannii is a fern in the asplenium family (Aspleniaceae). It is found on a northwest-facing slope just above a gulch bottom in what was likely *Acacia koa* (koa)–*Metrosideros polymorpha* dominated montane mesic forest in the past, but which is now a forest dominated by the nonnative *Corynocarpus laevigatus* (karakanut) in the montane mesic ecosystem, at an elevation of 3,450 ft (1,050 m) (Aguraiuja and Wood 2003, p. 155; HBMP 2007; TNCH 2007). *D. mannii* was historically known from one location in the Halemanu area of what is now Kokee State Park, in the northwestern region of Kauai. The species was thought to be extinct since the early 1900s, until 2002 when a single individual was rediscovered (Aguraiuja and Wood 2003, pp. 154-155; Palmer 2003, p. 120). Currently, the species is known only from this one individual in the southeastern branch of Nawaimaka Stream in the Halemanu Mountains of Kokee State Park (HBMP 2007).

Doryopteris angelica is a fern in the pteris family (Pteridaceae) found in *Acacia koa* (koa)–*Metrosideros polymorpha* lowland mesic forest in the lowland mesic ecosystem at elevations between roughly 1,900 and 3,000 ft (579 and 914 m) (HBMP 2007; TNCH 2007). Three populations of fewer than 20 individuals were discovered in 1994, and currently the species is known from approximately 29 to 54 individuals in 5 populations at Awaawapuhi (2 to 3 individuals), Mahanaloa (3 to 6 individuals), Makaha (10 to 20 individuals), Kuia (10 to 20 individuals), and Paaiki (4 to 5 individuals) (NTBG 1998; Wagner [W.H.] *et al.* 1999b, p. 147; Wood 1999, 2000, 2007a; Perlman, in litt. 2006; HBMP 2007).

Dryopteris crinalis var. *podosorus*, a fern in the dryopteris family (Dryopteridaceae), is known from steep to vertical riparian basalt walls within dark seeping drainages in *Metrosideros polymorpha* montane wet forest within the montane wet ecosystem, from 4,000 to 5,100 ft (1,200 to 1,550 m) in elevation (TNCH 2007; Wood 2007c). Historically, this variety was known from the Kokee area, Kawaikoi, and Waialeale (Palmer 2003, p. 139). Currently, 3 populations totaling 32 to 47 individuals are known. The Mohihi population is made up of 10 to 20 individuals, from 15 to 20 individuals comprise the south Kilohana population, and the Waialeale population is known from 7 individuals (Wood 2007c).

Dubautia imbricata ssp. *imbricata* (naenae), a shrub in the sunflower family (Asteraceae), currently occurs in the lowland wet ecosystem, although there are historical records from the montane wet ecosystem as well (Carr 1999, p. 298; TNCH 2007). Occurrence records show that *D. imbricata* ssp. *imbricata* has typically been found in wet *Metrosideros polymorpha* forest and *Metrosideros, Oreobolus* (sedge), *Rhynchospora* (kuolohia) bogs at elevations between approximately 2,165 and 3,640 ft (660 and 1,110 m) (HBMP 2007). Historically and currently, *D. imbricata* ssp. *imbricata* is known only from the Wahiawa Mountains of Kauai (St. John and Carr 1981, pp. 198, 201; Carr 1999, p. 298; HBMP 2007). There are approximately 200 individuals at Wahaiawa drainage, approximately 1,000 individuals on both sides of the ridge between Hanapepe and Iole, and an estimate of several hundred individuals at Iliiliula (K. Wood, pers. comm. 2005a; HBMP 2007). These 3 populations total approximately 1,400 individuals (K. Wood, pers. comm. 2005a; HBMP 2007).

Dubautia kalalauensis (naenae), a shrub or tree in the sunflower family (Asteraceae), is found in the montane wet ecosystem in *Metrosideros polymorpha* wet forest at elevations between 4,000 and 4,050 ft (1,205 and 1,235 m) (Baldwin and Carr 2005, p. 261; TNCH 2007). Historically, this species, as a part of the species *Dubautia laxa*, was known from several locations below the rim of Kalalau Valley in Kokee State Park in the northwestern region of Kauai. Currently, *D. kalalauensis* is found in only one location along the rim of Kalalau Valley near Puu o Kila Lookout and totals 26 individuals (Baldwin and Carr 2005, p. 261).

Dubautia kenwoodii (naenae), a shrub in the sunflower family (Asteraceae), is found in diverse lowland mesic forest in the lowland mesic ecosystem at an elevation of 2,625 ft (800 m) (HBMP 2007; TNCH 2007; Wood 2007b). First described in 1998 as a new species, *D. kenwoodii* is known from one individual found below the western rim of Kalalau Valley, in the northwestern region of Kauai (Carr 1998).

Dubautia plantaginea ssp. *magnifolia* (naenae) is a shrub or small tree in the sunflower family (Asteraceae) found in the wet cliff ecosystem (Carr 1999, p. 304; HBMP 2007; TNCH 2007). Typical habitat for this species includes wet cliff and wet forest and shrubland at elevations between 1,542 and 2,395 ft (470 and 730 m) (HBMP 2007). Historically, *D. plantaginea* ssp. *magnifolia* was known from two populations less than 2 mi (3.2 km) apart in bog habitat in the Alakai Wilderness Preserve and the Na Pali-Kona Forest Reserve on Kauai (HBMP 2007). In 1992, the year that Hurricane Iniki struck Kauai, the only known population at "Blue Hole" at the headwaters of the Wailua River of "a couple hundred" individuals was greatly reduced. Currently, there are

approximately 100 individuals in the only known population (Blue Hole) (S. Perlman, pers. comm. 2003b).

Dubautia waialealae (naenae) is a dome or tussock-shaped shrub in the sunflower family (Asteraceae) that occurs in bogs in the montane wet ecosystem at elevations between 3,980 and 5,249 ft (1,213 and 1,600 m) (Carr 1999, p. 308; HBMP 2007; TNCH 2007). The type collection was made on the summit of Waialeale in 1909 (Rock 1910, p. 304), but little is known of other historical locations of *D. waialealae* on Kauai. Currently, there is one large population centered on the rain-gauge summit of Waialeale, with many subpopulations radiating about 0.6 mi (1 km) to the north and south. These subpopulations were observed in groups of 7 to 400 individuals (Wood 2006, pp. 25-29), with a total population of 3,000 individuals (Wood 2006, p. 9). In 1994, a single individual of *D. waialealae* was reported at North Bog, 8.5 mi (14 km) away from the population at Waialeale; however, in 2006, it was reported that this individual had died (K. Wood, in litt. 1994a; M. Bruegmann, pers. comm. 2006b; HBMP 2007).

Geranium kauaiense (nohoanu) is a decumbent (reclining) subshrub in the geranium family (Geraniaceae) (Wagner *et al.* 1999, p. 733). It occurs in the montane wet ecosystem in *Metrosideros-Rhynchospora* bogs and bog margins at elevations between 4,000 and 4,080 ft (1,219 and 1,463 m) (Wagner *et al.* 1999, p. 733; HBMP 2007; TNCH 2007).

Historically, *G. kauaiense* was known from montane bogs on the island of Kauai, ranging from North Bog to as far south as the summit of Waialeale (HBMP 2007). Currently, there are three subpopulations within a very small range (within 0.5 mi, 0.8 km) in the Halehaha Bogs of the Alakai Wilderness Preserve totaling approximately 140 individuals (K. Wood, in litt. 1994b; S. Perlman, pers. comm. 1999b; Wood 2006, p. 10; HBMP 2007).

Keysseria erici is a herb in the sunflower family (Asteraceae) that occurs in *Metrosideros* mixed bogs in the montane wet ecosystem, at elevations between 4,000 and 5,120 ft (1,219 and 1,561 m) (Mill 1999, pp. 329-330; HBMP 2007; TNCH 2007). Little is known of the historical occurrences of *K. erici*. The type was collected by Forbes (1918, p. 306) from the "Alakai swamp, Waimea drainage basin" on Kauai. Currently, this species is found in three to four populations totaling several thousand individuals (HBMP 2007). The populations occur at Namolokama, Hanakapiai-Wainiha ridge, In-between Bog, and at the Kilohana bogs (including Rain Gauge Bog, T Bog, and Platanthera Bog) (HBMP 2007).

Keysseria helenae is an herb in the sunflower family (Asteraceae) and is found in *Metrosideros polymorpha* or mixed sedge and grass bogs at elevations between 3,900 and 5,120 ft (1,189 and 1,561 m) in the montane wet ecosystem (Mill 1999, p. 330; HBMP 2007; TNCH 2007). Little is known of the historical occurrences of *K. helenae*. The type was collected from the "swamp near Kaholuamano" by Forbes (1918, p. 306). Currently, this species is found at Kauluwehi Bog in the Alakai Wilderness Preserve, at Waialeale, and on Kahili-Kawaikini Ridge, totaling approximately 300 individuals (K. Wood, pers. comm. 2003b; HBMP 2007).

Labordia helleri (kamakahala) is a shrub, sometimes climbing, in the logania family (Loganiaceae) (Wagner *et al.* 1999, pp. 856-857). It occurs in *Metrosideros-Acacia-Dicranopteris* mesic to wet forest, at elevations between 1,200 and 3,900 ft (366 and 1,189 m), in the lowland mesic, lowland wet, montane mesic, and montane wet ecosystems (HBMP 2007; TNCH 2007). Historically, *L. helleri* was wide-ranging on Kauai. Collections were made as far south as the Haupu Mountains, through central Kauai to the northwestern coast (HBMP 2007). Currently, there are 10 populations totaling 350 to 550 individuals. The largest population extends from the Na Pali Kona Forest Reserve into Kuia Natural Area Reserve (NAR), and contains 300 to 500 individuals at Honopu, Awaawapuhi, Kuia drainage, and Kalalau-Milolii ridge. Other much smaller populations occur at upper Mahanaloa (10 individuals), Limahuli (recorded as "occasional" in HBMP database), Waioli (1 individual), Kaunuohua ridge (1 individual), Kohua ridge (1 individual), Koaie stream (10 individuals), Kawaiiki (3 individuals), southeast Puu Kolo (recorded as "localized" in HBMP database), and Puu Kolo-Kahuamoa (1 individual) (HBMP 2007).

Labordia pumila (kamakahala), a shrub in the logania family (Loganiaceae), occurs in the montane wet ecosystem at elevations between 3,478 and 5,100 ft (1,060 to 1,555 m) in *Metrosideros polymorpha* mixed sedge and grass bogs (Wagner *et al.* 1999, p. 860; HBMP 2007; TNCH 2007). Little is known of the historical locations of *L. pumila* on Kauai. The type specimen was collected by Wawra (1869, 1870) at the summit of Waialeale. Currently, *L. pumila* is found in three populations on the Alakai plateau. The largest population along the Wainiha rim totals 500 individuals (HBMP 2007). There are also about 300 to 400 individuals at the summit of Waialeale, and occasional individuals at Namolakama (Wood 2006, p. 10). The total number of known individuals from all 3 populations is 800 to 900; however, one estimate suggests that the overall population in the summit areas may be as high as 5,000 to 6,000 individuals (Wood 2006, p. 10).

Lysimachia daphnoides (lehua makanoe), a member of the myrsine family (Myrsinaceae), is found in *Metrosideros polymorpha* mixed bogs at elevations between 3,960 and 4,440 ft (1,207 and 1,353 m) in the montane wet ecosystem (Marr and Bohm 1997, p. 265; Wagner *et al.* 1999, p. 1,080; HBMP 2007; TNCH 2007). Historically, *L. daphnoides* was known from the more southerly mountains of Kauai, including the Wahiawa drainage and ridges, in what is now the Lihue-Koloa Forest Reserve (HBMP 2007). Currently, this species is found in the Alakai Wilderness Preserve and the Na Pali Kona Forest Reserve, in 3 populations totaling 200 to 300 individuals (HBMP 2007; Service 2005a). The population along the Alakai swamp trail (including Charlie's Bog, Kilohana, south Kilohana, and northwest Kilohana) totals 190 to 280 individuals; the second population includes Sincock Bog 1 and Kauluwehi (21 individuals); and the third population occurs at Waiakoali-Mohihi and Mohihi drainage (7 individuals) (HBMP 2007).

Lysimachia iniki is a woody shrub in the myrsine family (Myrsinaceae) that occurs on wet, mossy, or rocky cliffs in the wet cliff ecosystem at 2,400 ft (720 m) (Marr and Bohm 1997, pp. 270-271; TNCH 2007). This species was first described in 1997 from material collected in the "Blue Hole" at the headwaters of the Wailua River on Kauai. At the time it was discovered it was known from 26 individuals, but currently at least 40 individuals are known (Marr and Bohm 1997, pp. 270-271; S. Perlman, in litt. 2006, 2007).

Lysimachia pendens is a many-branched shrub in the myrsine family (Myrsinaceae) and is reported from wet, mossy, or rocky cliffs in the wet cliff ecosystem at 2,400 ft (720 m) (Marr and Bohm 1997, p. 275; TNCH 2007). This species was discovered in the "Blue Hole" area of Kauai in 1987 from several small populations totaling approximately 100 individuals (Marr and Bohm 1997, p. 275; Division of Forestry and Wildlife 2005 [Comprehensive Conservation Wildlife Strategy]). Many plants were destroyed by two major landslides that apparently occurred between 1997 and 2003, based

on information taken from field survey reports. Currently, the species is known from only eight individuals (S. Perlman, in litt. 2003, 2006, 2007).

Lysimachia scopulensis, a shrub in the myrsine family (Myrsinaceae), is found on cliffs in lowland diverse mesic forest pockets at elevations between 2,950 and 3,200 ft (900 and 975 m) within the dry cliff ecosystem (Wood 2007d; TNCH 2007). First discovered in 1991 in Kalalau Valley, this species is currently known from two populations. The Kalalau population is comprised of approximately 15 individuals and the Puu Kii population is comprised of 10 to 15 individuals, for a total of 25 to 30 individuals (Marr and Bohm 1997, pp. 283-284; Wood 2007d).

Lysimachia venosa, a shrub in the myrsine family (Myrsinaceae), occurs in *Metrosideros polymorpha* dominated wet forest areas in the wet cliff ecosystem, at elevations between 3,000 and 5,700 ft (915 and 1,740 m) (Marr and Bohm 1997, p. 284; Wood 2006, p. 11; TNCH 2007). *L. venosa* was known historically from two collections in the early 1900s from the Waialeale summit region of Kauai (Marr and Bohm 1997, p. 284; Wagner *et al.* 1999, p. 1,085; HBMP 2007). In 1991, a broken branch of this species was collected from the headwaters of the Wailua River that had fallen from the cliffs above, possibly from the summit area of Waialeale (Wood 2006, p. 11; Marr and Bohm 1997, p. 284). While no plants were found during surveys of the summit area in 2006, there is still additional habitat to be surveyed, and species experts believe *L. venosa* still exists (S. Perlman, in litt. 2007; Wood 2006, p. 11).

Melicope degeneri (alani) is a small shrub or tree in the rue family (Rutaceae) that occurs in the montane wet ecosystem in *Metrosideros-Cheirodendron-Dicranopteris* wet forest between the elevations of 3,000 and 3,800 ft (914 and 1,158 m) (Stone *et al.* 1999, p. 1,186; HBMP 2007; TNCH 2007). *M. degeneri* was thought to be extinct until it was rediscovered in Pohakuao, just beyond the northwest corner of the Hono o Na Pali NAR, in 1993 (Wood 2000, p. 6), and subsequently observed in upper Hanakoa in 1995 and along Koaie Stream in 1999 (NTBG Accession Data 1999). The Pohakuao individual has not been relocated since its discovery (Wood 2000, p. 5). Ten trees were originally documented during the discovery of the Hanakoa population in 1995 (Wood 2000, p. 4; Wood 2007 pp. 4-6). Since 1995, 2 of the trees have died and 3 additional individuals were located, for a current total of 11 individuals (S. Perlman, in litt. 2007c; N. Tangalin, in litt. 2007a). In addition, 1 small mature tree of *M. degeneri* was found growing in Koaie Canyon's upper drainage in 1999, and was last observed there in September of 2006 (K. Wood, pers. comm. 2007b), bringing the total known number of *M. degeneri* to 12, and possibly 13, known individuals (including the Pohakuao occurrence).

Melicope paniculata (alani) is a tree in the rue family (Rutaceae) (Stone *et al.* 1999, p. 1,199). It occurs in the lowland wet ecosystem in forests dominated by *Metrosideros polymorpha*, at elevations between 1,200 and 2,680 ft (365 and 815 m) (Stone *et al.* 1999, p. 1,199; HBMP 2007; TNCH 2007). This species was historically reported from central Kauai (HBMP 2007; Stone *et al.* 1999, p. 1,199). Currently, *M. paniculata* is known from six sites, with five individuals in upper Limahuli Valley, three individuals along the north fork of the Wailua River, five individuals along Koaie Stream, and three individuals on the ridge between Hulua and Kapalaoa. The population in Lumahai Valley is estimated to be approximately 100 to 200 individuals; however Bender (2006, p. 7) estimated that there may be a total of 500 individuals (Wood 1998, p. 4; Stone *et al.* 1999, p. 1,199; Wagner and Herbst 2003, p. 45; HBMP 2007).

Melicope puberula (alani) is a shrub or small tree in the rue family (Rutaceae) that occurs in the lowland wet and montane wet ecosystems in wet forest and bogs at elevations ranging between 2,080 and 4,100 ft (634 and 1,250 m) (Stone *et al.* 1999, p. 1,202; HBMP 2007; TNCH 2007). Historically, *M. puberula* was known from the Alakai Swamp on the island of Kauai (St. John 1944b, p. 266). Currently, this species is known from the south rim of Kalalau east to the Alakai-Kilohana plateau area, and north into Hono o Na Pali NAR (HBMP 2007). The Hawaii Biodiversity and Mapping Program delineated these three areas as one population (named the Kalalau-Wainiha population) (HBMP 2007). In 1993, a single individual was observed near Hinalele Falls in the southern portion of the Wainiha Mountain Range (HBMP 2007). The largest population occurs in the Alakai-Kilohana Plateau area with approximately 600 individuals. About 100 individuals are found within the Kalalau area, and approximately 200 individuals occur within the Hono o Na Pali NAR, for a total of approximately 900 individuals (HBMP 2007).

Myrsine knudsenii (kolea) is a small tree in the myrsine family (Myrsinaceae). Historically, the species may have been found in lowland mesic and wet ecosystems, but currently it is only known from *Acacia koa-Metrosideros polymorpha-Dicranopteris linearis* mesic forest at elevations between 3,200 and 3,900 ft (975 and 1,200 m) in the montane mesic ecosystem (Wagner *et al.* 1999, p. 941; Wood *et al.* 2002, p. 15; HBMP 2007; TNCH 2007). Historically, *M. knudsenii* was found in Hanapepe Valley in south-central Kauai; Kawaiula Trail in western Kauai; and Awaawapuhi, Kumuwela, Honopu, and Nualolo in the Kokee region of the island of Kauai (Wagner *et al.* 1999, p. 941). Currently, the species is known from 3 populations totaling approximately 30 individuals at Honopu, Awaawapuhi, and Nualolo (S. Perlman, in litt. 2007; Wood *et al.* 2001, p. 10; Wood *et al.* 2002, p. 15; HBMP 2007; Wood 4907 (BISH)).

Myrsine mezii (kolea), a small tree in the myrsine family (Myrsinaceae), is found in *Acacia-Metrosideros* forest in the montane mesic and montane wet ecosystems at elevations between 3,380 and 3,480 ft (1,030 and 1,060 m) (Wagner *et al.* 1999, p. 943; HBMP 2007; NTBG Accession Data 9888, 2002; TNCH 2007). *M. mezii* is known from only two locations totaling five individuals, in the Koaie Canyon area of western Kauai (N. Tangalin, in litt. 2007b). Four trees comprise one population at Nawaimaka, and the second known occurrence at Kawaiiki is composed of a single tree in poor condition (N. Tangalin, in litt. 2007b). The population size has not changed in the last 10 years, and historical locations and numbers are unknown.

Phyllostegia renovans, a subshrub in the mint family (Lamiaceae), occurs at elevations from 2,700 to 3,700 ft (225 to 1,125 m) in *Metrosideros polymorpha* wet forest in the lowland wet and montane wet ecosystems (HBMP 2007; TNCH 2007). First discovered in 1989 in the headwaters of the Wainiha River, this species is currently known from 4 populations: approximately 30 surviving individuals reintroduced into Limahuli Valley after the last wild individual from that area died, 5 individuals at Wainiha, 10 individuals at Kalalau Valley, and 1 individual in Lumahai Valley (K. Wood, in litt. 1994, p.4; Wagner 1999, p. 275; HBMP 2007).

Pittosporum napaliense (hoawa) is a small tree in the pittosporum family (Pittosporaceae) typically found in *Pandanus* and lowland mesic forest in the lowland mesic ecosystem, at elevations between 400 and 2,100 ft (122 and 640 m) (Wagner *et al.* 1999, pp. 1,045-1,047; HBMP 2007; TNCH 2007). Historically, *P. napaliense* was known from northwestern Kauai (Wagner *et al.* 1999, p. 1,047; HBMP 2007). Currently, this species is known from 3 populations; 2 of these are located

within the Hono o Na Pali NAR in Waiahuakua (50 individuals) and Hoolulu valleys (100 individuals), with the third population (10 to 50 individuals) located in upper Kalalau Valley in the Na Pali Coast State Park (HBMP 2007).

Platydesma rostrata (pilo kea lau lii) is a shrub in the rue family (Rutaceae). It occurs in the lowland mesic, lowland wet, wet cliff, montane mesic, and montane wet ecosystems, in forest dominated by *Acacia koa* and *Metrosideros polymorpha*, at elevations between 2,500 and 4,000 ft (760 and 1,220 m) (Stone *et al.* 1999, p. 1,210; HBMP 2007; TNCH 2007). *P. rostrata* was historically known from Makaha and Milolii ridge in the Na Pali Kona Forest Reserve, and Kaunuohua ridge and Nualolo trail in Kokee State Park, on the island of Kauai (HBMP 2007). Currently, this species is found in the Na Pali Kona Forest Reserve on the Awaawapuhi and Honopu trails; in Halelea Forest Reserve at Lumahai; in Hono o Na Pali NAR at Pihea; in Kunia NAR on the Nualolo Trail; in Mahanaloa and Kuia valleys; and in the Lihue-Koloa Forest Reserve at Pohakupele, Hulua, Kapalaoa, and Iliiliula Valley (HBMP 2007). These small populations total approximately 100 individuals (HBMP 2007).

Pritchardia hardyi (loulu) is a tree in the palm family (Arecaceae) that occurs in the lowland wet and wet cliff ecosystems (Read and Hodel 1999, p. 1,370; TNCH 2007). It is found in *Metrosideros-Dicranopteris* wet forest and shrubland and on windswept windward ridges and headwater drainages, at elevations between 1,800 and 3,400 ft (548 and 1,036 m) (Read and Hodel 1999, p. 1,370; HBMP 2007). Historically, *P. hardyi* was known from a single population totaling about 200 individuals in an area on the southeast (windward) side of Kauai (HBMP 2007). An additional population totaling about 100 individuals was found north of that area (NTBG Provenance Report 040094), bringing the total number of known individuals of *P. hardyi* to approximately 300. Both populations occur almost entirely within the Lihue-Koloa and Halelea Forest Reserves (HBMP 2007).

Psychotria grandiflora (kopiko) is a small tree or shrub in the coffee family (Rubiaceae) that occurs in the montane mesic and montane wet ecosystems (K. Wood, in litt. 2007c; TNCH 2007). It is found in *Acacia-Metrosideros* mesic to wet forest between the elevations of 3,400 and 4,100 ft (1,128 and 1,250 m) (HBMP 2007). Historically, this species was known from collections at Waimea, Kokee, and Kalalau, all from the northwestern area of Kauai (Fosberg 1964, p. 258). Currently, 10 small populations of *Psychotria grandiflora* are found only within Kokee State Park, and are estimated to total between 16 and 30 individuals (Arnold 2007, pp. 1-3; HBMP 2007; S. Perlman, in litt. 2007d; N. Tangalin, in litt. 2007c).

Psychotria hobdyi (kopiko) is a tree in the coffee family (Rubiaceae) that occurs in lowland *Acacia koa-Metrosideros polymorpha* mesic forest in the lowland mesic ecosystem at elevations between 1,700 and 2,700 ft (520 and 825 m) (Wagner *et al.* 1999, pp. 1,166-1,168; HBMP 2007; TNCH 2007). The first collection of *P. hobdyi* was made in Mahanaloa Valley on Kauai in 1970 (St. John 1975, p. 59). Currently, this species is known from 10 populations totaling approximately 120 individuals in the following locations: 1 population of 2 individuals in Kawaiula Valley; 1 population of approximately 5 individuals at the junction of Mahanaloa Valley and Kuia Valley; 3 populations totaling approximately 47 individuals in Mahanaloa Valley; 2 populations of 17 to 22 individuals in Paaiki Valley; 2 populations of approximately 39 individuals in Poopooiki Valley; and 1 population in upper Kalalau Valley of approximately 10 individuals (HBMP 2007).

Schiedea attenuata, a shrub in the pink family (Caryophyllaceae), occurs on cliffs at elevations between 2,297 and 2,625 ft (700 and 900 m) in the dry cliff ecosystem (Wagner *et al.* 1994, pp. 187-190; TNCH 2007). *Schiedea attenuata* was discovered in 1991 by K. Wood during a rappel on the cliffs in an area of precipitous slopes above the Kalalau Valley on Kauai. Approximately 20 individuals were last observed there in 1994 (M. Bruegmann, in litt. 1994b, Wagner *et al.* 1994, p. 187).

Stenogyne kealiae is a trailing or scandent vine in the mint family (Lamiaceae) (Wagner and Weller 1991, p.51). It occurs in the dry cliff, lowland wet, and montane mesic ecosystems, in *Metrosideros polymorpha* forest, *M. polymorpha-Acacia koa* forest, and *M. polymorpha-Dicranopteris linearis* shrubland, at elevations between 3,550 and 4,100 ft (1,082 and 1,250 m) (Wagner and Weller 1991, p. 51; TNCH 2007). One population (Wainiha), however, is reported between 2,231 and 2,707 ft (680 and 825 m) elevation (HBMP 2007). Historically, this species occurred at Pohakupili near Kealia in the Kealia Forest Reserve on the island of Kauai. Currently, this species occurs at Honopu, Kalalau, Malamalamaiki, Pohakupili, and Wainiha. The 5 populations of *S. kealiae* total approximately 100 to 200 individuals (HBMP 2007).

Tetraplasandra bisattenuata (ohe ohe) is a tree in the ginseng family (Araliaceae), which occurs in lowland mesic to wet forest and shrubland in the lowland mesic and lowland wet ecosystems at elevations between 1,800 and 2,000 ft (550 and 610 m) (TNCH 2007; Wood 2007f, pp. 1-5). This species is known only from the Haupu and Kahili regions of Kauai. Currently, 35 individuals are found at Mt. Haupu and 2 individuals are at Mt. Kahili (Wood 2007f, p. 1).

Tetraplasandra flynnii (ohe ohe) is a tree in the ginseng family (Araliaceae) found in *Metrosideros polymorpha* (ohia) montane mesic to wet forest in the montane mesic and montane wet ecosystems, at elevations between 3,850 and 4,000 ft (1,175 and 1,225 m) (Lowry and Wood 2000, p. 42; HBMP 2007; TNCH 2007). Three individuals of *T. flynii* were first discovered in 1988, and currently it is only known from those three individuals (Lowry and Wood 2000, pp. 40 and 43; HBMP 2007).

A. Animals

The Kauai creeper (*Oreomystis bairdi*), or akikiki, is a small Hawaiian honeycreeper found only on the island of Kauai, currently in the montane wet ecosystem (TNCH 2007). The Hawaiian honeycreepers are in the subfamily Drepanidinae of the finch family, Fringillidae (AOU 1998, p. 676). The akikiki is most common in forests dominated by *Metrosideros polymorpha* with a diverse subcanopy (Scott *et al.* 1986, p. 139). Based on surveys conducted from 1968 through 1973, its distribution was thought to encompass 21,750 ac (88 sq km) at elevations between 1,968 and 5,248 ft (600 and 1,600 m), but a survey in 2000 indicated its distribution had decreased to 8,896 ac (36 sq km) (Scott *et al.* 1986, p. 141; Tweed *et al.* 2005, pp. 3-4). The akikiki generally forages on trunks, branches, and twigs of live and dead trees, and occasionally forages in subcanopy shrubs. It feeds primarily on insects, insect larvae, and spiders gleaned and extracted from bark, lichens, and moss (Foster *et al.* 2000, p. 4). Nests are made of moss, small pieces of bark, bits of lichen, and fine plant fibers (Eddinger 1972, p. 673; Foster *et al.* 2000, p. 7; VanderWerf and Roberts, in press). The akikiki was considered common from high to low elevation in native forests in the late 1800s (Perkins 1903, p. 54), and was described as locally abundant on and near the Alakai Plateau in the early 1960s (Richardson and Bowles 1964, p. 29). From 1968 to 1973, the species was estimated to number 6,832 ± 966 birds

(Sincock *et al.* 1983, p. 53). In 1981, data from the Hawaii Forest Bird Survey indicated there were approximately 1,650 ± 450 akikiki in a 9.7 sq mi (25 sq km) area of the southeastern Alakai, in the vicinity of Sincock's Bog (Scott *et al.* 1986, p. 141). The current population of the akikiki is estimated to be 1,312 ± 530 birds, based on surveys conducted in April and May 2007 (Hawaii Division of Forestry and Wildlife and USGS, unpubl. data 2007). The abundance of the akikiki has thus declined by approximately 80 percent in the last 40 years, and its distribution has been reduced to less than half of its former extent.

The Kauai akepa (*Loxops caeruleirostris*), or akekee, is a small forest bird found only on the island of Kauai. Like the akikiki, the akekee is also a Hawaiian honeycreeper in the subfamily Drepanidinae of the Fringillidae family (AOU 1998, p. 677). The akekee occurs in the montane mesic and montane wet ecosystems in forests dominated by *Metrosideros polymorpha*, *Acacia koa*, *Cheirodendron trigynum*, and *C. platyphyllum* (Lepson and Pratt 1997, p. 4; TNCH 2007). The akekee uses its bill to open flower and leaf buds while foraging for arthropod prey (insects, insect larvae, spiders), and is a specialist on the ohia tree (*M. polymorpha*) (Lepson and Pratt 1997, p. 4). Nests are made of moss and lichen, with the nest lining made of fine grasses and soft bark strips (Eddinger 1972, p. 97; Berger 1981, p. 140; Lepson and Freed 1997, pp. 11-12). Until recently, the population of akekee appeared to be relatively stable, even while other endemic Kauai birds demonstrated sharp declines (Lepson and Pratt 1997, p. 14). The akekee was described as "quite plentiful" (Bryan and Seale 1901, p. 136) and common "over a large part of the high plateau" in the late 1800s (Perkins 1903, p. 417), and probably occurred throughout upper elevation forested regions of the island (Perkins 1903, p. 417). Richardson and Bowles (1964, p. 30) reported that it was fairly common in higher elevation forests. Conant *et al.* (1998, p. 16) reported that the akekee was common in the area around Sincock's Bog in 1975 and observed it daily. The first quantitative information on population size and distribution was based on extensive surveys conducted from 1968 to 1973, which yielded an island-wide population estimate of 5,066 ± 840 birds, with most individuals found in the Alakai Plateau area, west to Kokee, and on Makaleha Mountain and in Wainiha Valley (Sincock *et al.* 1983, p. 53). This was followed by population estimates of 7,839 ± 704 birds in 2000, and 5,669 ± 1,003 birds in 2005 (Hawaii Division of Forest and Wildlife and USGS, unpubl. data 2007). The most recent surveys, conducted in April and May 2007, show the current population of akekee to be 3,536 ± 1,030 birds (Hawaii Division of Forest and Wildlife and USGS, unpubl. data 2007), indicating that the population has dropped to less than half its former size within the last 7 years. The geographic range occupied by the akekee was approximately 34 sq mi (88 sq km) in 1970 (Scott *et al.* 1986, p. 155), which was reported not to have changed in 2000 (Foster *et al.* 2004, p. 721). However the 2007 surveys failed to find the species in many areas where it had previously been observed, indicating that there has likely been a range contraction, although the extent of that contraction is not yet known.

Drosophila attigua, a large species of Hawaiian picture-wing fly, occurs in wet forest in the montane mesic and montane wet ecosystems at elevations generally between 3,000 and 3,936 ft (914 and 1,200 m), although it has been found as low as 2,460 ft (750 m). The adult flies are generalist microbivores (microbe eaters) and feed upon a variety of decomposing plant material. The eggs are laid within the decomposing bark of native *Cheirodendron* sp. (olapa) trees (family Araliaceae), where the hatching larvae complete development before dropping to the soil to pupate (Speith 1980, p. 278; Kaneshiro and Kaneshiro 1995, p. 13-14; TNCH 2007). *D. attigua* was historically known from 2 populations on the island of Kauai: one population east of the Alakai massif at Mt. Kahili where 19 males and 13 females were observed (Hardy and Kaneshiro 1969, p. 41; Kaneshiro and Kaneshiro 1995, p. 13; HBMP 2007), and a second population on the western end of the Alakai Swamp in the Na Pali Kona Forest Reserve at Pihea (K. Kaneshiro, pers. comm. 2007). The species was also collected at Mohihi Stream located within the Alakai Wilderness Preserve in 1963, and at the Kokee Stream within Kokee State Park in 1991 (Kaneshiro and Kaneshiro 1995, p. 14). Observations of *D. attigua* at the Pihea site have been somewhat sporadic, as the species has been observed there only three times, once each in 1986, 1987, and most recently in 1991, despite numerous surveys (HBMP 2007; K. Kaneshiro, pers. comm. 2007; K. Magnacca, Wesley College, pers. comm. 2007).

Previous Federal Action

Thirty-one of the species proposed here for listing are currently candidate species (72 FR 69033, December 6, 2007); candidate species are those taxa for which the Service has sufficient information on their biological status and threats to propose them for listing under the Act, but for which the development of a listing regulation has been precluded to date by other higher priority listing activities. The current candidates addressed in this proposed listing rule include the plants *Astelia waialealae*, *Canavalia napaliensis*, *Chamaesyce eleanoriae*, *Chamaesyce remyi* var. *kauaiensis*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea eleeleensis*, *Cyanea kuhihewa*, *Cyrtandra oenobarba*, *Dubautia imbricata* ssp. *imbricata*, *Dubautia plantaginea* ssp. *magnifolia*, *Dubautia waialealae*, *Geranium kauaiense*, *Keysseria erici*, *Keysseria helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Melicope degeneri*, *Melicope paniculata*, *Melicope puberula*, *Myrsine mezii*, *Pittosporum napaliense*, *Platydesma rostrata*, *Pritchardia hardyi*, *Psychotria grandiflora*, *Psychotria hobdyi*, *Schiedea attenuata*, *Stenogyne kealiae*; the bird, akikiki; and the picture-wing fly, *Drosophila attigua*. The candidate status of all of these species was most recently assessed and reaffirmed in the December 6, 2007, Notice of Review of Native Species that are Candidates or Proposed for Listing as Threatened or Endangered (CNOR) (72 FR 69033).

On May 4, 2004, the Center for Biological Diversity petitioned the Secretary of the Interior to list 225 species of plants and animals, including the 31 candidate species listed above, as endangered or threatened under the provisions of the Act. Since then, we have published our annual findings on the May 4, 2004, petition (including our findings on the 31 candidate species listed above) in the CNOR dated May 11, 2005 (70 FR 24870), September 12, 2006 (71 FR 53756), and December 6, 2007 (72 FR 69033). This proposal constitutes a further response to the 2004 petition.

On October 11, 2007, we received a petition from Dr. Eric VanderWerf and the American Bird Conservancy to list the akikiki and the akekee as endangered or threatened species. According to the petitioners, the akikiki and akekee warrant listing under the Act because they have small populations, occur in small geographic ranges, and are undergoing rapid population and range declines; the two species also face numerous imminent

and significant threats including, but not limited to, habitat loss and degradation by alien plants and nonnative ungulates, diseases spread by alien mosquitoes, predation by alien mammals, and catastrophic events such as hurricanes (VanderWerf and American Bird Conservancy, in litt. 2007). The petitioners also cite the inadequacy of regulatory mechanisms as a threat, noting that as members of the subfamily Drepanidinae (Hawaiian honeycreepers), the akikiki and akekee are not protected under the Migratory Bird Treaty Act (16 U.S.C. 703-712; see 71 FR 50205, August 24, 2006). The akikiki was already a candidate species. This proposal constitutes our response to the October 11, 2007, petition.

In addition to the 31 candidate species and the akekee, we are proposing to list, with critical habitat, the following 16 species of plants endemic to Kauai: *Cyanea kolekoleensis*, *Cyanea dolichopoda*, *Cyrtandra paliku*, *Diellia mannii*, *Doryopteris angelica*, *Dryopteris crinalis* var. *podosorus*, *Dubautia kalalauensis*, *Dubautia kenwoodii*, *Lysimachia iniki*, *Lysimachia pendens*, *Lysimachia scopulensis*, *Lysimachia venosa*, *Myrsine knudsenii*, *Phyllostegia renovans*, *Tetraplasandra bisattenuata*, and *Tetraplasandra flynnii*. These 16 Kauai plant species, as well as 170 others on the Hawaiian Islands, have been identified as the "rarest of the rare" Hawaiian plant species, in need of immediate conservation, by the members of the multiagency (Federal, State, and private) Plant Extinction Prevention (PEP) program. The goal of this program is to prevent the extinction of plant species with fewer than 50 individuals remaining in the wild on the islands of Kauai, Oahu, Maui, Molokai, Lanai, and Hawaii. The goal of the PEP program is to prevent extinction by establishing a network of multi-island plant propagation sites and storage facilities, and conducting emergency monitoring and genetic sampling of all PEP species (Hawaii Division of Forestry and Wildlife (DOFAW) 2007; Service 2007). The Service has provided significant funding to this program since 2002, through section 6 (Cooperation with the States) of the Act. We believe these 16 plant species warrant listing under the Act for the reasons discussed above ("Description of the 48 Species") and in the "Summary of Factors Affecting the Species" (below), and since these species occur within the same six ecosystems and share common threats with the other 32 species we are addressing in this proposed rule, we have included them here in an effort to provide them with Federal protection in an expeditious manner.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and our implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. If we determine that the level of threat posed to a species by one or more of the five listing factors is such that the species meets the definition of either endangered or threatened under section 3 of the Act, that species may then be proposed for listing. The Act defines an endangered species as "in danger of extinction throughout all or a significant portion of its range," and a threatened species as "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The threats to each of the individual 48 species are summarized in Table 2, and discussed in detail below. Factor D is not included in the table as no primary threats to the species fell under this category.

TABLE 2.—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 48 KAUAI SPECIES

Species	Ecosystem	Factor A								Factor B	Factor C			Factor E
		Non-native plants	Pigs	Goats	Deer	Fire	Hurricanes	Landslides or Flooding	Climate Change	Illegal collection	Predation by ungulates	Predation by rats	Predation by non-native invertebrates	Other species-specific threats
Astelia waialealae	MW (bogs only)	X	X	X			X		X					LN, NR
Canavalia napaliensis	LM	X		X		X	X		X			X	X	
Chamaesyce eleanoriae	LM, DC	X		X			X	L	X		X	X		LN
Chamaesyce remyi var.*kauaiensis*	LW, WC	X	X				X	L	X		X			
Chamaesyce remyi var.*remyi*	LM, LW,MM, MW, WC	X	X	X	X		X	L	X		X	X	X	
Charpentiera densiflora	LM, LW	X		X		X	X	L, F	X		X	X	X	
Cyanea dolichopoda	WC	X					X	L	X				X	LN
Cyanea eleeleensis	LW	X	X				X	L	X		X	X	X	NW
Cyanea kolekoleensis	LW	X	X				X	F	X			X	X	NW
Cyanea kuhihewa	LW	X	X				X	L	X		X	X	X	NW
Cyrtandra oenobarba	LW, WC	X	X	X			X	L, F	X		X	X	X	
Cyrtandra paliku	WC	X					X	L	X					LN
Diellia mannii	MM	X	X		X	X	X	L	X		X			LN
Doryopteris angelica	LM	X	X	X	X		X		X			X		LN
Dryopteris crinalis var.*podosorus*	MW	X	X				X		X					LN
Dubautia imbricata ssp. *imbricata*	LW	X	X				X		X		X			
Dubautia kalalauensis	MW	X					X		X					LN
Dubautia kenwoodii	LM	X	X	X			X	FR	X					FR, LN
Dubautia plantaginea ssp. *magnifolia*	WC	X	X				X	L	X					
Dubautia waialealae	MW (bogs only)	X	X	X			X		X		X			LN

TABLE 2.—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 48 KAUAI SPECIES—Continued

Species	Ecosystem	Factor A								Factor B	Factor C			Factor E
		Non-native plants	Pigs	Goats	Deer	Fire	Hurri-canes	Land-slides or Flood-ing	Climate Change	Illegal col-lection	Predation by ungulates	Preda-tion by rats	Preda-tion by non-native inverte-brates	Other species-specific threats
Geranium kauaiense	MW (bogs only)	X	X				X		X		X			NR
Keysseria erici	MW (bogs only)	X	X				X		X		X			
Keysseria helenae	MW (bogs only)	X	X				X		X		X			
Labordia helleri	LM, LW,MM, MW	X	X	X	X		X		X		X	X		
Labordia pumila	MW (bogs only)	X	X				X		X		X			NR
Lysimachia daphnoides	MW (bogs only)	X	X				X		X		X			NR
Lysimachia iniki	WC	X					X	L	X					LN
Lysimachia pendens	WC	X	X				X	L	X					
Lysimachia scopulensis	DC	X	X	X			X	L	X					LN
Lysimachia venosa	WC	X					X	L	X					NW
Melicope degeneri	MW	X	X	X			X		X				X	LN, NR
Melicope paniculata	LW	X	X	X			X	L	X				X	
Melicope puberula	LW, MW	X	X	X			X		X		X		X	
Myrsine knudsenii	MM	X	X	X	X		X		X			X		LN
Myrsine mezii	MM, MW	X	X	X			X	L	X		X			LN
Phyllostegia renovans	LW, MW	X	X	X			X	L	X		X	X		LN
Pittosporum napaliense	LM	X		X			X		X		X	X		
Platydesma rostrata	LM, LW, MMMW, WC	X	X	X	X		X	L	X		X	X	X	
Pritchardia hardyi	LW, WC	X	X	X			X		X	X	X	X		

Psychotria grandiflora	MM, MW	X	X	X	X		X		X		X	X		LN, NR
Psychotria hobdyi	LM	X	X	X	X	X	X		X		X	X	X	LN
Schiedea attenuata	DC	X		X		X	X	L	X		X			LN
Stenogyne kealiae	LW, MM, DC	X	X	X	X	X	X	L	X		X	X		
Tetraplasandra bisattenuata	LM, LW	X	X				X		X			X		LN
Tetraplasandra flynnii	MM, MW	X		X			X		X					LN
Animals														
Akekee	MM, MW	X	X	X			X		X			X		AD, PCO
Akikiki	MM, MW	X	X	X			X		X			X		AD, PCO
picture-wing fly *Drosophila attigua*	MM, MW	X	X	X	X	X	X		X			X	X	CTF

LM = Lowland Mesic
LW = Lowland Wet
MM = Montane Mesic
MW = Montane Wet
DC = Dry Cliff
WC = Wet Cliff
L = Landslides
F = Flooding
LN = Limited numbers/? 50 individuals
NR = No reproduction
FR = Falling rocks
NW = Not extant in wild
AD = Avian diseases
PCO = Predation by feral cats and owls
CTF = Competition with nonnative tipulid flies
Factor A - Habitat Modification
Factor B - Overutilization
Factor C - Disease or Predation
Factor E - Other

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Hawaiian Islands are located over 2,000 mi (3,200 km) from the nearest continent. This isolation has allowed the few plants and animals that arrived in the Hawaiian Islands to evolve into many varied and highly endemic species (species that occur nowhere else in the world). The only native terrestrial mammal on the Hawaiian Islands is a flying mammal, the Hawaiian hoary bat (*Lasirus cinereus semotus*). The native plants and animals of the Hawaiian Islands have therefore evolved in the absence of any mammalian predators, browsers, or grazers; many of the native species have lost defenses against threats such as mammalian predation and competition with aggressive, weedy plant species that are typical of mainland environments (Loope 1992, p. 11; Wagner *et al.* 1999, pp. 3-6, 45). For example, Carlquist (in Carlquist and Cole 1974, p. 29) notes that "Hawaiian plants are notably nonpoisonous, free from armament, and free from many characteristics thought to be deterrents to herbivores (oils, resins, stinging hairs, coarse texture)." In addition, species restricted to highly specialized locations or food sources (e.g., some Hawaiian forest birds and picture-wing flies) are particularly vulnerable to changes (from nonnative species, hurricanes, fire, and climate change) in their habitat (Carlquist and Cole 1974, pp. 28-29; Loope 1992, pp. 3-6; Stone 1992, pp. 88-102).

Habitat destruction and modification by introduced ungulates

Introduced mammals have greatly impacted the native vegetation, as well as the native fauna, of the Hawaiian Islands. The first introductions of alien mammals began with pigs, dogs, and rats that arrived with the Polynesians around 400 A.D. (Kirch 1982, p. 3-4). Impacts to the native species and ecosystems of Hawaii accelerated following the arrival of Captain James Cook in 1778. The Cook expedition and subsequent explorers intentionally introduced a European race of pigs or boars and other livestock, such as goats, to serve as food sources for seagoing explorers (USGS 1998, p. 752). The mild climate of the islands, combined with the lack of competitors or predators, has led to the successful establishment of large populations of these introduced mammals, to the detriment of native Hawaiian species and ecosystems. Over the 200 years following the introduction of these animals, the numbers of introduced ungulates has increased, and the adverse impacts on native vegetation have become increasingly apparent (Mueller-Dombois *et al.* 1981, p. 310). Beyond the direct effects of trampling and consuming native plants, feral ungulates (hoofed mammals) contribute significantly to increased erosion on the islands, and their behavior (i.e., rooting, moving across large expanses) facilitates the spread and establishment of competing, invasive, nonnative plant species. The presence of introduced alien mammals is considered one of the primary factors underlying the alteration and degradation of native vegetation and habitats on the island of Kauai. All six ecosystems and the associated native species that occur in these ecosystems are threatened by the destruction or degradation of habitat due to nonnative ungulates (hoofed mammals), including pigs (*Sus scrofa*), goats (*Capra hircus*), and black-tailed deer (*Odocoileus hemionus*).

Pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests of the Hawaiian Islands, and are widely recognized as one of the greatest current threats to forest ecosystems in Hawaii (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195; Loope 1999, p. 56). European pigs, introduced to Hawaii by Captain James Cook in 1778, hybridized with domesticated Polynesian pigs, became feral, and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They are currently present on Kauai, Niihau, Oahu, Molokai, Maui, and Hawaii. These introduced pigs are extremely destructive and have both direct and indirect impacts on native plant communities. While rooting in the earth in search of invertebrates and plant material, pigs directly impact native plants by disturbing and destroying vegetative cover, and trampling plants and seedlings. They may also reduce or eliminate plant regeneration by damaging or eating seeds and seedlings (further discussion of predation by nonnative ungulates is under Factor C, below). Pigs are a major vector for the establishment and spread of competing invasive nonnative plant species, by dispersing plant seeds on their hooves and coats as well as through the spread of manure, and by fertilizing the disturbed soil through their feces. Pigs feed preferentially on the fruits of many nonnative plants, such as *Passiflora mollisima* (banana poka) and *Psidium cattleianum* (strawberry guava), spreading the seeds of these invasive species through their feces as they travel in search of food. In addition, rooting pigs contribute to erosion by clearing vegetation and creating large areas of disturbed soil, especially on slopes (Aplet *et al.* 1991, p. 56; Smith 1985, pp. 190, 192, 196, 200, 204, 230-231; Stone 1985, pp. 254-255, 262-264; Medeiros *et al.* 1986, pp. 27-28; Scott *et al.* 1986, pp. 360-361; Tomich 1986, pp. 120-126; Cuddihy and Stone 1990, pp. 64-65; Loope *et al.* 1991, pp. 1-21; Wagner *et al.* 1999, p. 52). The compacted volcanic soils, wallows, and downed, hollowed-out tree ferns created by feral pig activity hold water and create breeding sites for mosquitoes, which transmit avian disease (Scott *et al.* 1986, pp. 365-368; Atkinson *et al.* 1995, p. S68). Mosquito-borne diseases such as malaria pose a significant threat to native Hawaiian forest birds, including the akikiki and akekee (see Factor C).

Goats native to the Middle East and India were also successfully introduced to the Hawaiian Islands in the late 1700s. Feral goats now occupy a wide variety of habitats on Kauai, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Stone 1985, p. 48; van Riper and van Riper 1982, pp. 34-35). Goats are able to access and forage in extremely rugged terrain, including nearly vertical cliffs of the Na Pali Coast, and have a high reproductive capacity (Clarke and Cuddihy 1980, pp. C-19, C-20; Culliney 1988, p. 336; Cuddihy and Stone 1990, p. 64); because of these factors, goats are believed to have completely eliminated some plant species from islands (Atkinson and Atkinson 2000, p. 21). Goats can be highly destructive to natural vegetation, and contribute to erosion by: eating young trees and young shoots of plants before they can become established; creating trails that can damage native vegetative cover, destabilize substrate, and create gullies that convey water and exacerbate erosion; and dislodging stones from ledges that can damage vegetation below (C. Phillipson, pers.comm. 2008). The erosion caused by goats on the steep slopes of Kauai contributes to the potential for landslides and also increases the potential for flooding. Large feral herds of goats can cause damage at multiple scales; their climbing ability allows access to the more remote areas of Kauai and their browsing cau!seshabitat degradation that can lead to landslides from erosion.

Black-tailed deer (also known as mule deer) were first introduced to Kauai in 1961 for the purpose of sport hunting. These deer are currently limited to the western side of Kauai, where they feed on a variety of native and alien plants (van Riper and van Riper 1982, p. 42-46). In addition to directly impacting

native plants through browsing, deer likely inpact native plants indirectly by serving as a primary vector for the spread of introduced plants. Deer feed on many alien plant species, and likely distribute these plants seeds through their feces as they travel. Black-tailed deer have been noted as a vector of habitat alteration in the Kauai ecosystems (NTBG report 2007a; HBMP 2007), and impact the Kauai plants through predation as well (Factor C).

Each of the six Kauai ecosystems identified in this proposed rule (lowland mesic, lowland wet, montane mesic, montane wet, dry cliff, and wet cliff) and the proposed native species dependent on these habitat types are subject to both the direct and indirect adverse impacts of feral ungulates, which result in the destruction and degradation of habitat for the native Kauai species. The effects of these nonnative animals include the destruction of vegetative cover; trampling of plants and seedlings; direct consumption of native vegetation; soil disturbance; dispersal of alien plant seeds on hooves, coats, and through the spread of seeds in feces; and creation of open disturbed areas conducive to further invasion by nonnative pest plant species. All of these impacts lead to the subsequent conversion of a plant community dominated by native species to one dominated by nonnative species (see Habitat destruction and modification by nonnative plants, below). In addition, because these mammals inhabit terrain that is often steep and remote (Cuddihy and Stone 1990, p. 59), foraging and trampling contributes to severe erosion of watersheds. As early as 1900, there was increasing concern expressed about the integrity of island watersheds leading to establishment of a professional forestry program emphasizing soil and water conservation (Nelson 1989, p. 3).

Habitat destruction and modification by nonnative plants

General Ecosystem Impacts

The native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices, including ranching, the deliberate introduction of nonnative plants and animals, and agricultural development (Cuddihy and Stone 1990, pp. 27, 58). All of the species being addressed in this proposed rule are threatened by almost 50 taxa of introduced plants that alter their habitat. The original native flora of Hawaii (species that were present before humans arrived) consisted of about 1,000 taxa, 89 percent of which were endemic (species that occur only on the Hawaiian Islands). Over 800 plant taxa have been introduced from elsewhere, and nearly 100 of these have become pests (e.g., injurious plants) in Hawaii (Smith 1985, p. 180; Gagne and Cuddihy 1999, p. 45; Cuddihy and Stone 1990, p. 73). Some of these plants were brought to Hawaii by various groups of people, including the Polynesians, for food or cultural reasons. Plantation owners (and the territorial government of Hawaii), alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral and domestic animals, introduced nonnative trees for reforestation. Ranchers intentionally introduced pasture grasses and other nonnative plants for agriculture, and sometimes inadvertently introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Cuddihy and Stone 1990, p. 73; Scott *et al.* 1986, pp. 361-363).

Nonnative plants adversely impact native Hawaiian habitat, including the 6 Kauai ecosystems and the 48 species identified in this proposed rule, by modifying the availability of light, altering soil-water regimes, modifying nutrient cycling, altering fire characteristics of native plant communities (e.g., successive fires that burn farther and farther into native habitat, destroy native plants, and remove habitat for native species by altering microclimatic conditions to favor alien species), and ultimately converting native dominated plant communities to nonnative plant communities (Cuddihy and Stone, 1990, p. 74; D'Antonio and Vitousek 1992, p. 73; Smith 1985, pp. 180-181; Vitousek *et al.* 1997, p. 6). This directly and indirectly affects the plant and animal species proposed for listing by modifying or destroying their habitat and reducing food sources. Below we have organized by ecosystem a list of nonnative plants followed by a discussion of the specific negative effects of those nonnative plants on the proposed species.

Lowland Mesic Ecosystem

The nonnative plant threats to the species inhabiting the lowland mesic ecosystem include the understory and subcanopy species *Blechnum appendiculatum* (no common name, hereafter "NCN"), *Erigeron karvinskianus* (daisy fleabane), *Hedychium gardnerianum* (kahili ginger), *Kalanchoe pinnata* (air plant), *Lantana camara* (lantana), *Melastoma septemnervium* (Indian rhododendron), *Rubus argutus* (prickly Florida blackberry), *Rubus rosifolius* (thimbleberry), and the canopy species *Psidium cattleianum* (strawberry guava), *P. guajava* (common guava), *Rhodomyrtus tomentosa* (downy or rose myrtle), and *Schinus terebinthifolius* (Christmasberry) (Carr 1998, p. 10; NTBG Accession Database 1999; NTBG Provenance Report 1991; Wood 1998, p. 1; Wood 1999, p. 1; Wood 2005, p. 1; Wood 2007a, p. 1; Wood 2007f, p. 1; HBMP 2007). In addition, there are several nonnative grasses such as *Melinus minutiflora* (molasses grass), *Oplismenus hirtellus* (basketgrass), *Paspalum conjugatum* (Hilo grass), *P. urvillei* (Vasey grass), and *Setaria parviflora* (yellow foxtail) that pose a significant threat to the species dependent on this ecosystem (HBMP 2007).

Lowland Wet Ecosystem

The nonnative plant threats to the species inhabiting the lowland wet ecosystem include the understory and subcanopy species *Axonopus fissifolius* (narrow-leaved carpetgrass), *Christella parasitica* (NCN), *Clidemia hirta* (Koster's curse), *Coffea arabica* (Arabian coffee), *Cyperus meyenianus* (NCN), *Erigeron karvinskianus*, *Juncus planifolius* (bog rush), *Lantana camara*, *Melastoma septemnervium*, *Oplismenus hirtellus*, *Pterolepis glomerata* (NCN), *Rubus rosifolius*, *Sacciolepis indica* !(glenwood grass), *Setaria parviflora*, and *Sphaeropteris cooperi* (Australian tree fern), and the canopy species *Psidium cattleianum*, *P. guajava*, and *Rhodomyrtus tomentosa* (Hawaii State Comprehensive Wildlife Strategy (HSCWS) 2005; NTBG 2006; Wood 1998, p. 2; Wood 2007f, p. 3; HBMP 2007).

Montane Mesic Ecosystem

The nonnative plant threats to the species inhabiting the montane mesic ecosystem include the understory and subcanopy species *Axonopus fissifolius*, *Blechnum appendiculatum*, *Christella parasitica*, *Cyperus meyenianus*, *Ehrharta stipioides* (meadow ricegrass), *Erigeron karvinskianus*, *Hedychium gardnerianum*, *Holcus lanatus* (common velvet grass), *Kalanchoe pinnata*, *Lantana camara*, *Lonicera japonica* (Japanese honeysuckle), *Melastoma septemnervium*, *Paspalum urvillei*, *Passiflora tarmïniana* (banana poka), *Rubus argutus*, *R. ellipticus* (yellow Himalayan raspberry), and *R. rosifolius*, and the canopy species *Corynocarpus laevigatus* (karakanut), *Eucalyptus robusta* (swamp mahogany), *Psidium cattleianum*, *Rhodomyrtus tomentosa*,

and *Ricinus communis* (castor bean) (HBMP 2007).

Montane Wet Ecosystem

The nonnative plant threats to the species inhabiting the montane wet ecosystem include the understory and subcanopy species *Andropogon glomeratus* (bushy bluestem), *Andropogon virginicus* (broomsedge), *Axonopus fissifolius, Clidemia hirta, Cyperus meyenianus, Erechtites valerianifolia* (fireweed), *Erigeron karvinskianus, Hedychium gardnerianum, Juncus planifolius, Kalanchoe pinnata, Lantana camara, Paspalum urvillei, Passiflora tarminiana, Rubus argutus, R. ellipticus, R. rosifolius, Sacciolepis indica, Setaria parviflora*, and *Xyris complanata* (yellow-eyed grass), and the canopy species *Morella faya* (firetree) and *Psidium cattleianum* (HBMP 2007).

Dry Cliff Ecosystem

The nonnative plant threats to the species inhabiting the dry cliff ecosystem include the understory and subcanopy species *Andropogon glomeratus, Erigeron karvinskianus, Kalanchoe pinnata, Lantana camara, Lonicera japonica, Passiflora tarminiana, Rubus argutus*, and *Verbena litoralis* (vervain) (Wood 2007d; HBMP 2007).

Wet Cliff Ecosystem

The nonnative plant threats to the species inhabiting the wet cliff ecosystem include the understory and subcanopy species *Ageratum conyzoides* (maile honohono), *Andropogon glomeratus, Blechnum appendiculatum, Clidemia hirta, Cyperus meyenianus, Erigeron karvinskianus, Juncus planifolius, Kalanchoe pinnata, Lonicera japonica, Paspalum conjugatum, Passiflora edulis* (passion fruit, lilikoi), *P. tarminiana, Pluchea carolinensis* (sourbush), *Rubus argutus, R. rosifolius, Setaria parviflora, Sphaeropteris cooperi*, and *Youngia japonica* (oriental hawksbeard), and the canopy species *Buddleja asiatica* (dog tail) and *Psidium cattleianum* (S. Perlman, in litt. 2007; HBMP 2007).

Nonnative Species-Specific Impacts

Nonnative plants represent a significant and immediate threat to each of the 48 species being addressed in this proposed rule throughout their ranges by destroying and modifying habitat. They can adversely impact microhabitat by modifying the availability of light, altering soil-water regimes, and modifying nutrient cycling processes. They can also alter fire characteristics of native plant habitat, leading to incursions of fire-tolerant nonnative plant species into native habitat. Nonnative plants outcompete native plants by growing faster; in addition, they release chemicals that inhibit the growth of other plants. By outcompeting native species, nonnative plants convert native-dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33-35). The following list provides a brief description of the nonnative plants that pose a threat to the species proposed for listing that occur in the ecosystems being addressed in this proposed rule.

- *Ageratum conyzoides* is a perennial herb that produces thousands of seeds spread by wind and water, with over half germinating shortly after being shed, displacing native understory vegetation (Pacific Island Ecosystem at Risk (PIER) 2007).
- *Andropogon glomeratus*, a grass species, displaces native vegetation by invading disturbed areas, with culms (stems of grasses or similar plants) to 5 ft (1.5 m) tall, and reproduces readily by seed (Ohio Department of Natural Resources 2006; PIER 2008a).
- *Andropogon virginicus* is a grass with seeds that are easily distributed by wind, clothing, vehicles, and feral animals (Smith 1989, p. 63). Some research suggests that this species may also release allelopathic substances (chemicals that inhibit growth in other plants) that dramatically decrease the reestablishment of native plants (Rice 1972, p 752). This species is on the Hawaii State noxious weed list (HAR Title 4, Subtitle 6, Chapter 68).
- *Axonopus fissifolius* is a pasture grass that forms dense mats with tall foliage. This species does well in soils with low nitrogen levels, and can outcompete other grasses in wet forests and bogs. The species is not subject to any major diseases or insect pests, and recovers quickly from fire. The seeds are readily spread by water, vehicles, and grazing animals (O'Connor 1999, pp. 1,500-1,502; Cook *et al.* 2005, p. 4).
- *Blechnum appendiculatum* is a fern with fronds to 23 in (60 cm) long, that forms large colonies, outcompeting many native fern species (Palmer 2003, p. 81).
- *Buddleja asiatica* is a shrub or small tree that can tolerate a wide range of habitats, forms dense thickets, and is rapidly spreading into wet forest and even lava and cinder substrate areas in Hawaii where it displaces native vegetation (Wagner *et al.* 1999, p. 415; Pacific Island Ecosystem at Risk (PIER) 2008b).
- *Christella parasitica* (a fern) is known to hybridize with other *Christella* species, and may hybridize with endemic Hawaiian *Christella* species (Palmer 2003, p. 90).
- *Clidemia hirta* is a noxious shrub in the Melastomataceae family that forms a dense understory, shades out native plants and prevents their regeneration, and is considered a significant nonnative plant threat (Wagner *et al.* 1985, p. 41; Smith 1989, p. 64). All plants in the Melastomataceae family are legally declared noxious in the State of Hawaii (HAR Title 4, Subtitle 6, Chapter 68).
- *Coffea arabica* is shade tolerant and can form dense stands in the forest understory. Its seeds are dispersed by birds and rats and can germinate under the forest canopy displacing native vegetation (PIER 2008c).
- *Corynocarpus laevigatus* is a tree up to 49 ft (15 m) tall. *C. laevigatus* seeds were broadcast by aircraft over the interior of Kauai in 1929 in an attempt to restore the watershed, and it is now naturalized there (Wagner *et al.* 1985, p. 39; Forster and Forster 1999, p. 566). It forms dense shade which excludes other species, and the seeds are distributed by frugivorous (fruit-eating) birds and pigs (PIER 2008d).
- *Cyperus meyenianus* can grow as tall as 2 ft (0.6 m) in height and outcompetes native plants (Koyama 1999, p. 1,421).
- *Ehrharta stipioides* is a grass that creates a thick mat in which other species cannot regenerate; its seeds are easily dispersed by awns (slender, terminal, bristle-like process found at the spikelette in many grasses) that attach to fur or clothing (U.S. Army 2006, p. 2-1-20).
- *Erechtites valerianifolia*, a tall (up to 8 ft (2.5 m)), widely-distributed annual herb, produces thousands of wind-dispersed seeds, outcompeting native plants (Wagner *et al.* 1999, p. 314).
- *Erigeron karvinskianus* reproduces and spreads rapidly to form dense mats, and can spread by stem layering and regrowth of broken roots. This species crowds out and displaces ground level plants (Weeds of Blue Mountains Bushland 2006).
- *Eucalyptus robusta* was planted by State foresters in the early 1900s on all the main Hawaiian Islands except Niihau and Kahoolawe in an attempt to protect watersheds. These trees are quick-growing, can reach 99 ft (30 m) in height, reproduce from seed, and replace native forest species (Cuddihy and Stone 1990, p 52; Wagner *et al.* 1999, p. 957; PIER 2008e).
- *Hedychium gardnerianum* forms vast, dense colonies, displacing other plant species, and reproduces by stolons

where already established. The conspicuous, fleshy, red seeds are dispersed by fruit-eating birds as well as humans (Smith 1985, p. 191). Aircraft-based analysis has found that this species reduces the amount of nitrogen in the native *Metrosideros* forest canopy in Hawaii, a finding subsequently corroborated by ground-based sampling (Asner and Vitousek 2005). This species may also block stream edges, altering water flow and the native vegetation community (Global Invasive Species Database (GISD) 2007).

- *Holcus lanatus* is an aggressively growing and possibly allelopathic (having a chemical inhibitory effect on other organisms) grass that quickly becomes dominant over other plants (Pitcher and Russo 1980, p. 3).
- *Juncus planifolius* forms dense mats and has the potential of displacing natives by preventing establishment of their seedlings (Medeiros *et al.* 1991, p. 28).
- *Kalanchoe pinnata* can form dense stands that prevent reproduction of native species. It can also reproduce by vegetative means at indents along the leaf (Motooka *et al.* 2003).
- *Lantana camara* was brought to Hawaii as an ornamental plant, and is an aggressive, thicket-forming shrub which is now found on all of the main islands (Wagner *et al.* 1999, p. 1,320).
- *Lonicera japonica* is a sprawling vine that can grow over and smother shrubs and small trees, and cover the forest floor, preventing growth of native species (PIER 2008f).
- *Melastoma septemnervium* is another member of the Melastomataceae family. This plant displaces and outcompetes native vegetation because of its invasive characteristics such as high germination rate, rapid growth, early maturity, ability of fragments to root, possible asexual reproduction, and efficient seed dispersal, especially by birds (Smith 1985, p. 194; University of Florida Herbarium 2006). This species is on the Hawaii State noxious weed list (HAR Title 4, Subtitle 6, Chapter 68).
- *Melinus minutiflora* forms dense mats that can fuel more intense fires that destroy native plants (O'Connor 1999, p. 1.562; Cuddihy and Stone 1990, p. 89).
- *Morella faya* is an evergreen shrub or small tree up to 26 ft (8 m) tall. It forms monotypic stands, has the ability to fix nitrogen, and alters the successional ecosystems in areas it invades, displacing native vegetation through competition. It is also a prolific fruit producer (average of 400,000 fruit per individual shrub or tree per year), and the fruit are spread by frugivorous birds and feral pigs (Vitousek 1990, p. 8-9; Wagner *et al.* 1999, p. 931; PIER 2008g). This species is on the Hawaii State noxious weed list (HAR Title 4, Subtitle 6, Chapter 68).
- *Oplismenus hirtellus* forms a dense groundcover, is sometimes climbing, and roots at the nodes, enabling its rapid spread. It also has sticky seeds that attach to visiting animals and birds that then carry them to new areas where they are deposited and spread accordingly (O'Connor 1999, p. 1,565; Johnson 2005).
- *Paspalum conjugatum* is found in wet habitats, and forms a dense ground cover. Its small hairy seeds are easily transported on humans and animals or are carried by the wind through native forests, where it establishes and displaces native vegetation (Cuddihy and Stone 1990, p. 83; Tomich 1986, p. 125; PIER 2006; University of Hawaii 2008h).
- *Paspalum urvillei* forms dense stands which displace native vegetation (Motooka *et al.* 2003, p. 1).
- *Passiflora edulis* is a vigorous, climbing vine cultivated for its fruit in Hawaii (Escobar 1999, p. 1,010). It can grow up to 20 ft (6 m) per year once established, smothering trees and shrubs. Each fruit has hundreds of seeds which are eaten and distributed by pigs (PIER 2008i).
- *Passiflora tarminiana*, a vine native to South America, is widely cultivated for its fruit (Escobar 1999, p 1,012). First introduced to Hawaii in the early 1900s, it is now a significant pest in mesic forest, where it overgrows and smothers the forest canopy. Its seeds are readily dispersed by humans, birds, and feral pigs (La Rosa 1992, pp. 272, 290).
- *Pluchea carolinensis* is a fast-growing shrub that forms thickets in dry habitats and can tolerate saline conditions. The wind-dispersed seeds facilitate plant dispersal which displaces native vegetation (Francis 2006).
- *Psidium cattleianum* forms dense stands in which few other plants can grow, displacing native vegetation through competition. The fruit is eaten by pigs and birds that disperse the seeds throughout the forest (Smith 1985, p. 200; Wagner *et al.* 1985, p. 24).
- *Psidium guajava* forms dense stands in disturbed forest. The seeds are spread by feral pigs and alien birds, and it can also regenerate from underground parts by suckering (Wagner *et al.* 1999, p. 972).
- *Pterolepis glomerata* is another member of the Melastomataceae family. The basis for its classification as invasive are the plant's germination rates, rapid growth, early maturity, ability of fragments to root, possible asexual reproduction, and seed dispersal by birds (University of Florida Herbarium 2006). Because of these attributes, it displaces native vegetation through competition.
- *Rhodomyrtus tomentosa* forms dense thickets and produces large amounts of seed that are dispersed by frugivorous birds and mammals (Smith 1985, p. 201). It also alters natural fire regimes and sprouts prolifically after fires (University of Florida 2006). This species is on the Hawaii State noxious weed list (HAR Title 4, Subtitle 6, Chapter 68).
- *Ricinus communis* is a fast growing tree that can form thickets that shade out other species (PIER 2007).
- *Rubus argutus* reproduces both vegetatively and by seed, readily sprouts from underground runners, and is quickly spread by frugivorous birds (Tunison 1991, p. 2; Wagner *et al.* 1999, p. 1,107; U.S. Army 2006, p. 2-1-21, 2-1-22). This species, which displaces native vegetation through competiton, is on the Hawaii State noxious weed list (HAR Title 4, Subtitle 6, Chapter 68).
- *Rubus ellipticus* is a climbing shrub that forms impenetrable thickets, is covered with prickles, and has edible yellow fruit that are readily dispersed by birds. This species, which displaces native vegetation through competition, is on the Hawaii State noxious weed list (Benton 2005, p 1; GISD 2008a; HAR Title 4, Subtitle 6, Chapter 68).
- *Rubus rosifolius* forms dense thickets and outcompetes native plant species. It easily reproduces from roots left in the ground, and seeds are spread by feral animals and birds (PIER 2008j; GISD 2008b).
- *Sacciolepis indica* is an annual grass that invades disturbed and open areas in wet habitats. The seeds are dispersed by sticking to animal fur (University of Hawaii 1998).
- *Schinus terebinthifolius* forms dense thickets and grows in all terrain, and the red berries are attractive to birds (Smith 1989, p. 63). *Schinus* seedlings grow very slowly and can survive in dense shade, exhibiting vigorous growth when the canopy is opened after a disturbance (Brazilian Pepper Task Force 1997). Because of these attributes, it is able to displace native vegetation through competition.
- *Setaria parviflora* can grow in a wide variety of habitats. Its culms (hollow or pithy stalks or stems) can be up to 4 ft (1.2 m) tall, and this species can form significant colonies shading and crowding out native plant species (O'Connor 1999, p. 1,592; University of Florida 2007).
- *Sphaeropteris cooperi* is a tree fern native to Australia that was brought to

Hawaii for use in landscaping (Medeiros *et al.* 1992, p. 43). It can achieve high densities in native Hawaiian forest and grows up to 1 ft (0.3 m) in height per year. It reaches maximum known heights of 39 ft (12 m) (Jones and Clemesha 1976, p. 56), and can displace native species. Understory disturbance by pigs facilitates its establishment (Medeiros *et al.* 1992, p. 30), and it has been known to spread over seven mi (12 km) through windblown dispersal of spores from plant nurseries (Medeiros *et al.* 1992, p 29).

- *Verbena litoralis* is a perennial herb up to 6.5 ft (2 m) tall, and is naturalized in a wide range of habitats in Hawaii (Wagner *et al.* 1999, p. 1,325). It displaces native vegetation through competition.
- *Xyris complanata* is a clumping herb cultivated for use in floral arrangements. It is naturalized in Hawaii in wet muddy areas and on lava and can outcompete native vegetation (Wagner *et al.* 1999, p. 1,615).
- *Youngia japonica* is an annual herb 3 ft (0.9 m) tall that is native to southeastern Asia and is now a pantropical weed (Wagner *et al.* 1999, p. 377). In Hawaii it occurs in moist, disturbed sites, and can invade nearly intact native wet forest (Wagner *et al.* 1999, p. 377), outcompeting native vegetation.

Habitat destruction and modification by fire

Fire is a relatively new, human-related threat to native species and natural vegetation in Hawaii. The historical fire regime in Hawaii was characterized by infrequent, low severity fires (Cuddihy and Stone 1990, p. 91; Smith and Tunison 1992, pp. 395-397). Few natural ignition sources existed, natural fuel beds were often discontinuous, and rainfall in many areas on most islands was, and is moderate to high. Fires inadvertently or intentionally ignited by the original Polynesians in Hawaii probably contributed to the initial decline of native vegetation in the drier plains and foothills. These early settlers practiced slash-and-burn agriculture that created open lowland areas suitable for the later colonization of nonnative, fire-adapted grasses (Kirch 1982, pp. 5-6, 8; Cuddihy and Stone 1990, pp. 30-31). Beginning in the late 18th century, Europeans and Americans introduced plants and animals that further degraded native Hawaiian ecosystems. Pasturage and ranching, in particular, created highly fire-prone areas of nonnative grasses and shrubs (D'Antonio and Vitousek 1992, p. 67). Although fires are infrequent in mountainous regions today, extensive fires have occurred in lowland mesic areas, and up to half of the areas dominated by alien species have been damaged by fire.

Fires of all intensities, seasons, and sources are destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire can kill most native trees and shrubs in the burned area (D'Antonio and Vitousek 1992, p. 74). Few native Hawaiian plants and animals are adapted to withstand fire, and none are known to depend on fire for their existence or regeneration. Although Vogl (1969) (*in* Cuddihy and Stone 1990, p. 91) proposed that naturally occurring fires, primarily from lightning strikes, have been important in the development of the original Hawaiian flora, and that many Hawaiian plants might be fire adapted, Mueller-Dumbois (1981) (*in* Cuddihy and Stone 1990, p. 91) point out that most natural vegetation types of Hawaii would not carry fire before the introduction of alien grasses, and Smith and Tunison (in press) (*in* Cuddihy and Stone 1990, p. 91) state that native plant fuels typically have low flammability. Cuddihy and Stone (1990, p. 91) state that fire probably influenced the evolution of the montane ecosystems of Maui and Hawaii, which contain grasslands of the native *Deschampsia nubigena* and stands of native shrub species and koa (*Acacia koa*).

Alien-dominated grasslands and shrublands constitute the greatest fire threat to native lowland vegetation, including the lowland mesic ecosystem described in this proposal. Grasses (particularly those that produce mats of dry material or retain a mass of standing dead leaves) that invade native forests and shrublands provide fuels that allow fire to burn areas that would not otherwise easily burn (Fujioka and Fujii 1980, in Cuddihy and Stone 1990, p. 93). Native woody plants may recover from fire to some degree, but fire tips the competitive balance toward alien species (National Park Service 1989 *in* Cuddihy and Stone 1990, p. 93). Many nonnative invasive plants, especially fire tolerant grasses, outcompete native plants and inhibit their regeneration (D'Antonio and Vitousek 1992, pp. 70, 73-74; Tunison et. al. 2002, p. 122).

Fire represents a threat to many of the species found in the lowland mesic, montane mesic, and dry cliff ecosystems addressed in this proposed rule. Fire can destroy dormant seeds as well as plants, even in steep or inaccessible areas. Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimate conditions favorable to alien plants. Alien plant species most likely to be spread as a consequence of fire are those that produce a high fuel load, are adapted to survive and regenerate after fire, and establish rapidly in newly burned areas. For example, a documented increase in the frequency and size of fires at Hawaii Volcanoes National Park since 1968 coincided with an increasing cover of alien grasses (Smith and Tunison 1992, p. 398).

Habitat destruction and modification by hurricanes

Hurricanes adversely impact native Hawaiian habitat, including all six Kauai ecosystems and their associated species identified in this proposed rule. They do this by destroying native vegetation, opening the canopy and thus modifying the availability of light, and creating disturbed areas conducive to invasion by nonnative pest species (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 539-540). Because many Hawaiian plant and animal species, including the 48 species in this proposal, persist in low numbers and in restricted ranges, natural disasters, such as hurricanes, can be particularly devastating (Hawaii Comprehensive Wildlife Conservation Plan 2005, p. 4-3).

In November 1982, Hurricane Iwa struck the Hawaiian Islands with wind gusts exceeding 100 miles per hour (mph) (161 kilometers per hour (kph)), causing extensive damage, especially on the islands of Niihau, Kauai, and Oahu (Businger 1998, pp. 2, 6). Many forest trees were destroyed, which opened the canopy and facilitated invasion of native habitat by nonnative plants. Competition with nonnative plants is a threat to each of the 6 ecosystems and the 48 species addressed in this proposed rule, as described above. In September 1992, Hurricane Iniki, a Category 4 hurricane with maximum wind speeds recorded at 140 mph (225 kph), passed directly over the island of Kauai, causing significant damage to Kauai's native plant populations (Businger 1998, pp. 2, 6; S. Perlman, in litt. 1992, pp. 1-9). Several species of Kauai's endemic forest birds suffered significant declines in population, and some have not been observed since the hurricanes. In addition, populations of several of Hawaii's rare plants, including three of the species in this proposal, *Lysimachia iniki, L. pendens*, and *L. venosa*, were adversely impacted by hurricanes Iwa and Iniki through wind damage, canopy disruption, and landslides (S. Perlman, in litt. 1992, p. 1). Damage by future hurricanes could further decrease the remaining native-

plant dominated habitat areas that support rare plants and wildlife in Kauai ecosystems (S. Perlman, in litt. 1992, pp. 1-9).

Habitat destruction and modification due to landslides and flooding

Landslides and flooding destabilize substrates, damage and destroy individual plants, and alter hydrological patterns, which result in changes to native plant and animal communities. Due to the steep topography of much of the island of Kauai, erosion and disturbance caused by introduced ungulates exacerbates the potential for landslides or flooding, which in turn threaten native plants. For those species that occur in small numbers in highly restricted geographic areas, such events have the potential to eradicate all individuals of a population, or even all populations of a species, resulting in extinction.

Landslides and flooding likely adversely many of the species addressed in this proposed rule, including: *Chamaesyce eleanoriae, Chamaesyce remyi* var. *kauaiensis, C. remyi* var. *remyi, Charpentiera densiflora, Cyanea dolichopoda, C. eleeleensis, C. kolekoleensis, C. kuhihewa, Cyrtandra oenobarba, C. paliku, Diellia mannii, Dubautia kenwoodii, Dubautia plantaginea* ssp. *magnifolia, Lysimachia iniki, L. pendens, L. scopulensis, L. venosa, Melicope paniculata, Myrsine mezii, Phyllostegia renovans, Platydesma rostrata, Schiedea attenuata*, and *Stenogyne kealiae*. Monitoring data from the HBMP suggests that these species are threatened by landslides or falling rocks, since they are found in landscape settings susceptible to these events (e.g., steep slopes and cliffs). Since *Schiedea attenuata* is known from only a single population of 20 individuals on a steep cliff, one landslide could lead to the extinction of the species by direct destruction of the individual plants, mechanical damage to individual plants which could lead to their death, destabilization of the cliff habitat leading to additional landslides, and alteration of hydrological patterns (e.g., affecting the availability of soil moisture). Field survey data presented in the HBMP suggest that *Charpentiera densiflora* and *Cyrtandra oenobarba* are threatened by both landslides and flooding, and *Cyanea kolekoleensis* is threatened by flooding.

Habitat destruction and modification by climate change

The exact nature of the impacts of global climate change and increasing temperatures on native Hawaiian ecosystems, including the 6 Kauai ecosystems and each of the associated 48 species identified in this proposed rule, are unknown, but are likely to include the loss of native species that comprise the communities in which the 48 Kauai species occur (Benning *et al.* 2002, pp. 14,246 and 14,248; Pounds *et al.* 1999, pp. 611-612; Still *et al.* 1999, p. 610). Future changes in precipitation are uncertain because they depend in part on how El Niño (a disruption of the ocean atmospheric system in the Tropical Pacific having important global consequences for weather and climate) might change, and reliable projections of changes in El Niño have yet to be made (Hawaii Climate Change Action Plan 1998, pp. 2-10).

According to some climate change projections, temperature increases could pose an additional threat specific to the akekee and akikiki by causing an increase in the elevation at which regular transmission of avian malaria occurs (Benning *et al.* 2002). Experimental evidence has shown that the malarial parasite does not develop in birds in an environment below 55 degrees Fahrenheit (F) (13 degrees Celsius (C)), and field studies have found that maximum malaria transmission occurs where mean ambient summer temperature is 63 degrees F (17 degrees C) (Benning *et al.* 2002, p. 14,246). Between 55 and 63 degrees F (13 and 17 degrees C), malaria transmission is sporadic and usually associated with warmer periods, such as El Niño events (Benning *et al.* 2002, p. 14,246). There are no forested areas on Kauai where mean ambient temperature is below 55 degrees F (13 degrees C), which indicates that all areas are subject to malaria at least periodically. Benning *et al.* (2002) used GIS simulation to show that an increase in temperature of 3.6 degrees F (2 degrees C), which is within the range predicted by some climate models (*e.g.* Still *et al.* 1999 and references therein, p. 608; IPCC 2001, p. 67-69), would raise the 63 degrees F (17 degrees C) isotherm in the Alakai swamp region on Kauai by 984 ft (300 m), resulting in an 85 percent decrease in the land area where malaria transmission currently is only periodic. If climate change were to reduce the remaining suitable habitat for the akekee and akikiki by 85 percent as predicted, it would likely contribute to the extinction of the species over time.

The 48 Kauai species in this proposal are theoretically amongst the most vulnerable to extinction due to anticipated global climate change, although the specific impacts of such climate change on these species cannot currently be known. Impacts to the species proposed for listing would be expected to include habitat loss or alteration and/or changes in disturbance regimes, in addition to direct physiological stress. The probability of species going extinct as a result of these factors increases when ranges are restricted, habitat decreases, and population numbers decline (IPCC 2007, p. 8). Such is the case for each of the 48 Kauai species, which are characterized by limited climactic ranges and/or restricted habitat requirements, small population size, and low number of individuals. The threat of climate change for the akikiki and akekee would be further exacerbated by the extensive loss of suitable habitat due to the expansion of the transmission zone for malaria.

Summary of Habitat Destruction and Modification

The threats to each of the 48 Kauai species addressed in this proposed rule are occurring throughout the entire range of each of the species. These threats include introduced ungulates, nonnative plants, fire, natural disasters, and climate change.

The effects from ungulates are immediate because ungulates currently occur in all of the ecosystems on which these species depend. The threat posed by introduced ungulates is significant because they cause: (1) Trampling and grazing that directly impacts the plant species proposed for listing; (2) increased soil disturbance, leading to mechanical damage to individuals of proposed plants and host plants of *Drosophila attigua* (picture-wing fly); (3) trampling and grazing native plants used for nesting and foraging by the akekee and akikiki, and for foraging by *D. attigua*; (4) creation of open, disturbed areas conducive to weedy plant invasion and establishment of alien plants from dispersed fruits and seeds, which results over time in the conversion of a community dominated by native vegetation to one dominated by nonnative vegetation (leading to all of the negative impacts associated with nonnative plants, detailed below); (5) increased watershed erosion and sedimentation; and (6) creation of breeding sites for mosquitoes, the primary vector for the transmission of avian diseases, which threaten the akikiki and akekee. These threats are expected to continue or increase without control or eradication.

Nonnative plants represent a significant and immediate threat to all 48 species being addressed in this proposed rule through habitat destruction and modification for the following reasons: (1) They adversely

impact microhabitat by modifying the availability of light; (2) they alter soil-water regimes; (3) they modify nutrient cycling processes; (4) they alter fire characteristics of native plant habitat, leading to incursions of fire-tolerant nonnative plant species into native habitat; and (5) they outcompete, and possibly directly inhibit the growth of, native plant species. All of these threats can convert native dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33-35). This conversion has negative impacts on, and threatens, the 45 plant species addressed here, as well as the akikiki, akekee, and *Drosophila attigua*, which depend upon native plant species for essential life history needs.

The threat from fire to the species in this proposed rule that depend on lowland mesic, montane mesic, and dry cliff ecosystems (see Table 2) is significant because fire damages and destroys native vegetation, including dormant seeds, seedlings, and juvenile and adult plants. Many nonnative invasive plants, particularly fire-tolerant grasses, outcompete native plants and inhibit their regeneration (D'Antonio and Vitousek 1992, pp. 70, 73-74; Tunison *et al* 2001, p. 122). Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimatic conditions and creating conditions favorable to alien plants. The threat from fire is unpredictable but omnipresent in these ecosystems that have been invaded by nonnative, fire-prone grasses.

Natural disasters such as hurricanes represent a significant threat to native habitat and the 48 species addressed in this proposed rule because they open the forest canopy, modify available light, and create disturbed areas that are conducive to invasion by nonnative pest plants (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 346-347). These impacts can be particularly devastating to the 48 species addressed in this proposed rule because due to other threats they now persist in low numbers or occur in restricted ranges, and are therefore less resilient to such disturbances. Furthermore, a particularly destructive hurricane holds the potential of driving a highly localized endemic species to extinction in a single event. In 1982 and 1992, the island of Kauai received the brunt of hurricane-force winds and rain associated with Hurricanes Iwa and Iniki. Field biologists noted significant declines in native Hawaiian plant and wildlife populations following these events, and believe that future hurricane damage could further exacerbate these declines (S. Perlman, in litt. 1992, p. 1). Hurricanes pose an immediate and ever-present threat, because they can occur at any time, although their occurrence is not predictable.

Landslides and flooding adversely impact many of the species in this proposed rule (see Table 2) by destabilizing substrates, damaging and destroying individual plants, and altering hydrological patterns which result in habitat destruction or modification and changes to native plant and animal communities. These threats are significant and, as with hurricanes, have the potential to occur at any time, although their occurrence is not predictable.

The projected effects of global climate change and increasing temperatures on the 48 species addressed in this proposed rule relate to changes in microclimatic conditions, which may lead to the loss of native species due to direct physiological stress, the loss or alteration of habitat, and/or changes in disturbance regimes (e.g., storms and hurricanes). Because the probability of species going extinct increases when ranges are restricted, habitat decreases, and population numbers decline – conditions that describe the situation for small populations of single-island endemics such as those addressed in this proposed listing – each of the 48 Kauai species are particularly vulnerable to extinction due to such changes. In addition, climate change may pose a significant threat specific to the akekee and akikiki by causing an increase in the elevation at which regular transmission of avian malaria occurs. However, because the specific effects of probable climate change on these species are unknown at this time, we are not able to determine the magnitude of this threat with confidence.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The palm tree *Pritchardia hardyi* is found only on the island of Kauai. Rare palm trees are highly desirable to collectors, and there is an active internet sales and online auction market for their seeds and seedlings, including *P. hardyi* (GardenGuides.com 2007; Rarepalmseeds.com 2007; South Coast Palms 2007; Kapoho Palms 2007; J.D. Anderson Nursery 2007; Jungle Music Palms and Cycads 2007; Tropical Gardens of Maui 2007). Seeds of *P. hardyi* have been stolen from an outplanting site in the past (R. Nishek, NTBG, pers. comm. 2007), and we have evidence of vandalism and illegal collection of other species of endangered *Pritchardia* palms on Kauai (Johnson 1996, pp. 16-17; A. Kyono, DOFAW, pers. comm. 2000; R. Nishek, pers. comm. 2007). Because this species is found in only two populations with limited numbers of individuals, we consider overutilization to be an immediate and significant threat to *P. hardyi* throughout its entire range. We do not consider overutilization to pose a threat to any of the other 47 Kauai species.

C. Disease or Predation

Avian Diseases

Avian diseases transmitted by the introduced southern house mosquito (*Culex quinquefasciatus*), including avian pox (*Poxvirus avium*) and malaria (*Plasmodium relictum*), play a major role in limiting the distribution of the many Hawaiian forest bird species, and pose a significant and immediate threat to the akekee and akikiki throughout their ranges (Benning *et al.* 2002, p. 14,246). Like many other native Hawaiian forest birds, the akikiki and akekee are no longer found at lower elevations, but have become restricted to the higher elevation montane mesic (akekee only) and montane wet (both akekee and akikiki) ecosystems where mosquitoes and the diseases they carry are less prevalent (Scott *et al.* 1986, p. 367-368). In the warmer fall months, *Culex quinquefasciatus* breeds at higher densities in upper elevation forests, coinciding with a prevalence of malaria in avian populations at higher elevations (van Riper *et al.* 1986, pp. 332-333, 338).

Native Hawaiian birds evolved in the absence of mosquito-borne avian diseases, and only recently became exposed when mosquitoes were accidentally introduced to the islands in 1827, in association with the introduction of avian pox and malaria through imported cage birds and domestic fowl (Yorinks and Atkinson 2000, p. 731 and references therein). Native Hawaiian forest birds are more susceptible to malaria than are nonnative bird species (van Riper *et al.* 1986, pp. 327-328). In addition, native birds infected with malaria also show altered behaviors that increase their vulnerability to predation (Yorinks and Atkison 2000, pp. 731-738). Avian malaria appears to be highly pathogenic for the Hawaiian honeycreepers (birds in the subfamily Drepanidinae), including the akikiki and akekee (Yorinks and Atkinson, p. 737). In a study of iiwi (*Vestiaria coccinea*), another Hawaiian honeycreeper, Atkinson *et al.* (1995, p. S65) described "extraordinarily high mortality" of birds

infected with malaria. This susceptibility, in combination with the observation that other Hawaiian honeycreepers have become restricted to high elevation forests, led Atkinson *et al.* (1995, p. S68) to predict that a shift in the current mosquito distribution to higher elevations could be disastrous for those species with already reduced populations. As discussed below ("Other Natural or Manmade Factors Affecting Their Continued Existence"), climate change may pose just such a threat to the akikiki and akekee, by potentially causing an increase in the elevation at which regular transmission of avian malaria occurs (Benning *et al.* 2002, pp. 12,246-14,247).

Predation

Hawaii's plants and animals evolved in nearly complete isolation. Successful colonization of these remote volcanic islands was infrequent, and many organisms never established populations. As an example, Hawaii lacks any native ants or conifers, has very few bird families, and has only a single native land mammal (Loope 1998, p. 748). Defenses against mammalian herbivory, such as thorns, prickles, and production of toxins, were not needed, and evolutionary pressure for plants to produce or maintain them was lacking. Therefore, Hawaiian plants lost or never developed these defenses (Carlquist 1980, p. 173). Likewise, birds endemic to Hawaii lost their resistance to diseases common to their continental origins, and strategies to avoid mammalian predators. Native Hawaiian birds were not able to withstand the stressors of habitat change and predation caused when browsers, grazers, rooters, and predators were introduced (e.g., goats, cattle, pigs, rats, cats, and deer) (Scott *et al.* 1986, pp. 352-361, 364-365). The native flora and fauna of the islands are thus particularly vulnerable to the impacts of introduced alien species.

Introduced Ungulates

In addition to the habitat impacts discussed above (See "Habitat Destruction and modification by introduced ungulates"), the following ungulates most likely threaten the 45 plant species in this proposal by trampling and eating individual plants, as follows (this information is also presented in Table 2): *Astelia waialealae* (feral goats and pigs), *Canavalia napaliensis* (feral goats), *Chamaesyce eleanoriae* (feral goats), *Chamaesyce remyi* var. *kauaiensis* (feral pigs), *C. remyi* var. *remyi* (feral goats, pigs, and black-tailed deer), *Charpentiera densiflora* (feral goats), *Cyanea eleeleensis* (feral pigs), *C. kolekoleensis* (feral pigs), *C. kuhihewa* (feral pigs), *Cyrtandra oenobarba* (feral goats and pigs), *Diellia mannii* (black-tailed deer and feral pigs), *Doryopteris angelica* (black-tailed deer, feral goats and pigs), *Dryopteris crinalis* var. *podosorus* (feral pigs), *Dubautia imbricata* ssp. *imbricata* (feral pigs), *Dubautia kenwoodii* (feral goats and pigs), *Dubautia plantaginea* ssp. *magnifolia* (feral pigs), *Dubautia waialealae* (feral goats and pigs), *Geranium kauaiense* (feral pigs), *Keysseria erici* (feral pigs), *K. helenae* (feral pigs), *Labordia helleri* (black-tailed deer, and feral goats and pigs); *Labordia pumila* (feral pigs); *Lysimachia daphnoides* (feral pigs), *L. pendens* (feral pigs), *L. scopulensis* (feral pigs and goats), *Melicope degeneri* (feral goats and pigs), *M. paniculata* (feral goats and pigs), *M. puberula* (feral goats and pigs), *Myrsine knudsenii* (black-tailed deer, feral goats and pigs), *M. mezii* (feral!goats and pigs), *Phyllostegia renovans* (feral goats and pigs), *Pittosporum napaliense* (feral goats), *Platydesma rostrata* (black-tailed deer, feral goats and pigs), *Pritchardia hardyi* (feral goats and pigs), *Psychotria grandiflora* (black-tailed deer, feral goats and pigs), *P. hobdyi* (black-tailed deer, feral goats and pigs), *Schiedea attenuata* (feral goats), *Stenogyne kealiae* (black-tailed deer, feral goats and pigs), *Tetraplasandra bisattenuata* (feral pigs), and *Tetraplasandra flynnii* (feral goats) (Wood 1998, p. 1; Wagner *et al.* 1999, p. 282; HBMP Database 2007; Wood in litt. 2007, pp. 1, 4, 6-8, 10-12; USFWS 2007 Candidate Status Assessments).

We have direct evidence of ungulate damage to some of these species, but for many, ungulate damage is presumed based on several studies conducted in Hawaii and elsewhere. In a study conducted by Diong (1982, p. 160) on Maui, feral pigs were observed browsing on young shoots, leaves, and fronds of a wide variety of plants, of which over 75 percent were endemic species (Diong 1982, p. 160). A stomach content analysis in this study showed that 60 percent of the pigs' food source consisted of the endemic *Cibotium* (tree fern). Pigs were observed to fell plants and remove the bark of the native plant species *Clermontia, Cibotium, Coprosma, Psychotria, Scaevola,* and *Hedyotis,* resulting in larger trees being killed over a few months of repeated feeding (Diong 1982, p. 144). A study in Texas conducted by Beach (1997, pp. 3-4) revealed that feral pigs spread disease and parasites, and that their rooting and wallowing behavior led to spoilage of watering holes and loss of soil through leaching and erosion. Rooting activities also decreased the survivability of some plant species through disruption at root level of mature plants and seedlings (Beach 1997, pp. 3-4).

Feral goats thrive on a variety of food plants, and are instrumental in the decline of native vegetation in many areas (Cuddihy and Stone 1990, p. 64). Feral goats trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Clarke and Cuddihy 1980, p. C-20; van Riper and van Riper 1982, pp. 34-35; Tomich 1986, pp. 153-156; Cuddihy and Stone 1990, p. 64). A study of goat predation on a native *Acacia koa* (koa) forest on the island of Hawaii has shown that grazing pressure by goats can cause the eventual extinction of koa because it is unable to reproduce (Spatz and Mueller-Dombois 1973, p. 874). If goats are maintained at constantly high numbers, mature trees will eventually die and with them, the root systems that support suckers and vegetative reproduction. An exclosure analysis demonstrated that release from goat pressure by fencing resulted in a rapid recovery in height growth and numbers of vegetative resprouts of koa (Spatz and Mueller-Dombois 1973, p. 873). Another study at Puuwaawaa on the island of Hawaii demonstrated that prior to management actions in 1985, regeneration of endemic shrubs and trees in the goat-grazed area was almost totally lacking, contributing to the invasion of the forest understory by exotic grasses and weeds. After the removal of grazing animals in 1985, koa and *Metrosideros* spp. (ohia) seedlings were observed germinating by the thousands (Department of Land and Natural Resources 2002, p. 52). Goats have been observed uprooting, eating, and trampling native plants in the Kauai ecosystems (e.g., K.R. Wood 1994; S. Perlman, in litt. 2007). Based on a comparison of fenced and unfenced areas, it is clear that goats can devastate native ecosystems. They can also outcompete black-tailed deer. It is estimated that there are 2 goats per hectare in Hawaii (C. Kessler, pers. comm. 2008).

Black-tailed deer co!nsume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of nonnative plants (van Riper and van Riper 1982, pp. 42-43; Stone 1985, pp. 261-262; Tomich 1986, pp. 132-134; Cuddihy and Stone 1990, p. 67). About 350 animals are known to occur in and near Waimea Canyon, with some invasion into Alakai Swamp in drier periods (Cuddihy and Stone 1990, p. 67). According to current State

records, they are feeding largely on the introduced species strawberry guava, thimbleberry, passion flower, and blackberry, as well as the native species *Alyxia oliviformis* (maile), *Dodonaea viscosa* (aalii), *Dianella sandwicensis* (ukiuki), *Coprosma* sp. (pilo), and *Acacia koa* (Cuddihy and Stone 1990, p. 67). Black-tail deer affect the species and ecosystems addressed in this proposed rule by damaging native plants through browsing or trampling, resulting in plant mortality and/or the loss of reproductive vigor. By spreading seeds of nonnative species on their coats or in their digestive tracts, they also increase competition for resources with native species.

Rats

There are three species of introduced rats in the Hawaiian Islands. The Polynesian rat (*Rattus exulans*) and the black rat (*Rattus rattus*) are primarily found in the wild, in dry to wet habitats, while the Norway rat (*Rattus norvegicus*) is typically found in manmade habitats such as urban areas or agricultural fields (Tomich 1986, p. 41). The Polynesian rat probably arrived on the Hawaiian Islands as an inadvertent introduction by early Polynesian colonizers from the central Pacific (Tomich 1986, p. 42). More recently, the black rat and the Norway rat most likely arrived on the Hawaiian Islands as stowaways on ships sometime in the 19th century (Atkinson and Atkinson 2000, p. 25).

Rats occur in all six of the Kauai ecosystems, and rat predation threatens at least 19 of the 45 plant species addressed in this proposed rule (see Table 2). Although introduced rats are best known for their impacts on island birds, rat predation on seeds and young plants can seriously affect regeneration. They are also known to have caused declines or even the total elimination of island plant species (Campbell and Atkinson 1999, as cited in Atkinson and Atkinson 2000, p. 24). Rats impact the native plants by eating fleshy fruits, seeds, flowers, stems, leaves, roots, and other plant parts (Atkinson and Atkinson 2000, p. 23). In the Hawaiian Islands, rats may consume as much as 90 percent of the seeds produced by some trees, or in some cases prevent the regeneration of forest species completely (Cuddihy and Stone 1990, pp. 68-69). Plants with large, fleshy fruits are particularly susceptible to rat predation including several of the plant genera proposed for listing here, for example the fruits of *Pritchardia* spp., and plants in the bellflower (e.g., *Cyanea* spp.), and African violet (e.g., *Cyrtandra* spp.) families (Cuddihy and Stone 1990, pp. 67-69). Research on rats in forests in New Zealand has demonstrated that, over time, rats may alter the species composition of forest plants (Cuddihy and Stone 1990, pp. 68-69).

Rat predation may also threaten the native host and foraging plants of *Drosophila attigua*, and is a threat to the akekee and akikiki in the montane mesic and montane wet ecosystems. Rats are reported in the ecosystems where these birds occur and are potential predators on roosting or incubating adults, nests, and young (VanderWerf and Smith 2002, p. 73; Scott *et al.* 1986, pp. 363-364; USFWS 2007 Candidate Status Assessments). Predation by rats was the greatest cause of nest failure for the puaiohi, or small Kauai thrush (*Myadestes palmeri*), an endangered bird that inhabits the same areas as the akekee and akikiki (Tweed *et al.* 2006, p. 753). Puaiohi nest almost exclusively in pseudo-cavities on cliff faces (Snetsinger *et al.* 2005, p. 77), unlike akikiki and akekee that build cup nests in trees (Akikiki, BNA 555, p. 7; Akekee, BNA 295, p. 6). Captive raised puaiohi built cup nests in trees during a 1999 captive release in the Kawaikoi, and two females and their associated young were killed by rats at these nests (Tweed *et al.* 2003, USGS/BRD, unpublished data). From these data and information on rat predation for cliff nests (Snetsinger *et al.* 2005, p. 79), it is clear that both puaiohi cliff nests and cup nests built in trees are vulnerable to rat predation. Although we do not have direct evidence of rat predation on the akekee or akikiki from nest studies, it is reasonable to assume that these birds nesting in the same area as the puaiohi would be exposed to similar impacts from rat predation.

Cats and Owls

Feral cats (*Felis domesticus*) are present in the Alakai Swamp, which is within the montane wet ecosystem (Tweed *et al.* 2006, p. 753). Cats are believed to prey on roosting or incubating akekee and akikiki adults, nests, and young (VanderWerf and Smith 2002, p. 73; Scott *et al.* 1986, pp. 363-364). Though cats are most common at lower elevations, they have been observed in high-elevation rain forests on Hawaii and Maui (Scott *et al.* 1986, p. 363). On Hawaii Island, native forest birds have been found to be a regular component in the diets of feral cats in the montane wet forest (Smucker *et al.* 2000, p. 233). Examination of the stomach contents of 118 feral cats at Hakalau forest found native and introduced birds to be the most common prey item (Banko *et al.* 2004, p. 162). In addition, two species of owls, the native pueo (*Asio flammeus sandwichensis*) and the introduced barn owl (*Tyto alba*), are also known to prey on forest birds. Between 1996 and 1998, 10 percent of nest failures of the endangered puaiohi on Kauai were attributed to owls (Snetsinger *et al.* 1994, p. 47; Snetsinger *et al.* 2005, pp. 72, 79). Since the puaiohi occurs in the same area and forest type as the akikiki and akekee and is of generally similar size, it is not unreasonable to assume there may be similar impacts to these bird species.

Invertebrates

Predation by nonnative invertebrate pests adversely impacts 13 of the plant and animal species (Table 2) in this proposed rule through mechanical damage to plants, destruction of plant parts, parasitism, and mortality. Those introduced invertebrate pests with the greatest effect on these native species include at least 12 different species of slugs (Joe 2006, pp. 6, 12), the black twig borer (*Xylosandrus compactus*) (Davis 1970, pp. 38-39), the two-spotted leafhopper (*Sophonia rufofascia*) (Hawaii Department of Agriculture, p. 1; Fukada 1996, pp. 1-12), and the western yellow-jacket wasp (*Vespula pensylvanica*) (Gambino and Loope 1992, p. 1).

Predation by nonnative slugs is most likely a threat to individuals of the four species of *Cyanea* in this proposed rule: *Cyanea dolichopoda, C. eleeleensis, C. kolekoleensis,* and *C. kuhihewa* (Joe 2006. p. 10). On Oahu, slugs have been reported to destroy *C. grimesiana* ssp. *obatae* and *C. superba* ssp. *superba* in the wild, and have been observed eating leaves and fruit of cultivated individuals of *Cyanea* (L. Mehrhoff, pers. comm. 1995; U.S. Army Garrison 2005, pp. 3-34, 3-51). Little is known about the predation of certain rare plants by slugs; however, information in the U.S. Army's 2005 Status Report for the Makua Implementation Plan indicates that slugs can be a threat to all species of *Cyanea* (U.S. Army Garrison 2005, p. 3-51). Research investigating slug herbivory and control methods shows that slug impacts on *Cyanea* seedlings results in up to 70 to 80 percent seedling mortality (U.S. Army Garrison 2005, p. 3-51). Although we do not have direct evidence of slug predation on the 4 species of *Cyanea* addressed in this rule, slugs are found in the ecosystems on Kauai in which these plants occur. It is therefore reasonable to assume these plant species would be exposed to similar impacts from slug predation.

The black twig borer (*Xylosandrus compactus*) is known to infest a wide

variety of common plant taxa, including native species of *Melicope* (Davis 1970, p. 39; Extension Entomology and UH-CTAHR Integrated Pest Management Program 2006a, p. 1). This insect pest burrows into branches, introduces a pathogenic fungus as food for its larvae, and lays its eggs (Davis 1970, p. 39). Twigs, branches, and even entire plants can be killed from an infestation (Extension Entomology and UH-CTAHR Integrated Pest Management Program 2006a, p. 2). On the Hawaiian Islands, the black twig borer has many hosts, disperses easily, and is probably present at most elevations up to 2,500 ft (762 m) (Howarth 1985, pp. 152-153). Damage caused by the black twig borer has been observed by field biologists on *Canavalia napaliensis, Charpentiera densiflora, Melicope degeneri, M. paniculata*, and *M. puberula* (HBMP 2006).

The two-spotted leafhopper is a threat as the effects of its predation have been observed on four plant species included in this proposed rule: *Chamaesyce remyi* var. *remyi* (K. Wood, pers. comm. 2000), *Cyanea kuhihewa* (Wood 2004), *Platydesma rostrata* (HBMP 2007), and *Psychotria hobdyi* (HBMP 2006). This nonnative insect damages the leaves it feeds on, typically causing chlorosis (yellowing due to disrupted chlorophyll production) to browning and death of foliage (Hawaii Department of Agriculture 2006, p. 1). The damage to plants can result in the death of affected leaves or the whole plant, owing to the combined action of its feeding and oviposition behavior (Alyokhin *et al.* 2004, p. 13). In addition to the mechanical damage caused by the feeding process, the insect may introduce plant pathogens that lead to eventual plant death (Extension Entomology and UH-CTAHR Integrated Pest Management Program 2006b, p. 2). The two-spotted leafhopper is a highly polyphagous insect, and of its recorded host plant species 68 percent are fruit, vegetable and ornamental crops, and 22 percent are endemic plants, over half of which are rare and endangered (Alyokhin *et al.* 2004, p. 13). Its range is limited to below 4,000 ft (1,219 m) in elevation, unless there is a favorable microclimate. There has been a dramatic reduction in the two-spotted leafhopper populations in the past few years, possibly due to egg parasitism (M. Fukada, pers. comm. 2007).

Nonnative predatory and parasitic insects are considered significant factors contributing to the reduction in range and abundance of *Drosophila attigua* (Science Panel 2005, p. 25). In addition to the accidental establishment of nonnative species, nonnative predators and parasites have been purposefully imported and released in Hawaii since 1865 for biological control of pests. Between 1890 and 2004, 387 nonnative species were introduced, sometimes with the specific intent of reducing populations of native Hawaiian insects (Funasaki *et al.* 1988, pp. 109-110, 143; Lai 1988, pp. 180, 186; Staples and Cowie 2001, pp. 41, 54-57). Nonnative arthropods pose a serious threat to Hawaii's native *Drosophila*, both through direct predation or parasitism as well as competition for food and space (Howarth and Medeiros 1989, pp. 82-83; Howarth and Ramsay 1991, pp. 80-83; Kaneshiro and Kaneshiro 1995, pp. 41-45; Staples and Cowie 2001, pp. 41, 54-57).

Due to their large colony sizes and systematic foraging habits, species of social Hymenoptera (ants and some wasps) and parasitic wasps pose a predation threat to the Hawaiian picture-wing flies, including *D. attigua* (Gambino *et al.* 1987, p. 170; Foote and Carson 1995, p. 370; Kaneshiro and Kaneshiro 1995, p. 12). Hawaiian arthropods, including *D. attigua*, evolved without the predation influence of social wasps (Kaneshiro and Kaneshiro 1995, pp. 41-45), and therefore have no defenses against such predation. In 1977, an aggressive race of the western yellow-jacket wasp became established in the State of Hawaii, and is now abundant between 1,969 and 5,000 ft (600 and 1,524 m) in elevation (Gambino *et al.* 1990, p. 1,087; Foote and Carson 1995, p. 370) on all the main islands (Tenorio and Nishida 1995, p. 174). *Drosophila attigua* is present within the elevation range occupied by the yellow-jacket wasps. Yellow-jacket wasps are voracious predators in most ecosystems in which they are found. Compared with typical North American populations, yellow-jackets in Hawaii display a high incidence of colonies that overwinter and persist into at least a second year. The result is that numbers of workers at such colonies are much greater than at annual colonies (Gambino *et al.* 1987, p. 169). Yellow-jacket colonies in Hawaii can each produce over a half-million foragers that consume tens of millions of arthropods (Gambino and Loope 1992, p. 19). Picture-wing flies may be particularly vulnerable to predation by wasps due to their lekking (gathering in groups for breeding) behavior, conspicuous courtship displays that can last for several minutes, and relatively large size (K. Kaneshiro, University of Hawaii at Manoa, pers. comm. 2006). Yellow-jacket wasps are widespread within at least a portion of the range encompassing the *D. attigua* population sites in the montane mesic and montane wet ecosystems on Kauai (Science Panel 2005, p. 12).

The rarity or disappearance of numerous picture-wing fly species, including *Drosophila attigua*, from historical observation sites over the past 25 years may be due to a variety of factors. While there is no documentation that conclusively ties this decrease in observations to the establishment of yellow-jacket wasps within their habitats, the concurrent arrival of wasps and decline of picture-wing fly observations in some areas suggest that the wasps may have played a significant role in the decline of some picture-wing fly populations, including that of *D. attigua* (Foote and Carson 1995, p. 370; Kaneshiro and Kaneshiro 1995, p. 41-45; Science Panel 2005, p. 25).

Summary of Predation

We consider predation and parasitism by nonnative animal species (pigs, goats, deer, rats, cats, owls, and invertebrates) to pose an immediate and significant threat to 36 of the 48 species in this proposed rule throughout their ranges for the following reasons: (1) Observations and reports have documented pigs, goats, and deer browsing and trampling of 26 of the plant species, in addition to other studies demonstrating the negative impacts of ungulate browsing and trampling on native plant species of the islands (Spatz and Mueller-Dombois 1973, p. 874; Diong 1982, p. 160; Cuddihy and Stone 1990, p. 67); (2) nonnative invertebrates and rats cause mechanical damage to plants and destruction of plant parts (branches, fruits, seeds) to 22 of the 45 plant species in this proposed rule; (3) nonnative invertebrates such as yellow-jacket wasps prey upon, parasitize, and kill *Drosophila attigua*; and (4) rats, owls, and cats are likely predators on roosting or incubating adults, nests, and young of the akekee and akikiki (See Table 2).

D. The Inadequacy of Existing Regulatory Mechanisms

Currently, there are no Federal, State, or local laws, treaties, or regulations that specifically conserve or protect the 48 species from the threats described in this proposed rule. The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712) is the domestic law that implements the United States' commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of shared migratory bird resources. Each of the conventions

protects selected species of birds; however, the MBTA does not provide protection for any Hawaiian honeycreepers (Drepanidianae), including the two species being addressed in this proposed rule (akikiki and akekee) (71 FR 50205, August 24, 2006).

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Competition with Nonnative Invertebrates

Competition by nonnative crane-flies (family Tipulidae) is a threat to *Drosophila attigua* in the montane mesic and montane wet ecosystems on Kauai. The Hawaiian Islands now support several established species of nonnative crane-flies, and the larvae of some species feed within the decomposing bark of *Cheirodendron* spp. (Science Panel 2005, p. 18; K. Magnacca, pers. comm. 2005; S. Montgomery, pers. comm. 2005a). These tipulid larvae feed within the same portion of the decomposing host plant area normally occupied by *D. attigua* larvae during their development. The effect of this competition is a reduction in available host plant material for *D. attigua* larvae (Science Panel 2005, p. 18). There have been no statistical studies conducted on tipulid larvae competition in Hawaii, but it is thought the issue is severe based on many observations of very high numbers of tipulid flies present within the host plants of several species of Hawaiian *Drosophila* (S. Montgomery, pers. comm. 2008). In laboratory studies, Grimaldi and Jaenike (1984) demonstrated that competition between *Drosophila* larvae and other fly larvae can exhaust food resources, which affects both the probability of larval survival and the body size of adults, resulting in reduced adult fitness, fecundity, and lifespan.

Small Number of Populations and Individuals

Species that are endemic to single islands are inherently more vulnerable to extinction than widespread species because of the increased risk of genetic bottlenecks, random demographic fluctuations, climate change, and localized catastrophes such as hurricanes and disease outbreaks (Mangel and Tier 1994, p. 607; Pimm *et al.* 1998, p. 757). These problems are further magnified when populations are few and restricted to a very small geographic area, and when the number of individuals is very small. Populations with these characteristics face an increased likelihood of stochastic extinction due to changes in demography, the environment, genetics, or other factors (Gilpin and Soulé 1986, pp. 24-34).

Small, isolated populations often exhibit reduced levels of genetic variability, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (e.g., Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other threats, such as those discussed above (Factors A–C).

Very small plant populations may experience reduced reproductive vigor due to ineffective pollination or inbreeding depression. This is particularly true for dioecious species, such as *Melicope degeneri* and *Myrsine mezii* in this proposal, in which staminate (male) and pistillate (female) flowers occur on separate individuals. Isolated individuals have difficulty achieving natural pollen exchange, which decreases the production of viable seed. Populations are also impacted by demographic stochasticity, through which populations are skewed toward either male or female individuals by chance.

The following 25 plant species in this proposal are threatened by the effects of small population size (fewer than 50 individuals): *Astelia waialealae, Chamaesyce eleanoriae, Cyanea dolichopoda, C. eleeleensis, C. kolekoleensis, C. kuhihewa, Cyrtandra paliku, Diellia mannii, Doryopteris angelica, Dryopteris crinalis* var. *podosorus, Dubautia kalalauensis, D. kenwoodii, D. waialealae, Lysimachia iniki, L. pendens, L. scopulensis, L. venosa, Melicope degeneri, Myrsine knudsenii, M. mezii, Phyllostegia renovans, Psychotria grandiflora, Schiedea attenuata, Tetraplasandra bisattenuata*, and *T. flynnii*. We consider these species threatened by small population size because:

- No viable seeds or reproduction have been observed in *Astelia waialealae, Melicope degeneri*, and *Psychotria grandiflora*.
- Only five individuals of *Myrsine mezii* are known, and this number has not changed over 10 years (N. Tangalin, in litt. 2007b).
- *Cyrtandra paliku, Dubautia kalalauensis, Lysimachia iniki, Schiedea attenuata*, and *Tetraplasandra flynnii* are known only from a single population with fewer than 50 individuals (Wagner *et al.* 1994, p. 187; K. Wood, pers. comm. 1995; Marr and Bohm 1997, pp. 270-271; S. Perlman, pers. comm. 2003b; Baldwin and Carr 2005, p. 261; S. Perlman, in litt. 2006 and 2007).
- *Diellia mannii* and *Dubautia kenwoodii* are each known from only one individual in the wild (Carr 1998, p. 8; HBMP 2007).
- At least four species, *Cyanea eleeleensis, C. kolekoleensis, C. kuhihewa*, and *Lysimachia venosa*, are not known to persist in the wild. Of these, *Cyanea eleeleensis, C. kolekoleensis*, and *Lysimachia venosa* are not in storage or propagation, but individuals familiar with these species believe they may possibly remain extant and that much of their suitable habitat (lowland wet and wet cliff) on Kauai remains to be surveyed (Wood 2006, p. 11; S. Perlman, in litt. 2007; S. Perlman and K. Wood, pers. comm. 2007).
- *Cyanea kuhihewa* is found only in cultivation (D. Burney, NTBG, pers. comm. 2006; N. Sugii, pers. comm. 2006a; V. Pence, pers. comm. 2007) and is threatened by reduced reproductive vigor as well as vulnerability to extinction due to a single catastrophic event at either of the facilities that are propagating this species.

Summary of Other Natural or Manmade Factors Affecting Their Continued Existence

The threat to *Drosophila attigua* from nonnative tipulid flies is immediate and significant because the larvae of nonnative tipulid flies feed on the same host plants occupied by the larvae of *Drosophila attigua*, and the effect of this competition is a reduction in available host plant material for *D. attigua* larvae. This threat occurs throughout the range of *D. attigua*. Laboratory studies have shown that competition between *Drosophila* larvae and other fly larvae can exhaust food resources, which affects both the probability of larval survival and the body size of adults, resulting in reduced adult fitness, fecundity, and lifespan.

We consider the threat to at least 25 plant species in this proposal from limited numbers of populations and few (less than 50) individuals is significant and immediate for the following reasons: (1) These species may experience reduced reproductive vigor due to ineffective pollination or inbreeding depression; (2) they may experience reduced levels of genetic variability leading to diminished capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence; and (3) a single catastrophic

event may result in extinction of the species. This threat applies to the entire range of each species.

Proposed Listing Determination

We have carefully assessed the best scientific and commercial information available regarding threats to each of the 48 Kauai species. We find that all of these species face immediate and significant threats throughout their ranges from the present destruction and modification of their habitats, primarily from feral ungulates and nonnative plants, and from the threatened destruction and modification of their habitats from hurricanes (compounded because of their small population sizes and limited distribution), landslides, and flooding. In addition, we are concerned about the effects of projected climate change, particularly rising temperatures and consequent increased likelihood of malarial transmission, but recognize there is limited information on the exact nature of impacts from climate change (Factor A). There is also immediate and significant threat of disease or predation, including avian diseases such as malaria that impact the akikiki and akekee; widespread impacts of predation and herbivory on 36 of the species by nonnative pigs, goats, deer, rats, cats, owls, and invertebrates (Factor C); the threat of extinction due to factors associated with small numbers of populations and individuals; and competition from introduced tipulid flies for *Drosophila attigua* (Factor E) (see Table 2). In addition, the palm *Pritchardia hardyi* is threatened by overcollection (Factor B). These threats are exacerbated by the species' inherent vulnerability to extinction from stochastic events at any time because of their endemism, small numbers of individuals and populations, and restricted habitats.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that each of these endemic species is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. Therefore, on the basis of the best available scientific and commercial information, we propose listing the following 48 species as endangered in accordance with section 3(6) of the Act: the plants *Astelia waialealae, Canavalia napaliensis, Chamaesyce eleanoriae, Chamaesyce remyi* var. *kauaiensis, Chamaesyce remyi* var. *remyi, Charpentiera densiflora, Cyanea dolichopoda, Cyanea eleeleensis, Cyanea kolekoleensis, Cyanea kuhihewa, Cyrtandra oenobarba, Cyrtandra paliku, Diellia mannii, Doryopteris angelica, Dryopteris crinalis* var. *podosorus, Dubautia imbricata* ssp. *imbricata, Dubautia kalalaúensis, Dubautia kenwoodii, Dubautia plantaginea* ssp. *magnifolia, Dubautia waialealae, Geranium kauaiense, Keysseria erici, Keysseria helenae, Labordia helleri, Labordia pumila, Lysimachia daphnoides, Lysimachia iniki, Lysimachia pendens, Lysimachia scopulens, Lysimachia venosa, Melicope degeneri, Melicope paniculata, Melicope puberula, Myrsine knudsenii, Myrsine mezii, Phyllostegia renovans, Pittosporum napaliense, Platydesma rostrata, Pritchardia hardyi, Psychotria grandiflora, Psychotria hobdyi, Schiedea attenuata, Stenogyne kealiae, Tetraplasandra bisattenu!ata,* and *Tetraplasandra flynii;* the birds, akekee (*Loxops caeruleirostris*) and akikiki (*Oreomystis bairdi*); and the insect *Drosophila attigua.*

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. Each of the 48 endemic Kauai species proposed for listing in this rule is highly restricted in its range, and the threats occur throughout its range. Therefore, we assessed the status of each species throughout its entire range. In each case, the threats to the survival of these species occur throughout the species' range and are not restricted to any particular portion of that range. Accordingly, our assessment and proposed determination applies to each species throughout its entire range.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species and

(b) which may require special management considerations or protection; and

(2) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where a landowner seeks or requests Federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time of listing must contain the physical and biological features (we also refer to these as primary constituent elements, or PCEs) that are essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas containing the PCEs laid out in the appropriate quantity and spatial arrangement that is essential to the conservation of the species. Under theAct, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R.

5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources include the recovery plan for the species, if available; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine to be necessary for the recovery of the species, as additional scientific information may become available in the future. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations, but are outside the critical habitat designation, will be subject to conservation actions implemented by the Service and other Federal agencies under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may require consultation under section 7 of the Act and may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if any new information available to these planning efforts calls for a different outcome.

Section 4(a)(3) of the Act, as amended, and our implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In considering the designation of critical habitat for each of the 48 Kauai species, we have determined that there is one species, the palm *Pritchardia hardyi*, for which the designation of critical habitat is not prudent. Rare palm trees are highly desirable to collectors, and there is an active market for the seeds and seedlings of rare palms, including those of *P. hardyi*, through internet sales and online auctions (GardenGuides.com 2007; Rarepalmseeds.com 2007; South Coast Palms 2007; Kapoho Palms 2007; J.D. Anderson Nursery 2007; Jungle Music Palms and Cycads 2007; Tropical Gardens of Maui 2007). Seeds of *P. hardyi* have been stolen from an outplanting site in the past (R. Nishek, pers. comm. 2007), and we have evidence of vandalism and illegal collection of other species of endangered *Pritchardia* palms on Kauai (Johnson 1996, pp. 16-17; A. Kyono, pers. comm. 2000; R. Nishek, pers. comm. 2007). The designation of critical habitat for *P. hardyi* would require us to identify the geographic areas where the species occurs, thereby increasing the species' vulnerability to further unauthorized and illegal collection. Collecting and vandalism is identified as a threat specific to *P. hardyi* in our threats analysis. As the designation of critical habitat for this species would exacerbate this ongoing threat, we determine that the designation of critical habitat for *P. hardyi* is not prudent in accordance with the Act and its implementing regulations.

With the exception of *Pritchardia hardyi*, we find that the designation of critical habitat for each of the other 47 species addressed in this rule will benefit them by serving to focus conservation efforts on the restoration and maintenance of ecosystem functions that are essential for attaining their recovery and long-term viability. In addition, the designation of critical habitat serves to inform management and conservation decisions by identifying any additional physical and biological features of the ecosystem that may be essential for the conservation of certain species, such as the availability of sufficient arthropod prey for the akikiki and akekee, or hummocks in bog systems for *Astelia waialeale*. We therefore find that designation of critical habitat is prudent for the following 47 Kauai species, as critical habitat would be beneficial and there is no evidence that the designation of critical habitat would result in an increased threat from taking or other human activity for these species: (1) Plants—*Astelia waialealae, Canavalia napaliensis, Chamaesyce eleanoriae, Chamaesyce remyi* var. *kauaiensis, Chamaesyce remyi* var. *remyi, Charpentiera densiflora, Cyanea dolichopoda, Cyanea eleeleensis, Cyanea kolekoleensis, Cyanea kuhihewa, Cyrtandra oenobarba, Cyrtandra paliku, Diellia mannii, Doryopteris angelica, Dryopteris crinalis* var. *podosorus, Dubautia imbricata* ssp. *imbricata, Dubautia kalalauensis, Dubautia kenwoodii, Dubautia plantaginea* ssp. *magnifolia, Dubautia waialealae, Geranium kauaiense, Keysseria erici, Keysseria helenae, Labordia helleri, Labordia pumila, Lysimachia daphnoides, Lysimachia iniki, Lysimachia pendens, Lysimachia scopulensis, Lysimachia venosa, Melicope degeneri, Melicope paniculata, Melicope puberula, Myrsine knudsenii, Myrsine mezii, Phyllostegia renovans, Pittosporum napaliense, Platydesma rostrata, Psychotria grandiflora, Psychotria hobdyi, Schiedea attenuata, Stenogyne kealiae, Tetraplasandra bisattenuata,* and *Tetraplasandra flynii;* (2) Animals—akekee, akikiki, and *Drosophila attigua.*

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining those areas that contain the physical and biological features essential to the conservation of the 47 species proposed for listing in this rule, and for which designation of critical habitat is considered prudent, by identifying the occurrence data for each species and determining the ecosystems upon which they depend. This information was developed by using:

- The known locations of the 47 species, including site-specific species information from the Hawaii Biodiversity and Mapping Program (HBMP) database (HBMP 2007) and our own rare plant database;
- Species information from the plant database housed at NTBG;

• The Nature Conservancy's Ecoregional Assessment of the Hawaiian High Islands (2006), and ecosystem maps (2007);
• Color mosaic 1:19,000 scale digital aerial photographs for the Hawaiian Islands (April to May 2005);
• Island-wide Geographic Information System (GIS) coverage, e.g., Gap Analysis Program (GAP) vegetation data 2005;
• 1:24,000 scale digital raster graphics of U.S. Geological Survey (USGS) topographic quadrangles;
• Geospatial data sets associated with parcel data from Kauai County (2005);
• Designated critical habitat for listed species on the island of Kauai (68 FR 9116, February 27, 2003);
• Recent biological surveys and reports; and
• Discussions with qualified individuals familiar with these species and ecosystems (HBMP 2007; TNCH 2007; NTBG in litt. 2007).

Based upon all of this data, we determined that the 47 species addressed in this proposed rule are all found in or dependent upon one or more of the six ecosystems described in this rule: lowland mesic (TNC 2006b), lowland wet (TNC 2006c), montane mesic (TNC 2006e), montane wet (TNC 2006f), dry cliff (TNC 2006a), and wet cliff (TNC 2006d).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements laid out in the appropriate quantity and spatial arrangement for conservation of the species. These physical and biological features provide the essential life history requirements of the species which may include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing (or development) of offspring, germination, or seed dispersal; and generally;

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

As required by 50 CFR 424.12(b), we are to list the known primary constituent elements (PCEs) with our description of critical habitat. The primary constituent elements provided by the physical and biological features upon which the designation is based may include, but are not limited to, the following: Roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.

In this proposal, we derived the PCEs for each of the 47 species primarily based on those physical and biological features that support the successful functioning of the ecosystem upon which that species depends. As each species is dependent upon a functioning ecosystem to provide its fundamental life requirements, such as a certain soil type, minimum level of rainfall, or conditions conducive to supporting the presence of a certain species of plant for foraging or larval development, we considered the physical and biological features of the ecosystems described in this rule to be PCEs for each species. The PCEs collectively provide the suite of environmental conditions within each ecosystem essential to meeting the requirements of each species, including the appropriate microclimatic conditions for germination and growth of the plants (e.g., light availability, soil nutrients, hydrologic regime, temperature); habitat for shelter, foraging, nesting, and raising young in the case of the akikiki and akekee; larval host plants in the case of the picture-wing fly; and in all cases, space within the appropriate habitats for population growth and expansion, as well as to maintain the historical geographical and ecological distribution of each species. In many cases, due to our limited knowledge of the specific life-history requirements for these species that are little-studied and occur in remote and/or inaccessible areas, the more general description of the physical and biological features that provide for the successful function of the ecosystem that is essential to the conservation of the species represents the best, and in many cases, the only, scientific information available. Table 3 identifies the PCEs of a functioning ecosystem for each of the ecosystem types identified in this proposed rule; these are termed "ecosystem-level PCEs," and each species identified in this rule requires the ecosystem-level PCEs for each ecosystem in which that species occurs, as noted in Table 4. The ecosystem-level PCEs are defined here by elevation, annual levels of precipitation, substrate type and slope, and the characteristic native plant genera that are found in the canopy, subcanopy, and understory levels of the vegetative community, where applicable. If further information is available indicating additional, specific life-history requirements for some species, PCEs relating to these requirements are described separately and are termed "species-specific PCEs," which are also identified in Table 4. The PCEs for each species are therefore composed of the PCEs for the functioning of its associated ecosystem(s) in combination with additional species-specific requirements, if any, as shown in Table 4. Note that the ecosystem-level PCEs identified in Table 4 for each species are presented in detail in Table 3, thus both Table 3 and Table 4 must be read together to fully describe all of the PCEs for each species.

TABLE 3.—ECOSYSTEM-LEVEL PRIMARY CONSTITUENT ELEMENTS (PCEs) FOR EACH SPECIES (READ IN ASSOCIATION WITH TABLE 4)

Ecosystem	Primary Constituent Elements					
	Elevation	Annual Precipitation	Substrate	One or More of these Associated Native Plants (by Genus)		
				Canopy	Subcanopy	Understory
Lowland Mesic[1]	< 3,000 ft (<1,000 m)	50-75 in (127-190 cm)	shallow soils, little to no herbaceous layer	*Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum*	*Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele Psydrax*	*Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia*
Lowland Wet[2]	< 3,000 ft (<1,000 m)	> 75 in (> 190 cm)	clays, ashbeds, deep well-drained soils, lowland bogs	*Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria*	*Cibotium, Claoxylon, Hedyotis, Melicope*	*Alyxia, Cyrtandra, Dicranopteris, Diplazium, Microlepia, Machaerina,*
Montane Mesic[3]	3, 000 to 6,600 ft (1,000 to 2,000 m)	50-75 in (127-190cm)	weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils	*Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum*	*Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine*	*Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora*
Montane Wet[4]	3, 000 to 6,600 ft (1,000 to 2,000 m)	> 75 in (> 190 cm)	well-developed soils, montane bogs	*Acacia, Charpentiera, Cheirodendron, Metrosideros*	*Broussaisia, Cibotium, Eurya, Ilex, Myrsine*	Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium*
Dry Cliff[5]	unrestricted	< 75 in (< 190 cm)	> 65 degree slope, rocky talus	none	*Antidesma, Chamaesyce, Diospyros, Dodonaea,*	*Bidens, Eragrostis, Melanthera, Schiedea*
Wet Cliff[6]	unrestricted	> 75 in (> 190 cm)	> 65 degree slope, shallow soils, weathered lava	none	*Broussaisia, Cheirodendron, Leptecophylla, Metrosideros*	Ferns, Bryophytes, *Coprosma, Dubautia, Hedyotis, Peperomia*

[1] The PCEs for species in the lowland mesic ecosystem apply to the following critical habitat units: Kauai – Lowland Mesic Units 1, 2, 3, 4, and 5.
[2] The PCEs for species in the lowland wet ecosystem apply to the following critical habitat units: Kauai – Lowland Wet Units 1, 2, 3, 4, 5, and 6.
[2] The PCEs for species in the lowland wet ecosystem apply to the following critical habitat units: Kauai – Lowland Wet Units 1, 2, 3, 4, 5, and 6.
[3] The PCEs for species in the montane mesic ecosystem apply to the following critical habitat units: Kauai – Montane Mesic Units 1, 2, and 3.
[3] The PCEs for species in the montane mesic ecosystem apply to the following critical habitat units: Kauai – Montane Mesic Units 1, 2, and 3.
[4] The PCEs for species in the montane wet ecosystem apply to the following critical habitat units: Kauai – Montane Wet Units 1, 2, and 3.
[5] The PCEs for species in the dry cliff ecosystem apply to the following critical habitat units: Kauai – Dry Cliff Units 1 and 2.
[6] The PCEs for species in the wet cliff ecosystem apply to the following critical habitat units: Kauai – Wet Cliff Units 1, 2, and 3.

TABLE 4.— PRIMARY CONSTITUENT ELEMENTS FOR THE KAUAI SPECIES ARE A COMBINATION OF THE ECOSYSTEM-LEVEL PCES (SEE TABLE 3) FOR THE APPLICABLE ECOSYSTEM(S) AS WELL AS SPECIES-SPECIFIC PCES, IF ANY ARE IDENTIFIED

Species	Ecosystem-level PCEs						Species-specific PCEs
	Lowland Mesic	Lowland Wet	Montane Mesic	Montane Wet	Dry Cliff	Wet Cliff	
Plants							
Astelia waialealae				X			Hummocks in bogs
Canavalia napaliensis	X						
Chamaesyce eleanoriae	X				X		

TABLE 4.— PRIMARY CONSTITUENT ELEMENTS FOR THE KAUAI SPECIES ARE A COMBINATION OF THE ECOSYSTEM-LEVEL PCES (SEE TABLE 3) FOR THE APPLICABLE ECOSYSTEM(S) AS WELL AS SPECIES-SPECIFIC PCES, IF ANY ARE IDENTIFIED—Continued

Species	Ecosystem-level PCEs						Species-specific PCEs
	Lowland Mesic	Lowland Wet	Montane Mesic	Montane Wet	Dry Cliff	Wet Cliff	
Chamaesyce remyi var. *kauaiensis*		X				X	
Chamaesyce remyi var. *remyi*	X	X	X	X		X	
Charpentiera densiflora	X	X					
Cyanea dolichopoda						X	
Cyanea eleeleensis		X					
Cyanea kolekoleensis		X					
Cyanea kuhihewa		X					
Cyrtandra oenobarba		X				X	
Cyrtandra paliku						X	
Diellia mannii			X				
Doryopteris angelica	X						
Dryopteris crinalis var. *podosorus*				X			
Dubautia imbricata ssp. *imbricata*		X					
Dubautia kalalauensis				X			
Dubautia kenwoodii	X						
Dubautia plantaginea ssp. *magnifolia*						X	
Dubautia waialealae				X			bogs
Geranium kauaiense				X			bogs
Keysseria erici				X			bogs
Keysseria helenae				X			bogs
Labordia helleri	X	X	X	X			
Labordia pumila				X			bogs
Lysimachia daphnoides				X			bogs
Lysimachia iniki						X	
Lysimachia pendens						X	
Lysimachia scopulensis					X		
Lysimachia venosa						X	
Melicope degeneri				X			
Melicope paniculata		X					
Melicope puberula		X		X			
Myrsine knudsenii			X				
Myrsine mezii			X	X			

TABLE 4.— PRIMARY CONSTITUENT ELEMENTS FOR THE KAUAI SPECIES ARE A COMBINATION OF THE ECOSYSTEM-LEVEL PCES (SEE TABLE 3) FOR THE APPLICABLE ECOSYSTEM(S) AS WELL AS SPECIES-SPECIFIC PCES, IF ANY ARE IDENTIFIED—Continued

Species	Ecosystem-level PCEs						Species-specific PCEs
	Lowland Mesic	Lowland Wet	Montane Mesic	Montane Wet	Dry Cliff	Wet Cliff	
Phyllostegia renovans		X		X			
Pittosporum napaliense	X						
Platydesma rostrata	X	X	X	X		X	
Psychotria grandiflora			X	X			
Psychotria hobdyi	X						
Schiedea attenuata					X		
Stenogyne kealiae		X	X		X		
Tetraplasandra bisattenuata	X	X					
Tetraplasandra flynnii			X	X			
Animals							
Akekee			X	X			arthropod prey
Akikiki				X			arthropod prey
Drosophila attigua			X	X			larval host plants *Cheirodendron* sp.

Some of the species addressed in this proposed rule occur in more than one ecosystem. The PCEs for these species are described separately for each ecosystem in which they occur. The reasoning behind this approach is that each species requires a different suite of environmental conditions depending upon the ecosystem in which it occurs. For example, an individual plant of the species *Stenogyne kealiae* will require a different level of annual precipitation, will occur on different soils and slopes, and will grow in association with different native plant species when it is growing in the dry cliff ecosystem as opposed to the lowland wet and montane mesic ecosystems in which it also is found. All of the primary constituent elements as described for each ecosystem in which the species occurs are essential to the conservation of the species to retain its geographical and ecological distribution across the different ecosystem types in which it may occur, and to retain the genetic representation that allows this species to successfully adapt to different environmental conditions in various native ecosystems. It should be noted that, although these species are flexible enough to occur in multiple native ecosystems, the declining abundance of these species in the face of ongoing threats, such as increasing numbers of nonnative plant competitors, indicates that these species are not such broad habitat generalists as to be able to persist in highly altered habitats. To the best of our knowledge, functioning native ecosystems provide the fundamental biological requirements for all of these species.

Some examples may help to clarify our approach to describing the PCEs for each individual species. If we want to determine the PCEs for the plant *Cyanea dolichopoda*, we look at Table 4 and see that the PCEs for *C. dolichopoda* are provided by the ecosystem-level PCEs for the wet cliff ecosystem. Referring back to Table 3 tells us that the PCEs for the wet cliff ecosystem include no restrictions on elevation; annual precipitation greater than 75 inches; shallow soils or weathered lava at greater than 65 degrees slope; no canopy vegetation; a subcanopy that includes native plants in the genera *Broussaisia, Cheirodendron, Leptecophylla*, and *Metrosideros*; and an understory of native plants including ferns, bryophytes, and representatives of the genera *Coprosma, Dubautia, Hedyotis*, and *Peperomia*. As there are no species-specific PCEs identified for *C. dolichopoda*, and this plant is found only in the wet cliff ecosystem, the ecosystem-level PCEs for the wet cliff ecosystem describe the PCEs for *C. dolichopoda* in their entirety. As another example, Table 4 tells us that the PCEs for the picture-wing fly *Drosophila attigua* include the ecosystem-level PCEs for the montane mesic and montane wet ecosystems, and also that this species has an additional species-specific PCE, the presence of larval host plants in the genus *Cheirodendron*. The PCEs for *D. attigua* are thus composed of the PCEs for each of the two ecosystems it occupies, as described in Table 3 for the montane mesic and montane wet ecosystems, as well as the larval host plant *Cheirodendron*. Table 4 is read in a similar fashion in conjunction with Table 3 to describe the PCEs for each of the 47 species for which we are proposing to designate critical habitat in this proposed rule.

Criteria Used to Identify Critical Habitat Boundaries

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 47 species. We propose to designate critical habitat on lands that contain the physical and biological features essential to conserving multiple species, based on their shared dependence on

the functioning ecosystems they have in common. Because each of the six ecosystems addressed in this rule does not form a single contiguous area, the ecosystems are divided into geographic subunits that we refer to as "sections." The 6 ecosystem areas are divided into a total of 22 separate geographic sections. Although we do not usually refer to areas of critical habitat as sections, compliance with **Federal Register** publication requirements necessitated the subdivision of the ecosystem areas presented here into smaller subunits to correspond with existing critical habitat units currently published in the Code of Federal Regulations (CFR), since much of the proposed critical habitat for the plant species overlies critical habitat already designated for other plants on the island of Kauai. We thus refer to ecosystem "sections" here in order to retain the focus on the contiguous ecosystem areas of interest in this proposed rule, while recognizing that from a legal standpoint, multiple critical habitat units may comprise these sections. Further details are provided under the section titled "Proposed Critical Habitat Designation," below.

The proposed critical habitat is a combination of areas currently occupied by the species in that ecosystem, as well as areas that may be currently unoccupied. Due to the extremely remote and inaccessible nature of the area, surveys are relatively infrequent and may be limited in scope; therefore it is difficult to say with certainty whether individual representatives of a rare species may or may not be present. The occupied areas provide the physical and biological features essential to the conservation of the species that occur there by providing for the successful functioning of the ecosystem on which the species depend. However, due to the small population sizes, few numbers of individuals, and reduced geographic range of each of the 47 species for which critical habitat is proposed here, we have determined that a designation limited to the known present range of each species would be inadequate to achieve the conservation of those species. The areas believed to be unoccupied have been determined to be essential for the conservation and recovery of the species because they provide the physical and biological features necessary for the expansion of existing wild populations and reestablishment of wild populations within the historical range of the species. For four of the plant species, *Cyanea eleeleensis, Cyanea kolekoleensis, Cyanea kuhihewa*, and *Lysimachia venosa*, we are proposing to designate unoccupied areas only, since these species are not believed to be extant in the wild and thus unoccupied areas are essential for their recovery. Critical habitat boundaries were delineated to clearly depict and promote the recovery and conservation of these species by protecting the functioning ecosystems on which they depend.

In some cases, we have identified areas of critical habitat for species in multiple ecosystems. With the exception of the four species described above that are no longer known to be extant in the wild, all of the critical habitat units in these ecosystems contain some areas that are occupied by the species and some areas that are currently unoccupied, but have been determined to be essential for the conservation of the species. Because of the small numbers of individuals or low population sizes of each of the 47 species, each requires suitable habitat and space for the expansion of existing populations to achieve a level that could approach recovery. For example, although *Platydesma rostrata* is found in multiple critical habitat units across five ecosystem types, only a total of approximately 100 individuals comprise this entire distribution. The unoccupied areas of each unit are essential for the expansion of this species to achieve viable population numbers and maintain its historical geographical and ecological distribution.

The current and historical species location information was used to develop initial critical habitat boundaries (polygons) in each of the 6 ecosystems that would individually and collectively provide for the conservation of the 47 species addressed in this proposed rule. The initial polygons were superimposed over digital topographic maps of the island of Kauai and further evaluated. We also considered the correlation of these areas with areas already designated as critical habitat for other listed species. Land areas that were identified as highly degraded were removed from the proposed critical habitat units, and natural or manmade features (e.g., ridge lines, valleys, streams, coastlines, roads, obvious land features, etc.) were used to delineate the proposed critical habitat boundaries.

The critical habitat areas described below constitute our best assessment of the physical and biological features essential for the recovery and conservation of the 47 species and habitat that is essential to the conservation of the species for population expansion. The approximate size of each of the 22 critical habitat ecosystem sections and the status of their land ownership is identified in Table 5. The species that currently occupy each of the 22 sections are identified in Table 6; this table also identifies the sections that have been designated for the four species that are presumably no longer extant in the wild, and are therefore currently unoccupied by those species.

TABLE 5.—CRITICAL HABITAT PROPOSED FOR 47 KAUAI SPECIES (TOTALS MAY NOT SUM DUE TO ROUNDING)

			Land ownership (acres)		
Proposed critical habitat area	Size of section in acres	Size of section in hectares	State	Private	Corresponding critical habitat units and maps in the Code of Federal Regulations (CFR)
Kauai—Lowland Mesic					
—Section 1	2,007	812	2,007	0	Plants: 50 CFR 17.99, Unit 11, Map 66a
—Section 2	379	154	379	0	Plants: 50 CFR 17.99, Unit 11, Map 66a
—Section 3	124	50	124	0	Plants: 50 CFR 17.99, Unit 11, Map 66a

TABLE 5.—CRITICAL HABITAT PROPOSED FOR 47 KAUAI SPECIES (TOTALS MAY NOT SUM DUE TO ROUNDING)—Continued

			Land ownership (acres)		
Proposed critical habitat area	Size of section in acres	Size of section in hectares	State	Private	Corresponding critical habitat units and maps in the Code of Federal Regulations (CFR)
—Section 4	81	33	81	0	Plants: 50 CFR 17.99, Unit 11, Map 66a
—Section 5	37	15	0	37	Plants: 50 CFR 17.99, Unit 7, Map 23a
TOTAL Lowland Mesic	2,628	1,064	2,590	37	
Kauai—Lowland Wet					
—Section 1	1,164	471	117	1,047	Plants: 50 CFR 17.99, Unit 11, Map 70a; Unit 21, Map 217d.
—Section 2	172	70	172	0	Plants: 50 CFR 17.99, Unit 11, Map 70a
—Section 3	756	306	0	756	Plants: 50 CFR 17.99, Unit 11, Map 70a
—Section 4	591	239	10	581	Plants: 50 CFR 17.99, Unit 11, Map 70a
—Section 5	1,541	624	442	1,099	Plants: 50 CFR 17.99, Unit 10, Map 36a
—Section 6	789	319	134	655	Plants: 50 CFR 17.99, Unit 10, Map 36a
TOTAL Lowland Wet	5,013	2,029	875	4,138	
Kauai—Montane Mesic					
—Section 1	2,462	996	2,462	0	Plants: 50 CFR 17.99, Unit 11, Map 76c. Akekee: 50 17.95(b), Unit 1 – Montane Mesic. Picture-wing fly: 50 CFR 17.95(i), Unit 1 – Montane Mesic.
—Section 2	376	152	376	0	Plants: 50 CFR 17.99, Unit 11, Map 70c; Unit 22, map 217e. Akekee: 50 CFR 17.95(b), Unit 2 – Montane Mesic. Picture-wing fly: 50 CFR 17.95(i), Unit 2 – Montane Mesic.
—Section 3	138	56	138	0	Plants: 50 CFR 17.99, Unit 23, Map 217f. Akekee: 50 CFR 17.95(b), Unit 3 – Montane Mesic. Picture-wing fly: 50 CFR 17.95(i), Unit 3 – Montane Mesic.
TOTAL Montane Mesic	2,976	1,204	2,976	0	
Kauai—Montane Wet					

TABLE 5.—CRITICAL HABITAT PROPOSED FOR 47 KAUAI SPECIES (TOTALS MAY NOT SUM DUE TO ROUNDING)—Continued

			Land ownership (acres)		
Proposed critical habitat area	Size of section in acres	Size of section in hectares	State	Private	Corresponding critical habitat units and maps in the Code of Federal Regulations (CFR)
—Section 1	14,107	5,709	12,629	1,478	Plants: 50 CFR 17.99, Unit 10, Map 35a; Unit 11, Map 74a; Unit 18, Map 217a; Unit 24, Map 217g; Unit 25, Map 217h. Akekee and akikiki: 50 CFR 17.95(b), Unit 1 – Montane Wet. Picture-wing fly: 50 CFR 17.95(i), Unit 1 – Montane Wet.
—Section 2	790	320	790	0	Plants: 50 CFR 17.99, Unit 11, Map 64a. Akekee and akikiki: 50 CFR 17.95(b), Unit 2 – Montane Wet. Picture-wing fly: 50 CFR 17.95(i), Unit 2 – Montane Wet.
—Section 3	413	167	156	257	Plants: 50 CFR 17.99, Unit 11, Map 64a. Akekee and akikiki: 50 CFR 17.95(b), Unit 3 – Montane Wet. Picture-wing fly: 50 CFR 17.95(i), Unit 3 – Montane Wet.
TOTAL Montane Wet	15,310	6,196	13,575	1,735	
Kauai—Dry Cliff					
—Section 1	404	163	404	0	Plants: 50 CFR 17.99, Unit 11, Map 67a.
—Section 2	308	125	308	0	Plants: 50 CFR 17.99, Unit 11, map 67a.
TOTAL Dry Cliff	712	288	712	0	
Kauai—Wet Cliff					
—Section 1	190	77	190	0	Plants: 50 CFR 17.99, Unit 11, Map 70b.
—Section 2	784	317	778	7	Plants: 50 CFR 17.99, Unit 10, Map 36b; Unit 19, Map 217b.
—Section 3	61	24	8	53	Plants: 50 CFR 17.99, Unit 4, Map 5a; Unit 20, map 217c.
TOTAL Wet Cliff	1,035	418	976	60	
TOTAL ALL SECTIONS	27,674	11,199	21,706	5,970	

TABLE 6.—SPECIES FOR WHICH CRITICAL HABITAT IS DESIGNATED IN EACH ECOSYSTEM

Species	Critical Habitat Units					
	Lowland Mesic	Lowland Wet	Montane Mesic	Montane Wet	Dry Cliff	Wet Cliff
Plants						
Astelia waialealae				X		

TABLE 6.—SPECIES FOR WHICH CRITICAL HABITAT IS DESIGNATED IN EACH ECOSYSTEM—Continued

Species	Critical Habitat Units					
	Lowland Mesic	Lowland Wet	Montane Mesic	Montane Wet	Dry Cliff	Wet Cliff
Canavalia napaliensis	X					
Chamaesyce eleanoriae	X				X	
Chamaesyce remyi var. *kauaiensis*		X				X
Chamaesyce remyi var. *remyi*	X	X	X	X		X
Charpentiera densiflora	X	X				
Cyanea dolichopoda						X
*Cyanea eleeleensis**		X				
*Cyanea kolekoleensis**		X				
*Cyanea kuhihewa**		X				
Cyrtandra oenobarba		X				X
Cyrtandra paliku						X
Diellia mannii			X			
Doryopteris angelica	X					
Dryopteris crinalis var. *podosorus*				X		
Dubautia imbricata ssp. *imbricata*		X				
Dubautia kalalauensis				X		
Dubautia kenwoodii	X					
Dubautia plantaginea ssp. *magnifolia*						X
Dubautia waialealae				X		
Geranium kuauaiense				X		
Keysseria erici				X		
Keysseria helenae				X		
Labordia helleri	X	X	X	X		
Labordia pumila				X		

TABLE 6.—SPECIES FOR WHICH CRITICAL HABITAT IS DESIGNATED IN EACH ECOSYSTEM—Continued

Species	Critical Habitat Units					
	Lowland Mesic	Lowland Wet	Montane Mesic	Montane Wet	Dry Cliff	Wet Cliff
Lysimachia daphnoides				X		
Lysimachia iniki						X
Lysimachia pendens						X
Lysimachia scopulensis					X	
*Lysimachia venosa**						X
Melicope degeneri				X		
Melicope paniculata		X				
Melicope puberula		X		X		
Melicope knudsenii			X			
Myrsine mezii			X	X		
Phyllostegia renovans		X		X		
Pittosporum napaliense	X					
Platydesma rostrata	X	X	X	X		X
Psychotria grandiflora			X	X		
Psychotria hobdyi	X					
Schiedea attenuata					X	
Stenogyne kealiae		X	X		X	
Tetraplasandra bisattenuata	X	X				
Tetraplasandra flynnii			X	X		
Animals						
Akikiki (Oreomystis bairdi)			X	X		
Akekee (Loxops caeruleirostris)				X		
Picture-wing fly (Drosophila attigua)			X	X		

*Species with an asterisk are those that, to the best of our knowledge, no longer occur naturally in the wild, therefore there is no known occupied critical habitat for these species. The critical habitat units for these species have been determined to be essential to the conservation of the species because the area provides for the reestablishment of populations within the species' historical range.

When determining proposed critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack the physical and biological features essential for the conservation of the 47 species. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions involving these areas would not trigger section 7 consultation with respect to critical habitat unless the specific action would affect the adjacent critical habitat or its primary constituent elements.

Special Management Considerations or Protections

The term critical habitat is defined in section 3(5)(A) of the Act, in part, as geographic areas on which are found those physical or biological features essential to the conservation of the species and "which may require special management considerations or protection." Accordingly, in identifying critical habitat in occupied areas, we determine whether those areas that contain the features essential to the conservation of the species may require any special management actions. Although the determination that special management may be required is not a prerequisite to designating critical habitat in unoccupied areas, special management is needed throughout all of the proposed critical habitat units; the following discussion of special management needs is therefore applicable to each of the 47 Kauai species for which we are proposing to designate critical habitat in this proposed rule.

The 47 Kauai species for which we are proposing to designate critical habitat in this proposed rule include 43 species that are currently found in the wild, and four species that are not currently extant in the wild. For each of the 43 Kauai species currently found in the wild and for which we are proposing critical habitat, we have determined that the features essential to their conservation are primarily dependent on the successful functioning of the ecosystem(s) in which they occur (Tables 3 and 4). As described earlier, in some cases, additional species-specific primary constituent elements were also identified (Table 4). Special management considerations or protections are necessary throughout the critical habitat areas proposed here to avoid further degradation or destruction of the habitat that provides those features essential to their conservation. The primary threats to the physical and biological features essential to the conservation of all of these species include habitat destruction and modification by feral ungulates, competition with nonnative species, hurricanes, landslides, flooding, and climate change. The reduction of these threats will require the implementation of special management actions within each of the critical habitat areas identified in this proposed rule.

All proposed critical habitat requires active management to address the ongoing degradation and loss of native habitat caused by feral ungulates (pigs, goats, black-tailed deer). Feral ungulates also impact the habitat through predation and trampling. Without this special management, habitat containing the features that are essential for the conservation of these species will continue to be degraded and destroyed.

All proposed critical habitat requires active management to address the ongoing degradation and loss of native habitat caused by nonnative plants. Special management is also required to prevent the introduction of new alien plant species into native habitats. Particular attention is required in nonnative plant control efforts to avoid creating additional disturbances that may facilitate the further introduction and establishment of invasive plant seeds. Precautions are also required to avoid the inadvertent trampling of listed plant species in the course of management activities. The active control of nonnative plant species will help to address the threat posed by fire to three of the critical habitat areas in particular (Kauai—Lowland Mesic—Section 1, Kauai—Montane Mesic—Section 2, and Kauai—Dry Cliff—Section 1; see Table 5 for corresponding CFR unit numbers). This threat is largely a result of the presence of nonnative species, such as the grasses *Andropogon* sp. and *Setaria* sp., that increase the fuel load and quickly regenerate after a fire. These species can outcompete native plants that are not adapted to fire, creating a grass-fire cycle that alters ecosystem functions (D'Antonio and Vitousek 1992, pp. 64-66; Brooks *et al.* 2004, p. 680).

In addition, five sections of the critical habitat areas (Kauai—Dry Cliff—Section 1, Kauai—Dry Cliff—Section 2, Kauai—Wet Cliff—Section 1, Kauai—Wet Cliff—Section 2, and Kauai—Wet Cliff—Section 3; see Table 5 for corresponding CFR unit numbers) may require special management to reduce the threat of landslides and flooding, which threaten to further degrade the habitat conditions and have the potential to eliminate some species in their entirety (e.g., *Schiedea attenuata*).

In summary, we find that each of the areas we are proposing as critical habitat contains features essential to the conservation of the species that may require special management considerations or protection to ensure the conservation of the 47 Kauai species. These special management considerations and protections are required to preserve and maintain the essential features provided to these species by the ecosystems upon which they depend. A more detailed discussion of these threats is presented above ("Summary of Factors Affecting the Species").

Proposed Critical Habitat Designation

We are proposing critical habitat in 6 ecosystem types as critical habitat for 47 species; this critical habitat falls within 12 critical habitat units for the plants, 6 critical habitat units for the birds, and 6 critical habitat units for the picture-wing fly (see Table 5, above, for details). In total, approximately 27,674 ac (11,199 ha) fall within the boundaries of this proposed critical habitat designation. Of these proposed units, 26,028 ac (10,533 ha), or 94 percent, are already designated as critical habitat for other listed species. The proposed critical habitat includes land under State and private ownership. The critical habitat units we describe below constitute our current best assessment of those areas that meet the definition of critical habitat for the 47 species of plants and animals.

Because much of the proposed critical habitat for the plants overlies critical habitat already designated for other plant species on the island of Kauai, we have incorporated the maps of the ecosystem areas identified in this proposed rule into the existing critical habitat unit numbering system established for plants on the island of Kauai in the Code of Federal Regulations (50 CFR 17.99(a)(1)). This required further subdividing some of the ecosystem areas that we identified as "sections" into units that correspond to both existing and new critical habitat unit numbers and map numbers as published in the CFR. The maps and area descriptions presented here represent the 6 essential ecosystem areas that we have identified for all 47 species, subdivided into a total of 22 sections. For the 44 plant species, the

critical habitat unit numbers that collectively comprise these ecosystem areas and the corresponding map numbers that will appear at 50 CFR 17.99 are additionally provided for ease of reference with the CFR. Critical habitat for each of the 3 animal species is published in a separate section of the CFR (50 CFR 17.95(b) for the akekee and akikiki, and 50 CFR 17.95(i) for the picture-wing fly), and thus have their own separate critical habitat unit numbers and map numbers; these numbers are also provided in each of the critical habitat descriptions below for reference in the CFR.

As provided under section 4(b)(2) of the Act, all or portions of each of these areas may be considered for exclusion from critical habitat when this rule is finalized. Exclusions are considered based on the relative costs and benefits of designating critical habitat, including information provided during the public comment period on potential economic impacts of this proposed critical habitat designation, and may be made at the discretion of the Secretary. The consideration of potential economic impacts applies solely to the designation of critical habitat, and is not a factor in our assessment of w!hether aspecies warrants listing as a threatened or endangered species under the Act.

Kauai—Lowland Mesic—Section 1

Lowland Mesic – Section 1 consists of 2,007 ac (812 ha) in the lowland mesic ecosystem, including mesic forest extending from Awaawapuhi Trail south to Makaha Ridge, in the Na Pali Kona Forest Reserve and the Kuia NAR (Figure 1-A). The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99, Map 66a. This section is occupied by the plants *Doryopteris angelica, Labordia helleri, Platydesma rostrata* and *Psychotria hobdyi*, and includes mesic forest, the moisture regime, and canopy, subcanopy, and understory native plant species identified as PCEs in the lowland mesic ecosystem (Table 3). This section also contains unoccupied habitat that is essential to the conservation of these four species by providing the physical and biological features necessary for the expansion of the existing wild populations. Lowland Mesic – Section 1 is not known to be occupied by the species *Canavalia napaliensis, Chamaesyce eleanoriae, Chamaesyce remyi* var. *remyi, Charpentiera densiflora, Dubautia kenwoodii, Pittosporum napaliense*, and *Tetraplasandra bisattenuata*. We have, however, determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

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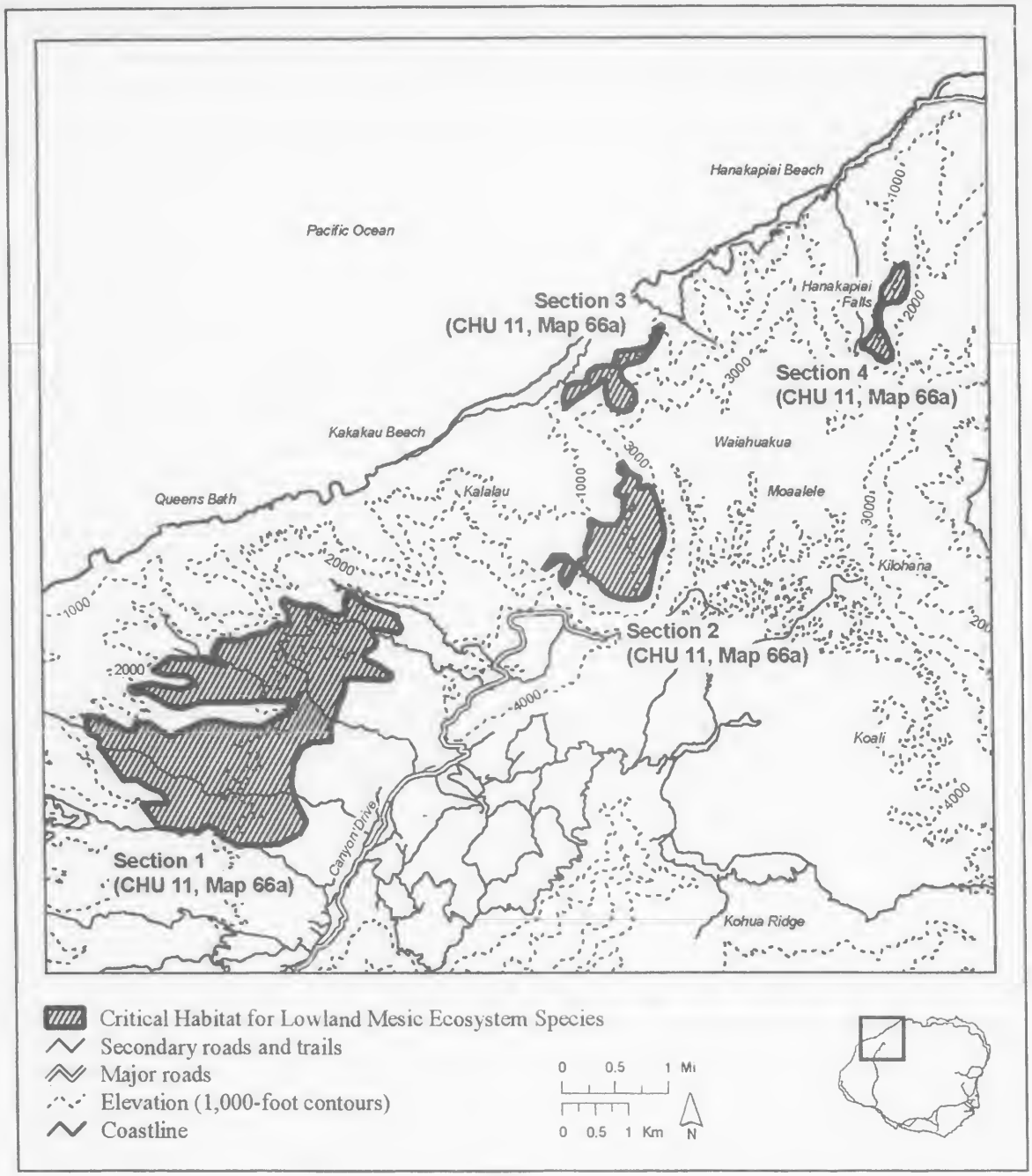

Figure 1-A. Areas proposed for designation of critical habitat for 11 plant species in the Lowland Mesic Ecosystem (Sections 1-4). Critical habitat unit (CHU) numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

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Kauai—Lowland Mesic—Section 2

Lowland Mesic – Section 2 consists of 379 ac (154 ha) in the lowland mesic ecosystem, including mesic forest extending from Keanapuka to Kahuamaa Flat along the rim and cliffs of the Kalalau Valley, in the Na Pali Coast State Park (Figure 1-A, above). The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99, Map 66a. This section is occupied by the plants *Chamaesyce eleanoriae, Chamaesyce remyi* var. *remyi, Charpentiera densiflora, Dubautia kenwoodii, Pittosporum napaliense*, and *Psychotria hobdyi*, and includes mesic forest, the moisture regime, and canopy, subcanopy, and understory native plant species identified as PCEs in the lowland mesic ecosystem (Table 3). This section also contains unoccupied habitat that is essential to the conservation of these six species by providing the physical and biological features necessary for the expansion of the existing wild populations. Lowland Mesic – Section 2 is not known to be occupied by the species *Canavalia napaliensis, Doryopteris angelica, Labordia helleri, Platydesma rostrata,* and *Tetraplasandra bisattenuata*. We have, however, determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

Kauai—Lowland Mesic—Section 3

Lowland Mesic – Section 3 consists of 124 ac (50 ha) in the lowland mesic ecosystem, including mesic forest extending from Manono Ridge, Pohakuao Valley, to Kanakuu, within the Na Pali Coast State Park (Figure 1-A, above). The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99, Map 66a. This section is occupied by the plants *Canavalia napaliensis, Chamaesyce eleanoriae*, and *Charpentiera densiflora*, and includes mesic forest, the moisture regime, and canopy, subcanopy, and understory native plant species identified as PCEs in the lowland mesic ecosystem (Table 3). This section also contains unoccupied habitat that is essential to the conservation of these three species by providing the physical and biological features necessary for the expansion of the existing wild populations. Lowland Mesic – Section 3 is not known to be occupied by the species *Chamaesyce remyi* var. *remyi, Doryopteris angelica, Dubautia kenwoodii, Labordia helleri, Pittosporum napaliense, Platydesma rostrata, Psychotria hobdyi*, and *Tetraplasandra bisattenuata*. We have, however, determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

Kauai—Lowland Mesic—Section 4

Lowland Mesic – Section 4 consists of 81 ac (33 ha) in the lowland mesic ecosystem, including mesic forest at the head of the Hanakapiai Valley, in the Na Pali Coast State Park (Figure 1-A, above). The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99, Map 66a. This section is occupied by the plant *Charpentiera densiflora*, and includes mesic forest, the moisture regime, and canopy, subcanopy, and understory native plant species identified as PCEs in the lowland mesic ecosystem (Table 3). This section also contains unoccupied habitat that is essential to the conservation of this species by providing the physical and biological features necessary for the expansion of the existing wild population. Lowland Mesic – Section 4 is not known to be occupied by the species *Canavalia napaliensis, Chamaesyce eleanoriae, Chamaesyce remyi* var. *remyi, Doryopteris angelica, Dubautia kenwoodii, Labordia helleri, Pittosporum napaliense, Platydesma rostrata, Psychotria hobdyi*, and *Tetraplasandra bisattenuata*. We have, however, determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

Kauai—Lowland Mesic—Section 5

Lowland Mesic – Section 5 consists of 37 ac (15 ha) in the lowland mesic ecosystem, including mesic forest on the slopes of Mt. Haupu, on privately owned land (Figure 1-B). The entire section is within previously designated critical habitat, and falls within Critical Habitat Unit 7 of 50 CFR 17.99, Map 23a. This section is occupied by the plants *Chamaesyce remyi* var. *remyi* and *Tetraplasandra bisattenuata*, and includes mesic forest and shrubland, the moisture regime, and subcanopy and understory native plant species identified as PCEs in the lowland mesic ecosystem (Table 3). This section also contains unoccupied habitat that is essential to the conservation of these two species by providing the physical and biological features necessary for the expansion of the existing wild populations. Lowland Mesic – Section 5 is not known to be occupied by the species *Canavalia napaliensis, Chamaesyce eleanoriae, Charpentiera densiflora, Doryopteris angelica, Dubautia kenwoodii, Labordia helleri, Pittosporum napaliense, Platydesma rostrata,* and *Psychotria hobdyi*. We have, however, determined this area to be essential for the conservation and recovery of these lowland mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

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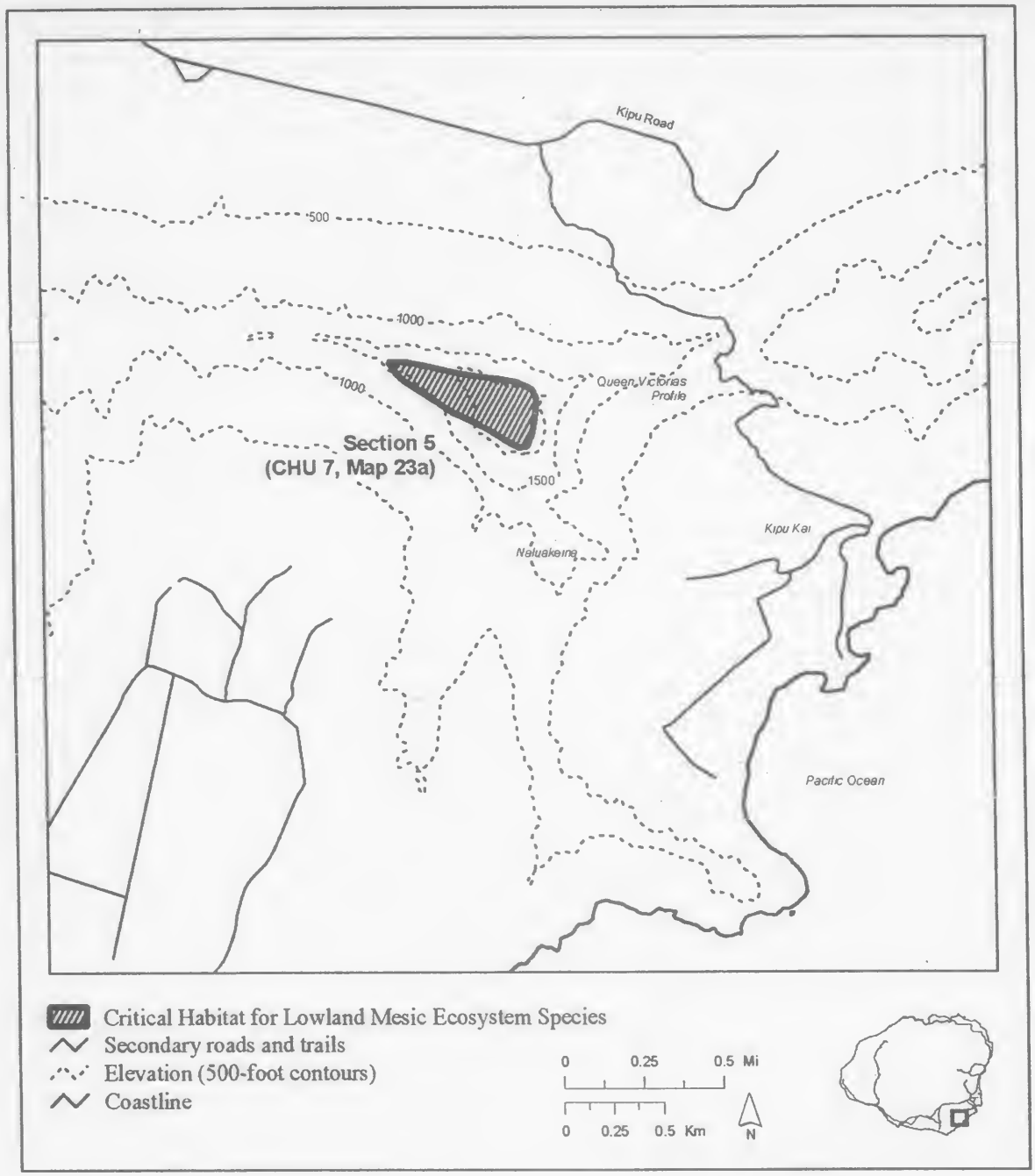

Figure 1-B. Areas proposed for designation of critical habitat for 11 plant species in the Lowland Mesic Ecosystem (Section 5). Critical habitat unit (CHU) number and map number, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

Kauai—Lowland Wet—Section 1

Lowland Wet – Section 1 consists of 1,164 ac (471 ha) in the lowland wet ecosystem (117 ac (47.4 ha) on State land; 1,047 ac (424 ha) on private land), including wet forest extending from Kulanalilia into Limahuli Valley to Honoonapali, in the Halelea Forest Reserve (Figure 2-A). The section includes 1,099 ac (445 ha) of State and privately owned land within previously designated critical habitat and 65 ac (26 ha) of newly proposed critical habitat on private land. The area that falls within designated critical habitat lies within Critical Habitat Unit 11 of 50 CFR 17.99, Map 70a, and proposed new Critical Habitat Unit 21, Map 217d. This section is occupied by the plants *Chamaesyce remyi* var. *remyi, Charpentiera densiflora, Labordia helleri*, and *Phyllostegia renovans*. This section also contains unoccupied habitat that is essential to the conservation of these three species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the lowland wet forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the lowland wet ecosystem (Table 3). Lowland Wet – Section 1 is not known to be occupied by the species *Chamaesyce remyi* var. *kauaiensis, Cyanea eleelensis, Cyanea kolekoleensis, Cyanea kuhihewa, Cyrtandra oenobarba, Dubautia imbricata* ssp. *imbricata, Melicope paniculata, Melicope puberula, Platydesma rostrata, Stenogyne kealiae*, and *Tetraplasandra bisattenuata*. We have, however, determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

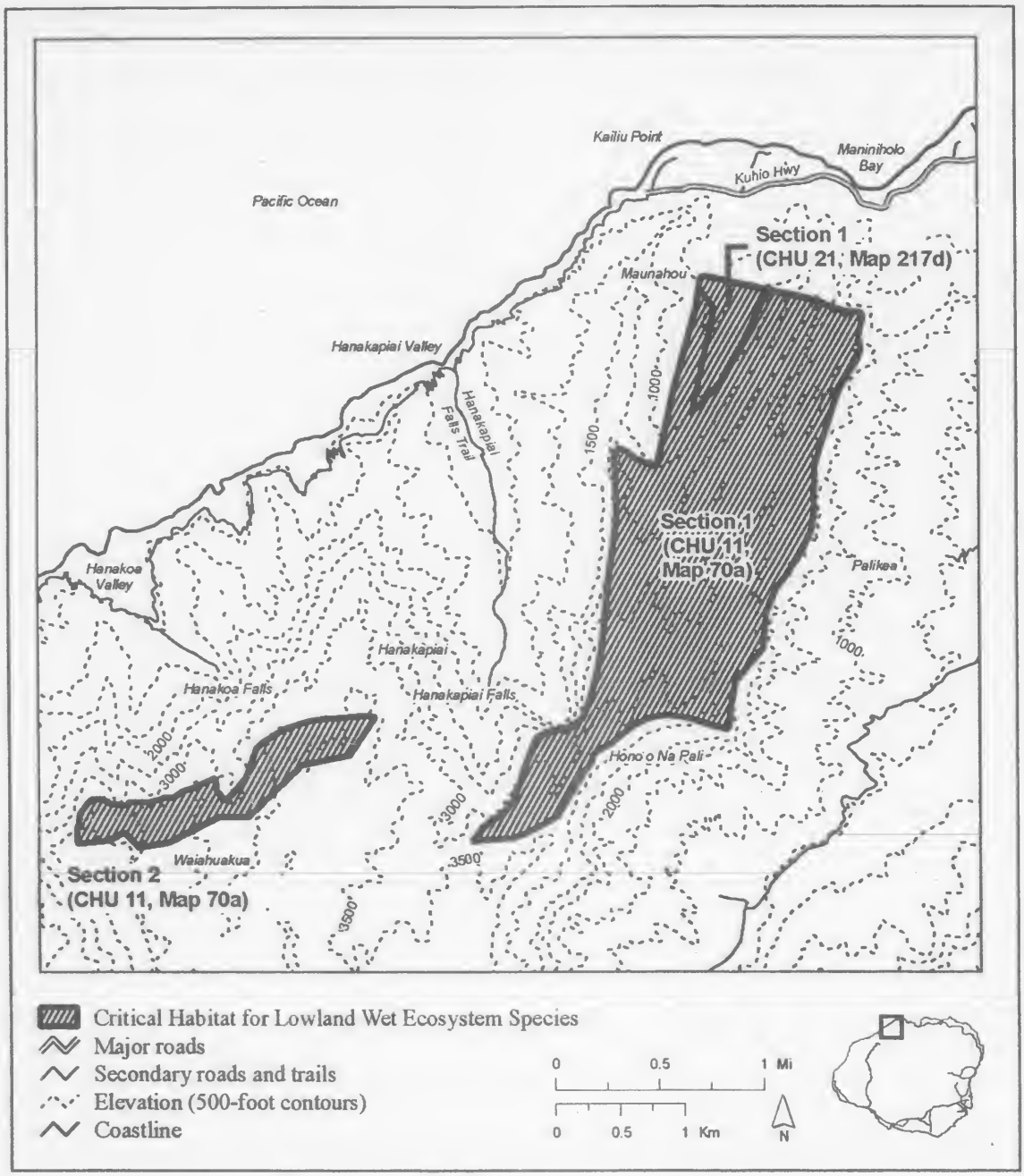

Figure 2-A. Areas proposed for designation of critical habitat for 15 plant species in the Lowland Wet Ecosystem (Sections 1-2). Section 1 overlies an existing critical habitat unit (CHU) on Kauai (CHU 11) and an area not currently designated as critical habitat. CHU numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

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Kauai—Lowland Wet—Section 2

Lowland Wet – Section 2 consists of 172 ac (70 ha) in the lowland wet ecosystem, including wet forest extending from Alealau to Pohakea, within the Hono o Na Pali NAR and the Na Pali Coast State Park (Figure 2-A, above). The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99, Map 70a, and is occupied by the plant *Melicope puberula*. This section also contains unoccupied habitat that is essential to the conservation of this species by providing the physical and biological features necessary for the expansion of the existing wild population. This section includes the lowland wet forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the lowland wet ecosystem (Table 3). Lowland Wet – Section 2 is not known to be occupied by the species *Chamaesyce remyi* var. *kauaiensis*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea eleelensis*, *Cyanea kolekoleensis*, *Cyanea kuhihewa*, *Cyrtandra oenobarba*, *Dubautia imbricata* ssp. *imbricata*, *Labordia helleri*, *Melicope paniculata*, *Phyllostegia renovans*, *Platydesma rostrata*, *Stenogyne kealiae*, and *Tetraplasandra bisattenuata*. We have, however, determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

Kauai—Lowland Wet—Section 3

Lowland Wet – Section 3 consists of 756 ac (306 ha) in the lowland wet ecosystem, including wet forest in upper Wainiha Valley, on privately owned land in the Halelea Forest Reserve (Figure 2-B). The entire section is within previously designated critical habitat, falling within Critical Habitat Unit 11 of 50 CFR 17.99, Map 70a, and is occupied by the plants *Chamaesyce remyi* var. *kauaiensis*, *Cyrtandra oenobarba*, *Melicope puberula*, and *Stenogyne kealiae*. This section also contains unoccupied habitat that is essential to the conservation of these four species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the lowland wet forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the lowland wet ecosystem (Table 3). Lowland Wet – Section 3 is not known to be occupied by the species *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea eleelensis*, *Cyanea kolekoleensis*, *Cyanea kuhihewa*, *Dubautia imbricata* ssp. *imbricata*, *Labordia helleri*, *Melicope paniculata*, *Phyllostegia renovans*, *Platydesma rostrata*, and *Tetraplasandra bisattenuata*. We have, however, determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

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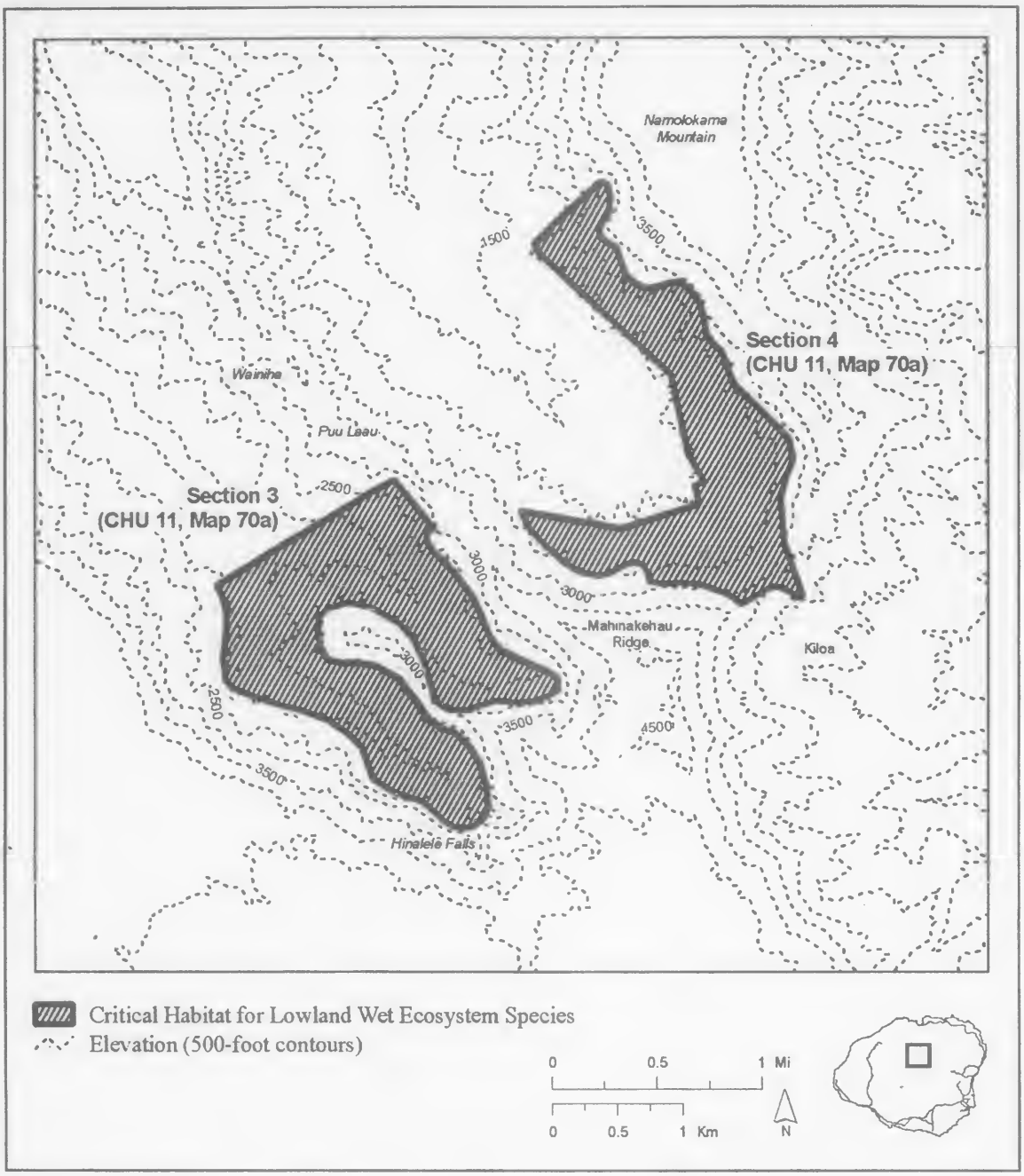

Figure 2-B. Areas proposed for designation of critical habitat for 15 plant species in the Lowland Wet Ecosystem (Sections 3-4). Critical habitat unit (CHU) numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

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Kauai—Lowland Wet—Section 4

Lowland Wet – Section 4 consists of 591 ac (239 ha) in the lowland wet ecosystem, including wet forest at the head of Lumahai Valley, on State (10 ac, 4.1 ha) and privately owned (581 ac, 235 ha) land in the Halelea Forest Reserve (Figure 2-B, above). The entire section is within previously designated critical habitat, falling within Critical Habitat Unit 11 of 50 CFR 17.99, Map 70a, and is occupied by the plants *Chamaesyce remyi* var. *remyi*, *Cyrtandra oenobarba*, *Melicope paniculata*, *Phyllostegia renovans*, and *Platydesma rostrata*. This section also contains unoccupied habitat that is essential to the conservation of these five species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the lowland wet forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the lowland wet ecosystem (Table 3). Lowland Wet – Section 4 is not known to be occupied by the species *Chamaesyce remyi* var. *kauaiensis*, *Charpentiera densiflora*, *Cyanea eleelensis*, *Cyanea kolekoleensis*, *Cyanea kuhihewa*, *Dubautia imbricata* ssp. *imbricata*, *Labordia helleri*, *Melicope puberula*, *Stenogyne kealiae*, and *Tetraplasandra bisattenuata*. We have, however, determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

Kauai—Lowland Wet—Section 5

Lowland Wet – Section 5 consists of 1,541 ac (624 ha) in the lowland wet ecosystem, including wet forest extending from the headwaters of the Wailua River at "Blue Hole" south to Iole, on State (442 ac, 179 ha) and privately owned (1,099 ac, 445 ha) land in the Lihue-Koloa Forest Reserve (Figure 2-C). The entire section is within previously designated critical habitat, falling within Critical Habitat Unit 10 of 50 CFR 17.99, Map 36a, and is occupied by the plants *Cyrtandra oenobarba*, *Dubautia imbricata* ssp. *imbricata*, *Melicope paniculata*, and *Platydesma rostrata*. This section also contains unoccupied habitat that is essential to the conservation of these four species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the lowland wet forest, the moisture regime, and canopy, subcanopy and understory plant species identified as PCEs in the lowland wet ecosystem (Table 3). Lowland Wet – Section 5 is not known to be occupied by the species *Chamaesyce remyi* var. *kauaiensis*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea eleelensis*, *Cyanea kolekoleensis*, *Cyanea kuhihewa*, *Labordia helleri*, *Melicope puberula*, *Phyllostegia renovans*, *Stenogyne kealiae*, and *Tetraplasandra bisattenuata*. We have, however, determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

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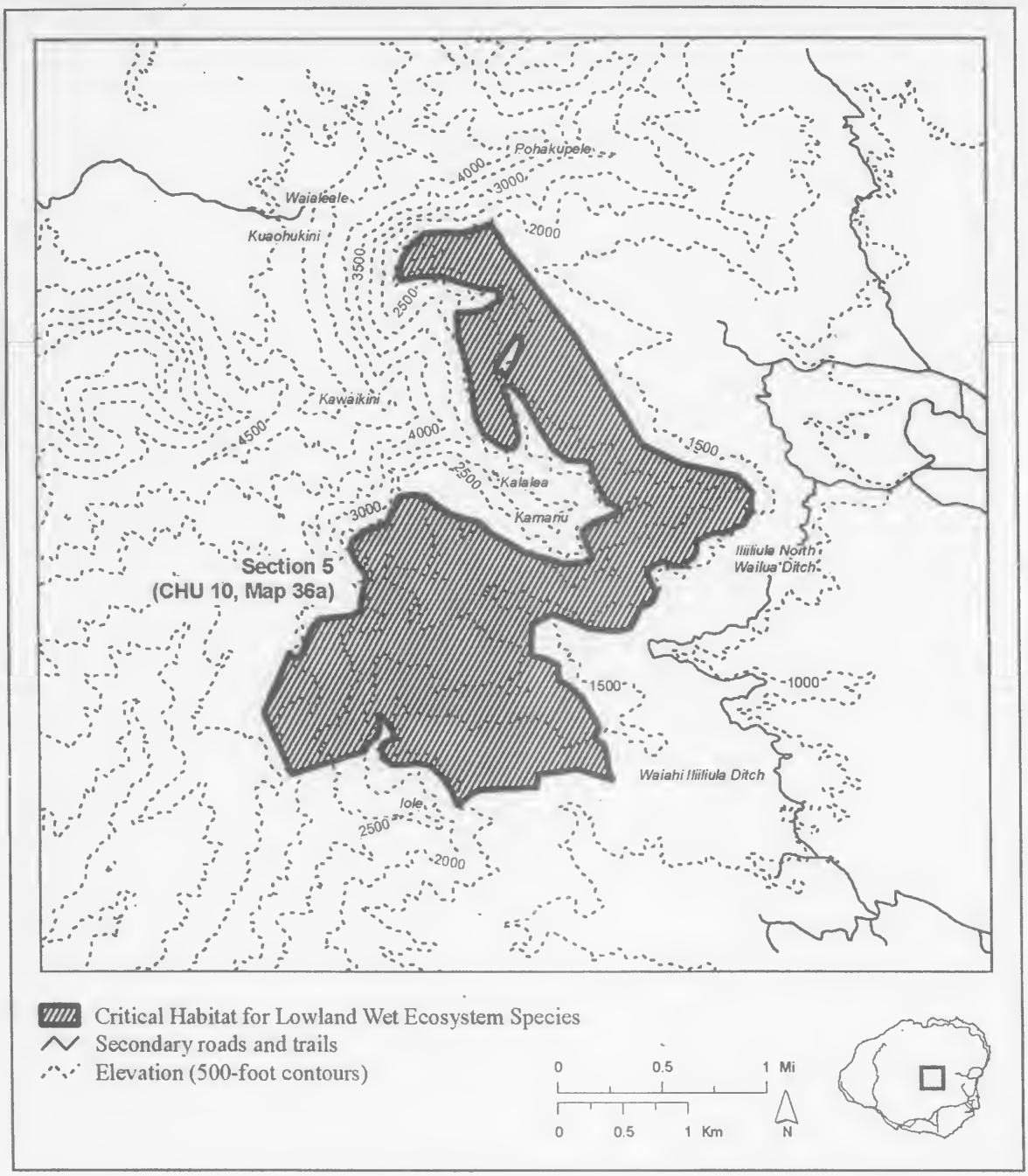

Figure 2-C. Areas proposed for designation of critical habitat for 15 plant species in the Lowland Wet Ecosystem (Section 5). Critical habitat unit (CHU) number and map number, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

Kauai—Lowland Wet—Section 6

Lowland Wet – Section 6 consists of 789 ac (319 ha) in the lowland wet ecosystem, including wet forest extending from Kapalaoa to Kanaele Bog and Lauahihaihai in the Wahiawa Mountains, on State (134 ac, 54 ha) and privately owned (655 ac, 265 ha) land in the Lihue-Koloa Forest Reserve (Figure 2-D). The entire section is within previously designated critical habitat, falling within Critical Habitat Unit 10 of 50 CFR 17.99, Map 36a, and is occupied by the plants *Chamaesyce remyi* var. *remyi, Cyrtandra oenobarba, Dubautia imbricata* ssp. *imbricata, Platydesma rostrata*, and *Tetraplasandra bisattenuata*. This section also contains unoccupied habitat that is essential to the conservation of these five species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the lowland wet forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the lowland wet ecosystem (Table 3). Lowland Wet – Section 6 is not known to be occupied by the species *Chamaesyce remyi* var. *kauaiensis, Charpentiera densiflora, Cyanea eleelensis, Cyanea kolekoleensis, Cyanea kuhihewa, Labordia helleri, Melicope paniculata, Melicope puberula, Phyllostegia renovans*, and *Stenogyne kealiae*. We have, however, determined this area to be essential for the conservation and recovery of these lowland wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

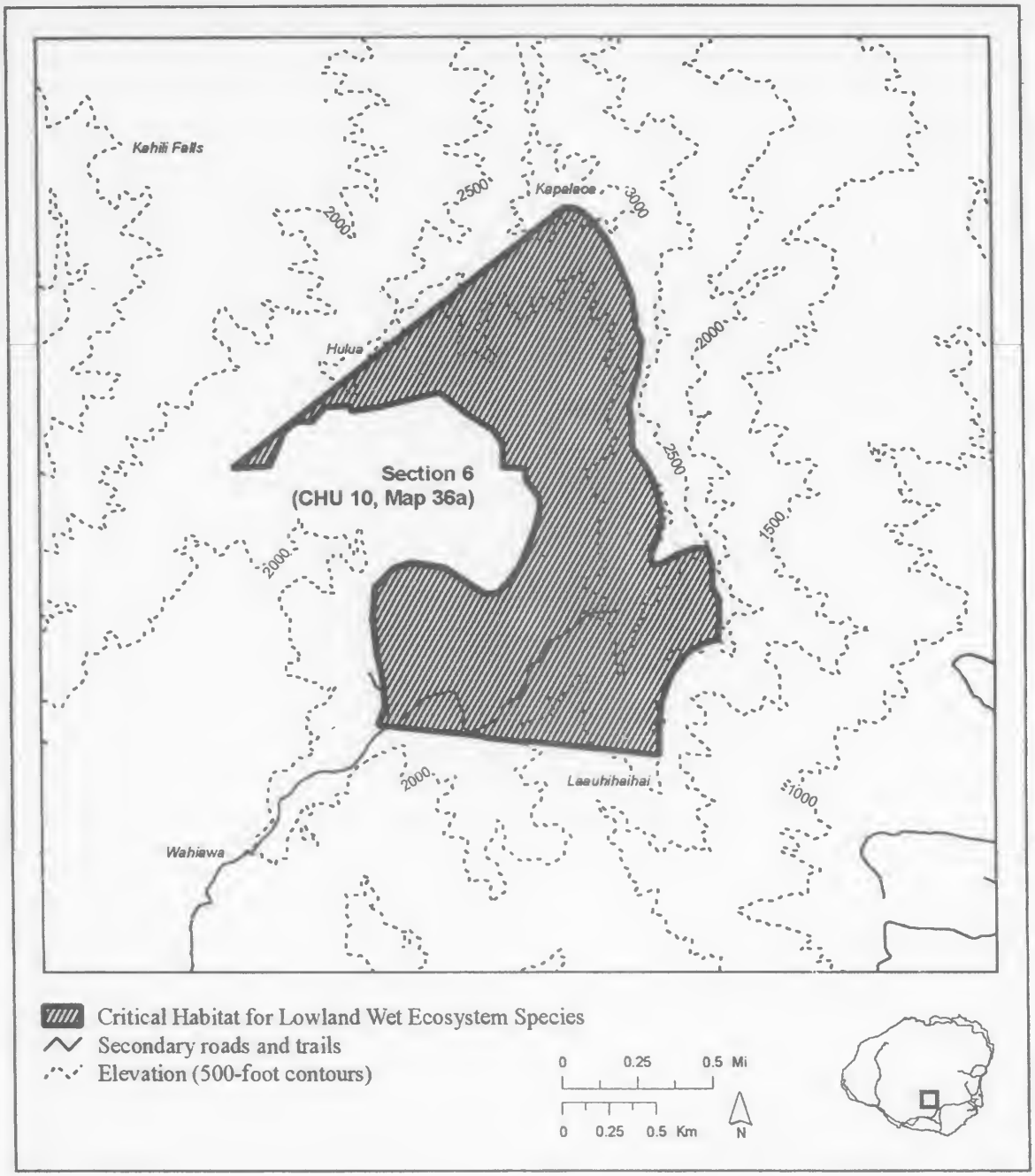

Figure 2-D. Areas proposed for designation of critical habitat for 15 plant species in the Lowland Wet Ecosystem (Section 6). Critical habitat unit (CHU) number and map number, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

Kauai—Montane Mesic—Section 1

Montane Mesic – Section 1 consists of 2,462 ac (996 ha) in the montane mesic ecosystem, including the area above Honopu Valley to Mahanaloa Valley, on State-owned land in Kokee State Park, the Na Pali-Kona Forest Reserve, and Kuia NAR (Figure 3-A). The entire section is within previously designated critical habitat for the plant species, falling within Critical Habitat Unit 11 of 50 CFR 17.99, Map 70C, and is occupied by the plants *Chamaesyce remyi* var. *remyi, Labordia helleri, Myrsine knudsenii, Platydesma rostrata, Psychotria grandiflora, Stenogyne kealiae*, and *Tetraplasandra flynii*. This section is also occupied by the bird akekee, and the picture-wing fly *Drosophila attigua*; maps of critical habitat for these species can be found at 50 CFR 17.95(b) for the akekee (Unit 1 – Montane Mesic), and at 50 CFR 17.95(i) for the picture-wing fly (Unit 1 – Montane Mesic). This section also contains unoccupied habitat that is essential to the conservation of these nine species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the montane mesic forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the montane mesic ecosystem (Table 3), as well as species-specific PCEs for the akekee (arthropod prey) and picture-wing fly (the larval-stage host plant, *Cheirodendron* sp.). Montane Mesic – Section 1 is not known to be occupied by the species *Diellia mannii* and *Myrsine mezii*. We have, however, determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

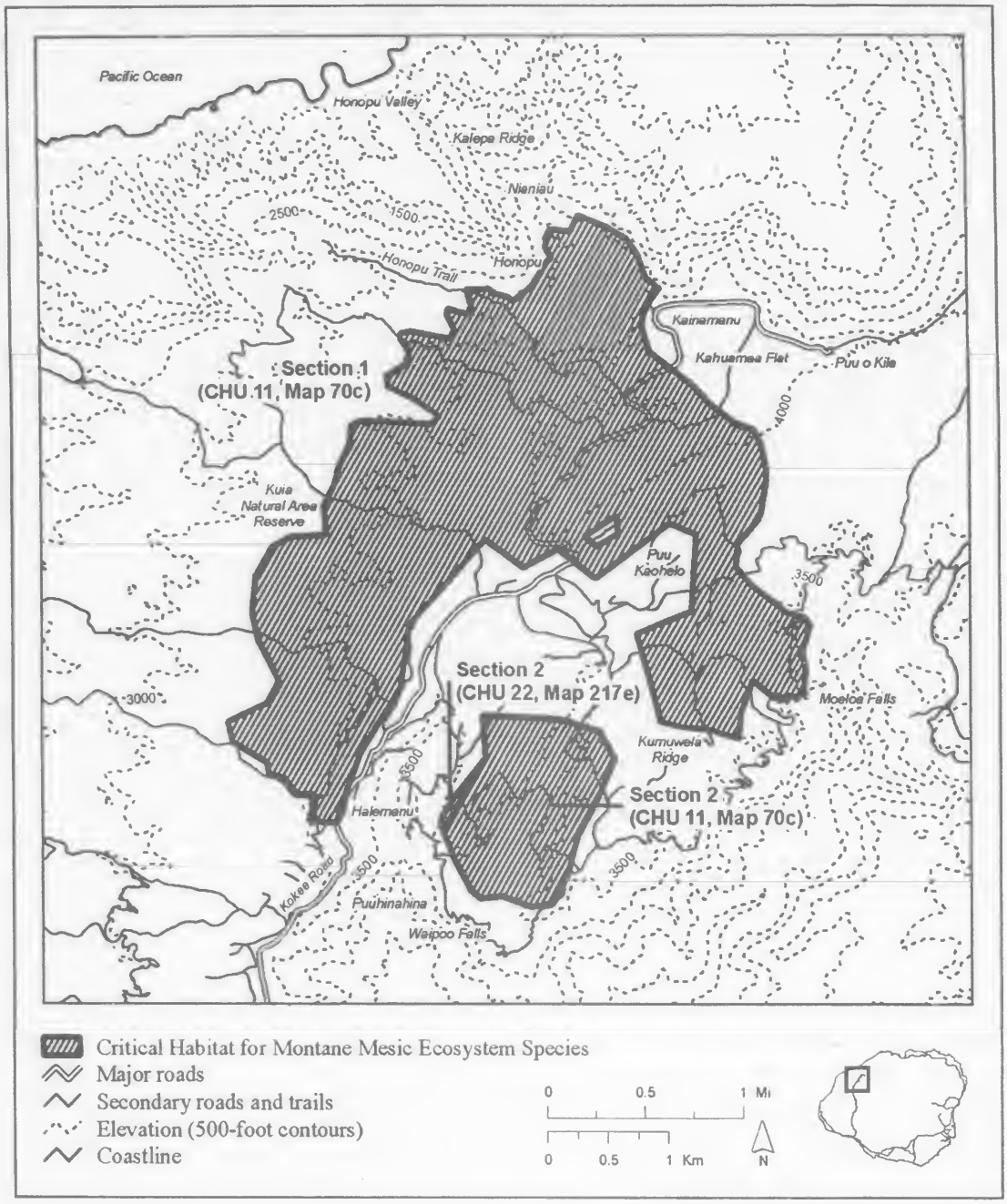

Figure 3-A. Areas proposed for designation of critical habitat for 9 plant species, the akekee, and the picture-wing fly in the Montane Mesic Ecosystem (Sections 1-2). Section 2 overlies an existing critical habitat unit (CHU) on Kauai (CHU 11) and an area not currently designated as critical habitat. CHU numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

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Kauai—Montane Mesic—Section 2

Montane Mesic – Section 2 consists of 376 ac (152 ha) in the montane mesic ecosystem and includes a portion of the area surrounding a tributary of Nawaimaka Stream east to Kumuwela Ridge (Figure 3-A). The entire section is State-owned within Kokee State Park, and includes 8 ac (3 ha) of newly proposed critical habitat. This section is occupied by *Diellia mannii* and the picture-wing fly *Drosophila attigua* and includes the montane mesic forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the montane mesic ecosystem (Table 3), as well as the larval-stage host plant (*Cheirodendron* sp.) associated with the picture-wing fly. This section also contains unoccupied habitat that is essential to the conservation of these two species by providing the physical and biological features necessary for the expansion of the existing wild populations. Montane Mesic – Section 2 is not known to be occupied by the plants *Chamaesyce remyi* var. *remyi*, *Labordia helleri*, *Myrsine knudsenii*, *Myrsine mezii*, *Platydesma rostrata*, *Psychotria grandiflora*, *Stenogyne kealiae*, and *Tetraplasandra flynnii*; or by the bird akekee. We have, however, determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

For the plants, that portion of the section that overlies previously designated critical habitat falls within Critical Habitat Unit 11 of 50 CFR 17.99, Map 70c. The previously undesignated land comprises proposed Critical Habitat Unit 22 of 50 CFR 17.99, Map 217e. Maps of critical habitat for the akekee can be found at 50 CFR 17.95(b) (Unit 2 – Montane Mesic), and for the picture-wing fly at 50 CFR 17.95(i) (Unit 2 – Montane Mesic).

Kauai—Montane Mesic—Section 3

Montane Mesic – Section 3 consists of 138 ac (56 ha) in the montane mesic ecosystem, including the upper portion of the Nawaimaka Valley up to Kapukapaia Ridge, on State-owned land in the Na Pali-Kona Forest Reserve (Figure 3-B). This section is not in previously designated critical habitat and includes the only montane mesic forest occupied by the plant *Myrsine mezii*, and the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the montane mesic ecosystem (Table 3). This section also contains unoccupied habitat that is essential to the conservation of this species by providing the physical and biological features necessary for the expansion of the existing wild population. Montane Mesic - Section 3 is not known to be occupied by the plants *Chamaesyce remyi* var. *remyi*, *Labordia helleri*, *Myrsine knudsenii*, *Myrsine mezii*, *Platydesma rostrata*, *Psychotria grandiflora*, *Stenogyne kealiae*, and *Tetraplasandra flynnii*; by the bird akekee; or by the picture-wing fly *Drosophila attigua*. We have, however, determined this area to be essential for the conservation and recovery of these montane mesic species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

For the plants, this section comprises proposed Critical Habitat Unit 23 of 50 CFR 17.99, Map 217f. Maps of critical habitat for the akekee can be found at 50 CFR 17.95(b) (Unit 3 – Montane Mesic), and for the picture-wing fly at 50 CFR 17.95(i) (Unit 3 – Montane Mesic).

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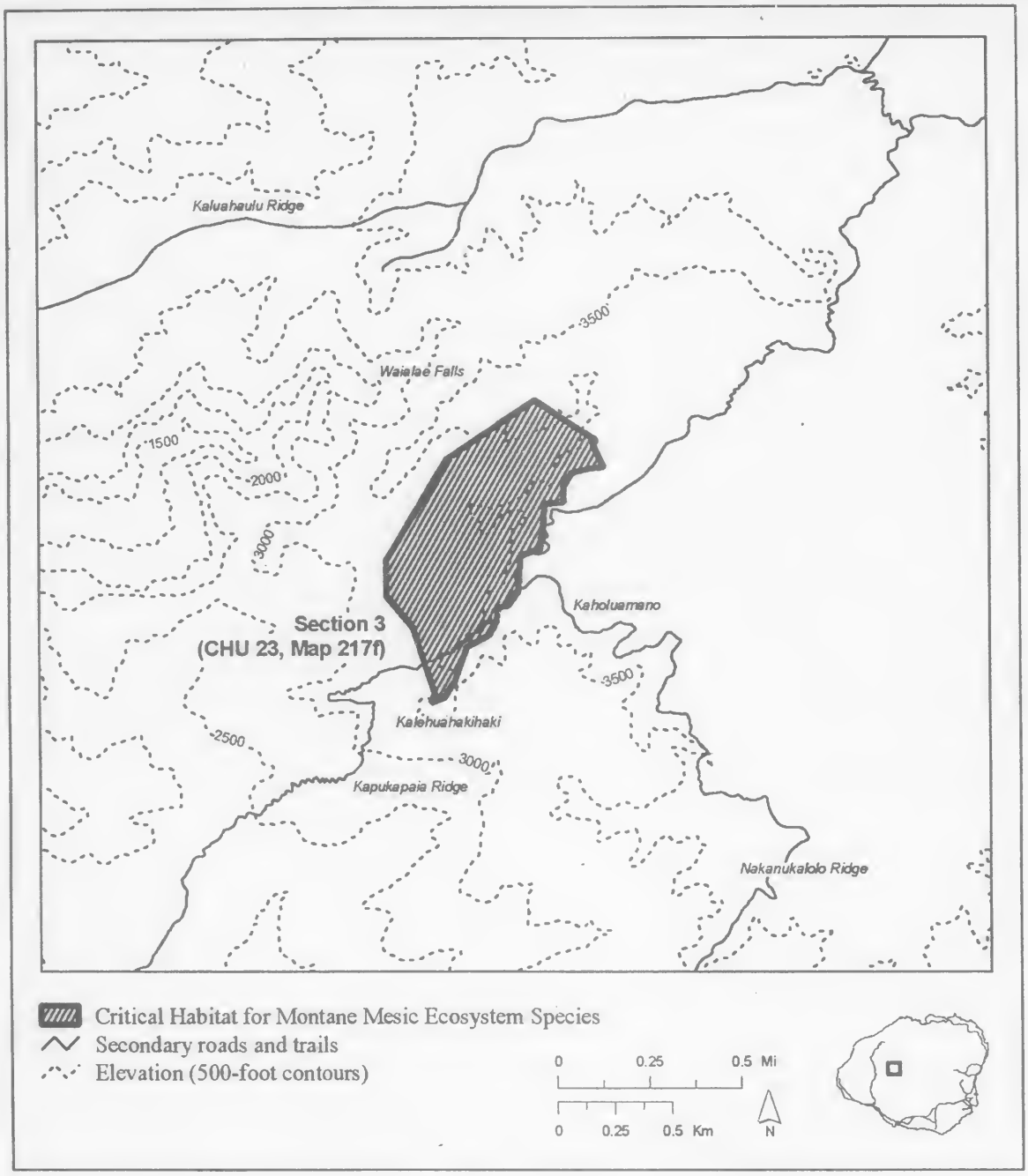

Figure 3-B. Areas proposed for designation of critical habitat for 9 plant species, the akekee, and the picture-wing fly in the Montane Mesic Ecosystem (Section 3). Critical habitat unit (CHU) number and map number, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

Kauai—Montane Wet—Section 1

Montane Wet – Section 1 consists of 14,107 ac (5,709 ha) in the montane wet ecosystem, extending across the Alakai Plateau from Hanakoa to Mount Waialeale, on State (12,629 ac, 5,111 ha) and privately owned (1,478 ac, 598 ha) land in the Na Pali Coast State Park, the Alakai Wilderness Preserve, the Na Pali-Kona and Halelea forest reserves, and Hono o Na Pali NAR (Figure 4). This section includes 1,116 ac (452 ha) of privately owned land that is newly proposed as critical habitat. It is occupied by the plants *Astelia waialealae, Chamaesyce remyi* var. *remyi, Dryopteris crinalis* var. *podosorus, Dubautia waialealae, Geranium kauaiense, Keysseria erici, Keysseria helenae, Labordia helleri, Labordia pumila, Lysimachia daphnoides, Melicope degeneri, Melicope puberula, Myrsine mezii, Phyllostegia renovans*, and *Platydesma rostrata*; by the akekee and akikiki; and by the picture-wing fly. This section also contains unoccupied habitat that is essential to the conservation of these 18 species by providing the physical and biological features necessary for the expansion of the existing wild populations. This section includes the montane wet forest, the moisture regime, and canopy, subcanopy, and understory plant species identified as PCEs in the montane wet ecosystem (Table 3), and the species-specific PCEs including (1) bogs (identified as PCEs for *Dubautia waialealae, Geranium kauaiense, Keysseria erici, Keysseria helenae, Labordia pumila, Lysimachia daphnoides*); (2) bog hummocks (identified as PCEs for *Astelia waialealae*); (3) arthropod prey (identified as PCEs for the akekee and the akikiki); and (4) larval-stage host plants, *Cheirodendron* sp., (identified as a PCE for the picture-wing fly).

Montane Wet – Section 1 is not known to be occupied by !the plants *Dubautia kalalauensis, Psychotria grandiflora*, and *Tetraplasandra flynnii*. We have, however, determined this area to be essential for the conservation and recovery of these montane wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

For the plants, those portions of the section that overlie previously designated critical habitat falls within two existing Critical Habitat Units of 50 CFR 17.99: Unit 10, Map 35a and Unit 11, Map 64a. The previously undesignated land comprises proposed Critical Habitat Unit 18 of 50 CFR 17.99, Map 217a; proposed Unit 24, Map 217g; and proposed Unit 25, Map 217h. Maps of critical habitat for the akekee and akikiki can be found at 50 CFR 17.95(b) (Unit 1 – Montane Wet), and for the picture-wing fly *Drosophila attigua* at 50 CFR 17.95(i) (Unit 1 – Montane Wet).

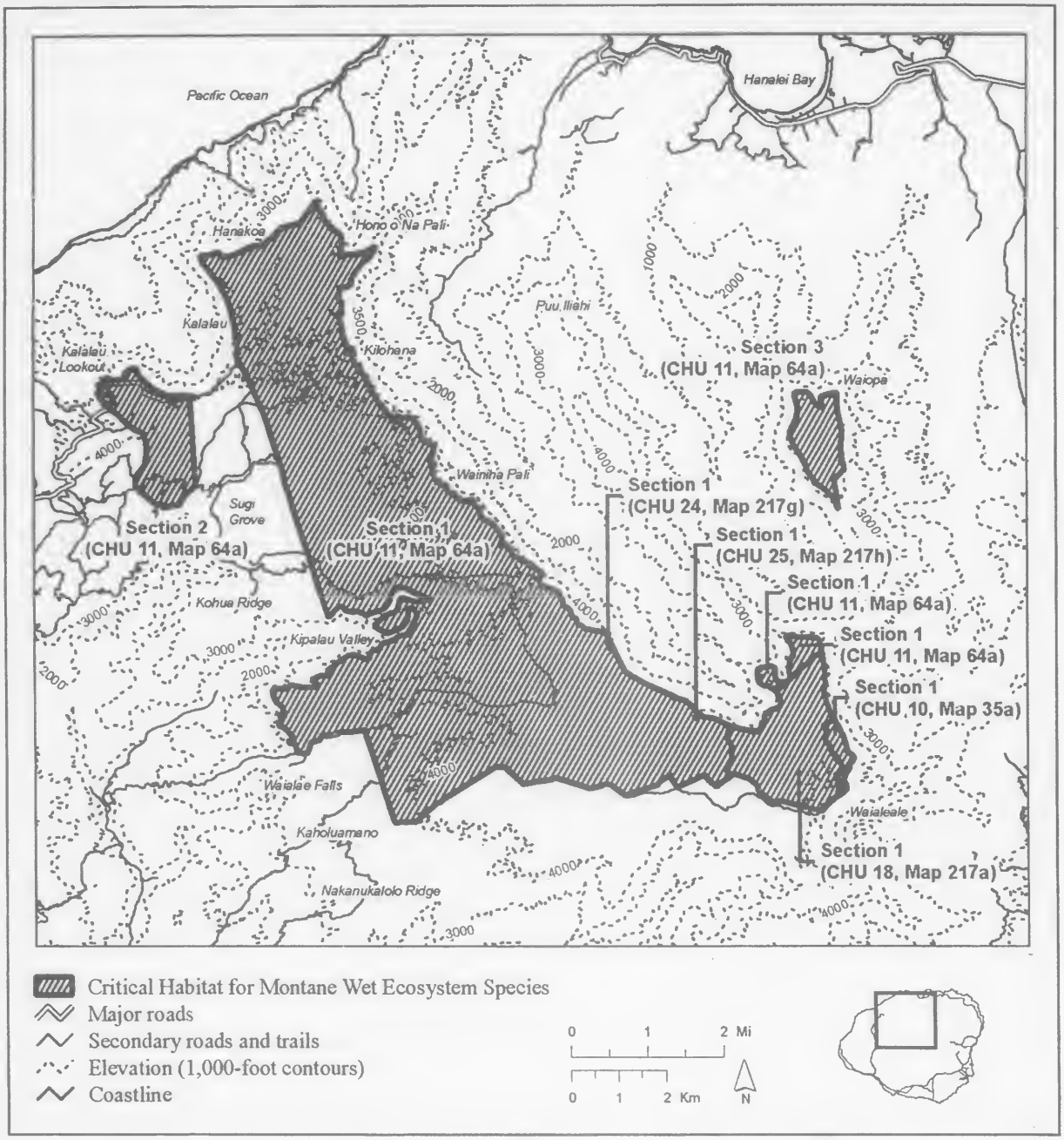

Figure 4. Areas proosed for designation of critical habitat for 18 plant species, the akekee and akikiki, and the picture-wing fly in the Montane Wet Ecosystem (Sections 1-3). Section 1 overlies two existing critical habitat units (CHU) on Kauai (CHU 10 and CHU 11) and areas not currently designated as critical habitat. CHU numbers and map numbers for each section, as published in the Code of Federal Regulations, are provided for ease of referencing.

Kauai—Montane Wet—Section 2

Montane Wet - Section 2 consists of 790 ac (320 ha) in the montane wet ecosystem, extending from Kahuamaa Flat south to the edge of Waimea Canyon, on State-owned land in Kokee State Park (Figure 4, above). The entire section is within previously designated critical habitat, and is occupied by the plants *Chamaesyce remyi* var. *remyi, Dubautia kalalauensis, Melicope puberula, Platydesma rostrata, Psychotria grandiflora,* and *Tetraplasandra flynii,* and by the akekee. This section includes the montane wet forest, the moisture regime, and canopy, subcanopy and understory plant species identified as PCEs in the montane wet ecosystem (Table 3), and arthropod prey (identified as a species-specific PCE for the akekee). Montane Wet - Section 2 is not known to be occupied by the plants *Astelia waialeale, Dryopteris crinalis* var. *podosorus, Dubautia waialeale, Geranium kauaiense, Keysseria erici, Keysseria helenae, Labordia helleri, Labordia pumila, Lysimachia daphnoides, Melicope degeneri, Myrsine mezii,* and *Phyllostegia renovans;* by the bird akikiki; or by the picture-wing fly, *Drosophila attigua.* We have, however, determined this area to be essential for the conservation and recovery of these montane wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

For the plants, critical habitat falls within previously designated Critical Habitat Unit 11 of 50 CFR 17.99, Map 64a. Maps of critical habitat for the akekee and akikiki can be found at 50 CFR 17.95(b) (Unit 2 – Montane Wet), and for the picture-wing fly *Drosophila attigua* at 50 CFR 17.95(i) (Unit 2 – Montane Wet).

Kauai—Montane Wet—Section 3

Montane Wet - Section 3 consists of 413 ac (167 ha) in the montane wet ecosystem, encompasses the summit of Namolokama, on State (156 ac, 63 ha) and privately owned (257 ac, 104 ha) land in the Halelea Forest Reserve (Figure 4). It is entirely within previously designated critical habitat, and is occupied by the plants *Keysseria erici* and *Labordia pumila.* This section includes the montane wet forest, the moisture regime, and the canopy, subcanopy, and understory plant species identified as PCEs in the montane wet ecosystem (Table 3), and bogs (identified as a species-specific PCE for *K. erici*). Montane Wet - Section 3 is not known to be occupied by the plants *Astelia waialeale, Chamaesyce remyi* var. *remyi, Dryopteris crinalis* var. *podosorus, Dubautia kalalauensis, Dubautia waialeale, Geranium kauaiense, Keysseria helenae, Labordia helleri, Lysimachia daphnoides, Melicope degeneri, Melicope puberula, Myrsine mezii, Phyllostegia renovans, Platydesma rostrata, Psychotria grandiflora,* and *Tetraplasandra flynnii;* by the birds akekee and akikiki; or by the picture-wing fly, *Drosophila attigua.* We have, however, determined this area to be essential for the conservation and recovery of these montane wet species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

For the plants, critical habitat falls within Critical Habitat Unit 11 of 50 CFR 17.99, Map 64a. Maps of critical habitat for the akekee and akikiki can be found at 50 CFR 17.95(b) (Unit 3 – Montane Wet), and for the picture-wing fly *Drosophila attigua* at 50 CFR 17.95(i) (Unit 3 – Montane Wet).

Kauai—Dry Cliff—Section 1

Dry Cliff - Section 1 consists of 404 ac (163 ha) in the dry cliff ecosystem, along cliffs from Kalanu to Pihea peak, within the Na Pali Coast State Park (Figure 5). The entire section is within previously designated critical habitat and is State-owned; it falls within Critical Habitat Unit 11 of 50 CFR 17.99, Map 67a. This section is occupied by the plants *Chamaesyce eleanoriae, Lysimachia scopulensis, Schiedea attenuata,* and *Stenogyne kealiae.* This section includes the dry cliffs, the moisture regime, and subcanopy and understory plant species identified as PCEs in the dry cliff ecosystem (Table 3).

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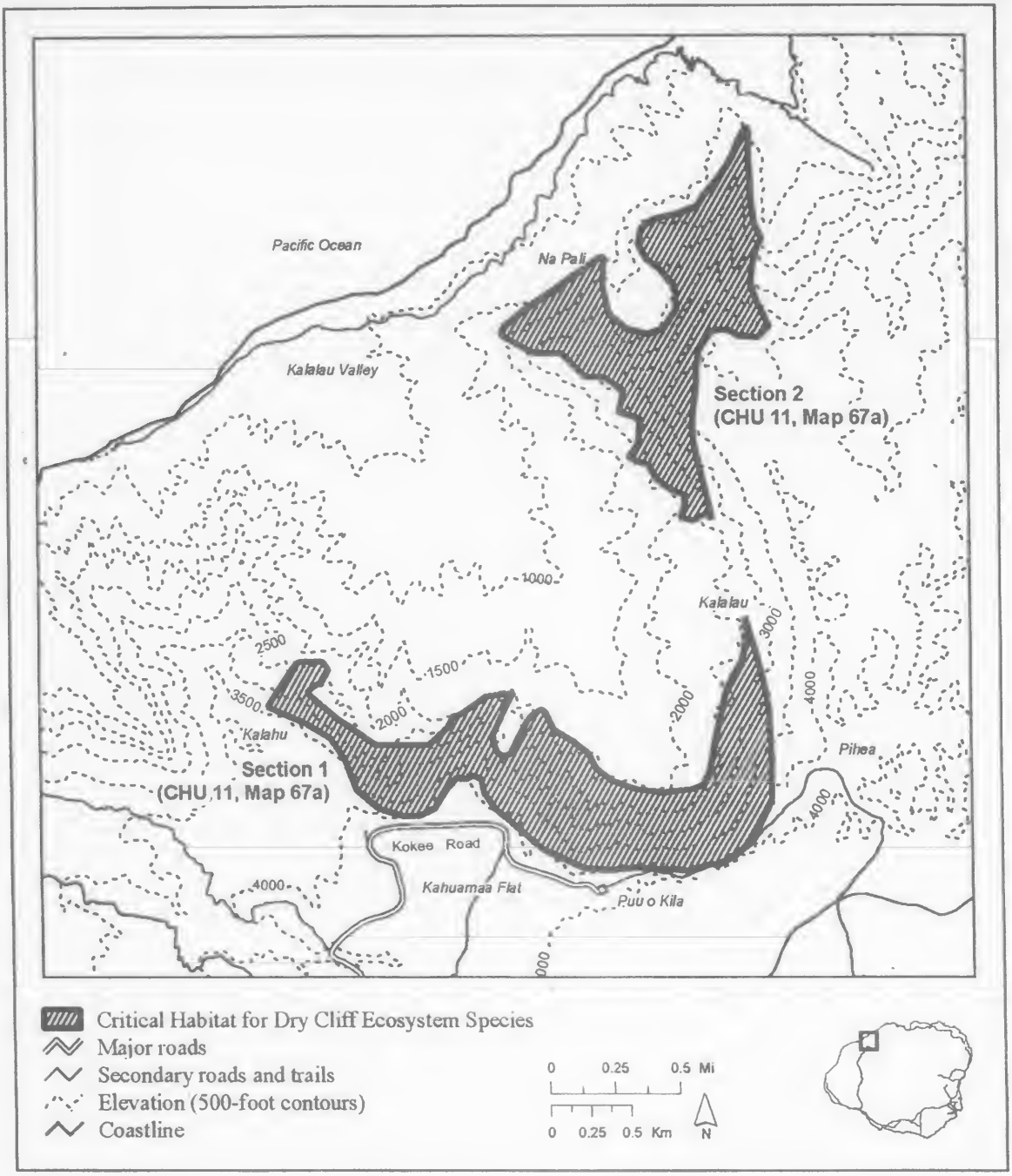

Figure 5. Areas proposed for designation of critical habitat for 4 plant species in the Dry Cliff Ecosystem (Sections 1-2). Critical habitat unit (CHU) numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

Kauai—Dry Cliff—Section 2

Dry Cliff - Section 2 consists of 308 ac (125 ha) in the dry cliff ecosystem, including cliffs and ridges extending from Kanakou to Keanapuka and along Manono Ridge, surrounding the hanging valley Pohakuao, in the Na Pali Coast State Park (Figure 5). The entire section is State-owned and within previously designated critical habitat; it falls within Critical Habitat Unit 11 of 50 CFR 17.99, Map 67a. This section is occupied by the plant *Chamaesyce eleanoriae* and includes the dry cliffs, the moisture regime, and subcanopy and understory plant species identified as PCEs in the dry cliff ecosystem (Table 3). Dry Cliff - Section 3 is not known to be occupied by the plants *Lysimachia scopulensis, Schiedea attenuata,* and *Stenogyne kealiae.* We have, however, determined this area to be essential for the conservation and recovery of these dry cliff species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

Kauai—Wet Cliff—Section 1

Wet Cliff - Section 1 consists of 190 ac (77 ha) in the wet cliff ecosystem, including cliffs along the rim of Kalalau Valley from Alealeau to Pihea, on State-owned land in the Na Pali Coast State Park and the Hono o Na Pali NAR (Figure 6-A). The entire section is within previously designated critical habitat, falling within Critical Habitat Unit 11 of 50 CFR 17.99, Map 70b, and is occupied by the plant *Chamaesyce remyi* var. *remyi.* This section includes the wet cliffs, the moisture regime, and subcanopy and understory plant species identified as PCEs in the wet cliff ecosystem (Table 3). Wet Cliff - Section 1 is not known to be occupied by the plants *Chamaesyce remyi* var. *kauaiensis, Cyanea dolichopoda, Cyrtandra oenobarbara, Cyrtandra paliku, Dubautia plantaginea* ssp. *magnifolia, Lysimachia iniki, Lysimachia pendens, Lysimachia venosa,* and *Platydesma rostrata.* We have, however, determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

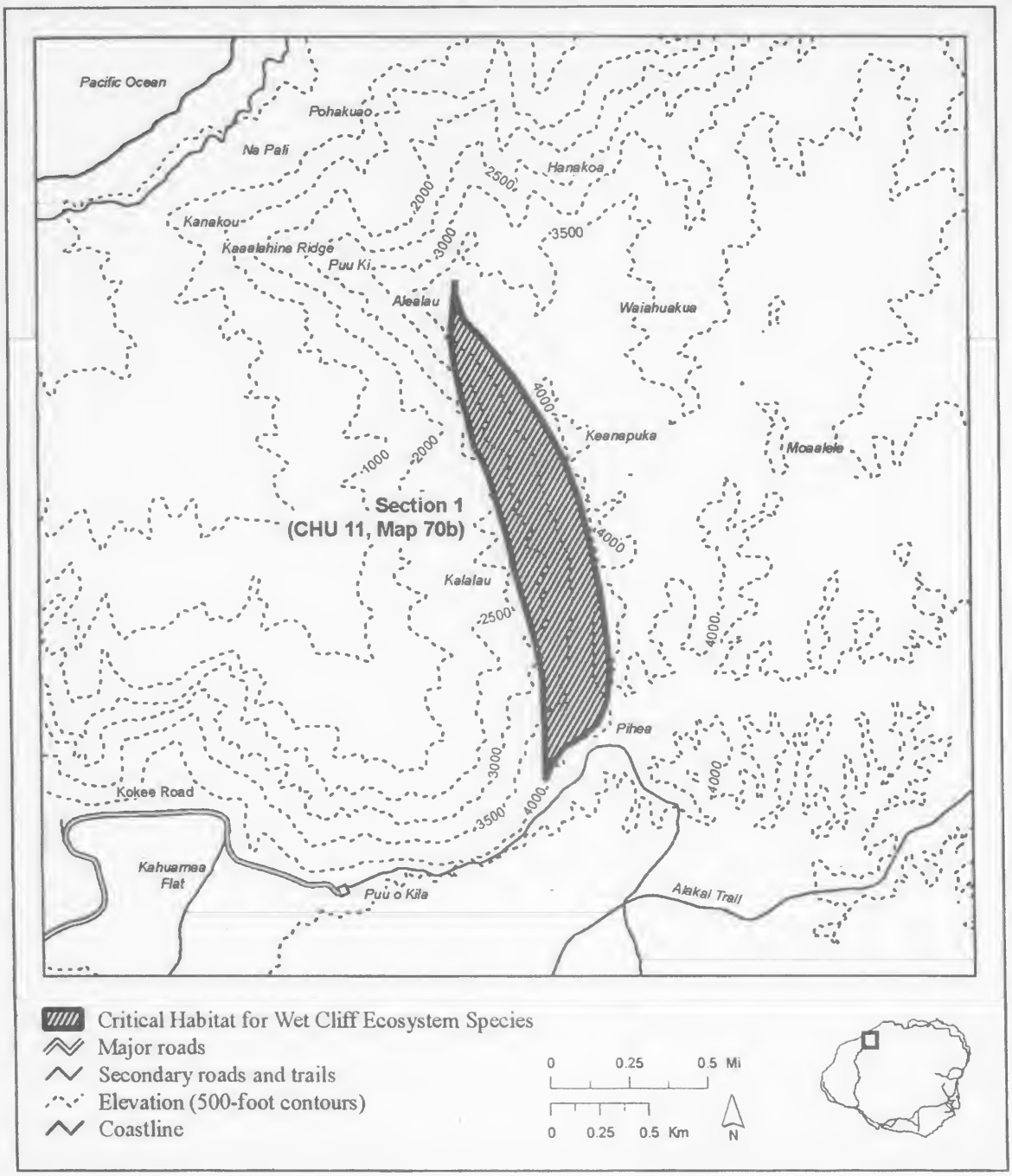

Figure 6-A. Area proposed for designation of critical habitat for 10 plant species in the Wet Cliff Ecosystem (Section 1). Critical habitat unit (CHU) number and map number, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

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Kauai—Wet Cliff—Section 2

Wet Cliff - Section 2 consists of 784 ac (317 ha) in the wet cliff ecosystem, and includes the cliffs at the headwaters of the Wailua River or "Blue Hole," on State (778 ac, 315 ha) and privately owned (7 ac, 3 ha) land in the Lihue-Koloa Forest Reserve (Figure 6-B). There are 489 ac (198 ha) within previously designated critical habitat and 296 ac (120 ha) of newly proposed critical habitat on State-owned land. The portion of the section that is in previously designated critical habitat falls within Critical Habitat Unit 10 of 50 CFR 17.99, Map 36b. The newly proposed portion of the section comprises Critical Habitat Unit 19 of 50 CFR 17.99, Map 217b. This section is occupied by the plants *Chamaesyce remyi* var. *kauaiensis, Cyanea dolichopoda, Cyrtandra oenobarba, Dubautia plantaginea* ssp. *magnifolia, Lysimachia iniki, Lysimachia pendens,* and *Platydesma rostrata.* The section includes the wet cliffs, the moisture regime, and subcanopy and understory plant species identified as PCEs in the wet cliff ecosystem (Table 3). Wet Cliff - Section 2 is not known to be occupied by the plants *Chamaesyce remyi* var. *remyi, Cyrtandra paliku,* and *Lysimachia venosa.* We have, however, determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

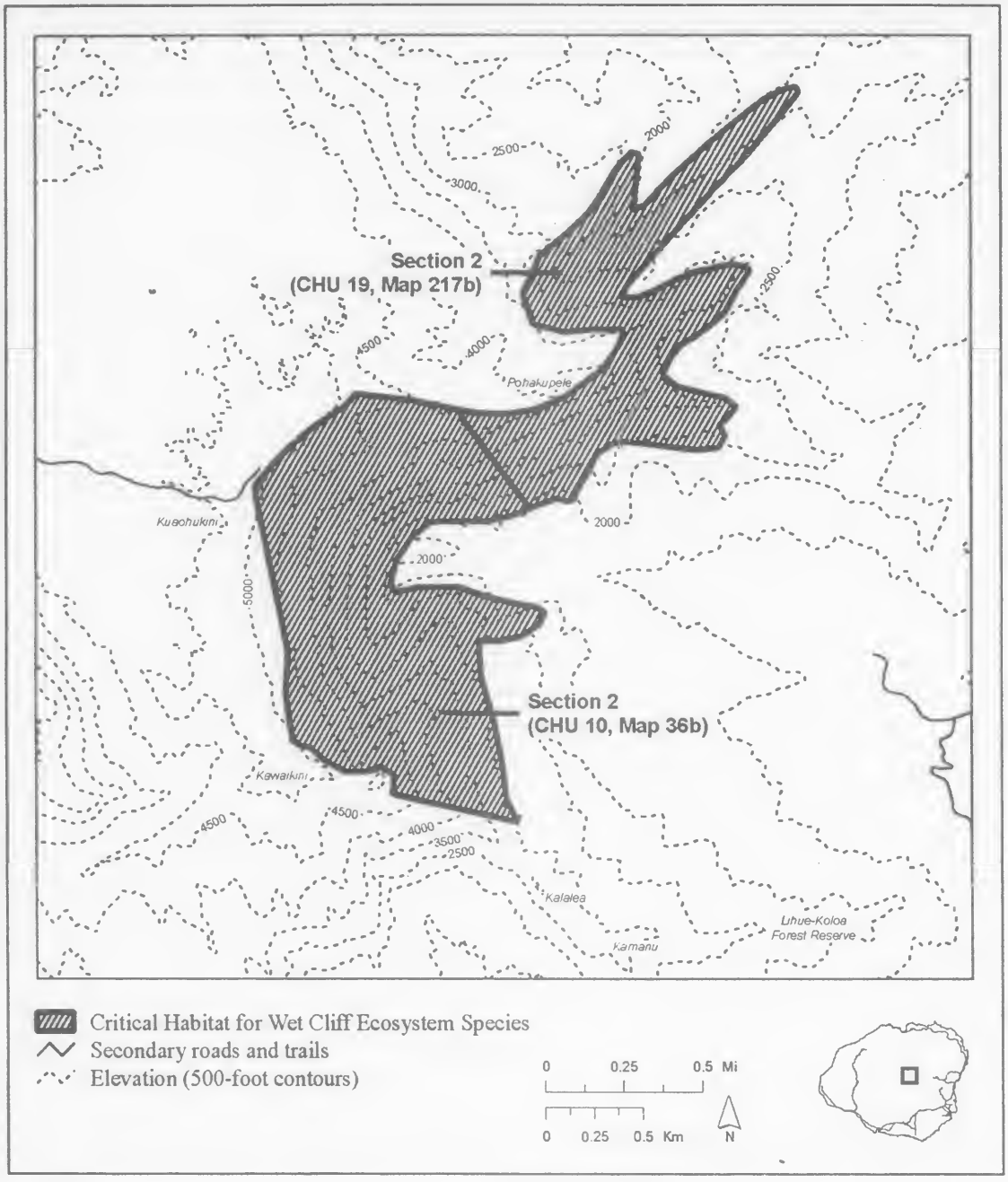

Figure 6-B. Area proposed for designation of critical habitat for 10 plant species in the Wet Cliff Ecosystem (Section 2). Section 2 overlies an existing critical habitat unit (CHU) on Kauai (CHU 10) and an area not currently designated as critical habitat. CHU numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

Kauai—Wet Cliff—Section 3

Wet Cliff - Section 3 consists of 61 ac (24 ha) in the wet cliff ecosystem, including cliffs below Kekoiki, on State (8 ac, 3 ha) and privately owned (53 ac, 22 ha) land in the Halelea, Moloaa and Kealia forest reserves (Figure 6-C). There are 23 ac (9 ha) of newly proposed critical habitat on privately owned land within this section. That portion of the section that falls within previously designated critical habitat falls within Critical Habitat Unit 4 of 50 CFR 17.99, Map 5a. The newly proposed portion of the section comprises Critical Habitat Unit 20 of 50 CFR 17.99, Map 217c. This section is occupied by the plant *Cyrtandra paliku*, and includes the wet cliffs, the moisture regime, and subcanopy and understory plant species identified as PCEs in the wet cliff ecosystem (Table 3). Wet Cliff - Section 3 is not known to be occupied by the plants *Chamaesyce remyi* var. *kauaiensis, Chamaesyce remyi* var. *remyi, Cyanea dolichopoda, Cyrtandra oenobarbara, Dubautia plantaginea* ssp. *magnifolia, Lysimachia iniki, Lysimachia pendens, Lysimachia venosa,* and *Platydesma rostrata*. We have, however, determined this area to be essential for the conservation and recovery of these wet cliff species because it provides the physical and biological features necessary for the reestablishment of wild populations within the historical range of the species. Due to the small numbers of individuals or low population sizes of each of these species, each requires suitable habitat and space for expansion or reintroduction to achieve a population level that could approach recovery.

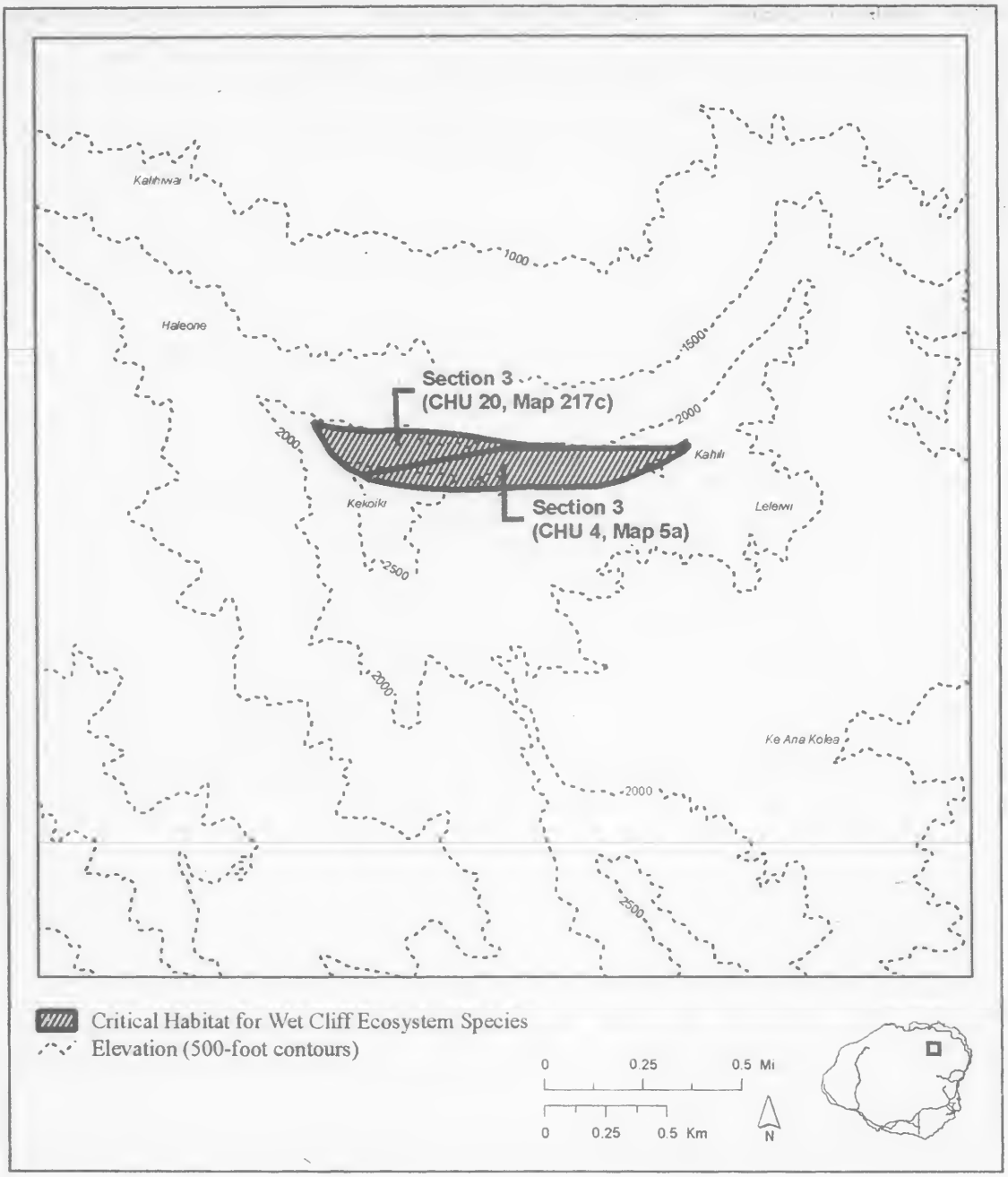

Figure 6-C. Areas proposed for designation of critical habitat for 10 plant species in the Wet Cliff Ecosystem (Section 3). Section 3 overlies an existing critical habitat unit (CHU) on Kauai (CHU 4) and an area not currently designated as critical habitat. CHU numbers and map numbers for each section, as published in the Code of Federal Regulations (50 CFR 17.99), are provided for ease of referencing.

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Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, an important factor in determinig whether an action will destroy or adversely modify critical habitat is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Consultation may be concluded through our issuance, as appropriate, of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "Reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the species included in this proposed rule or their designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the species included in this proposed rule. Generally, the role of the critical habitat areas is to support the essential conservation needs of the 47 species identified in this proposed rule; we have determined that this critical habitat is not only necessary for the species' survival, but is also essential to achieve the recovery of these species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat for the 47 species, and therefore may be affected by this proposed designation, include, but are not limited to:

(1)Activities that might appreciably degrade or destroy the primary constituent elements for the species including, but not limited to, the following: Overgrazing; maintaining or increasing feral ungulate levels; clearing or cutting native live trees and shrubs (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); and taking actions that pose a risk of fire.

(2)Activities that may alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, wetland, or vegetative communities. Such activities include new water diversion or impoundment, excess groundwater pumping, and manipulation of vegetation through activities such as the ones mentioned above.

(3)Recreational activities that may appreciably degrade vegetation.

(4)Mining sand or other minerals.

(5)Introducing or encouraging the spread of nonnative plant species.

(6)Importing nonnative species for research, agriculture, and aquaculture, and releasing biological control agents.

Exemptions and Exclusions

Application of Section 4(a)(3) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i)

of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands with a completed integrated natural resources management plan within the proposed critical habitat designation.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. In addition to economic impacts, we consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether landowners have developed any habitat conservation plans (HCPs) for the area, or whether there are conservation partnerships that would be encouraged or discouraged by designation of, or exclusion from, critical habitat in an area. In addition, we look at the presence of Tribal lands or Tribal trust resources that might be affected, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts the might occur because of the designation.

This discussion of the potential economic and other impacts of critical habitat designation is separate from and has not been considered in the proposed listing rule. The inclusion of this information in the proposed rule is solely for the purpose of soliciting public comments on the proposed critical habitat designation, not the proposed listing.

In developing this proposal, we have determined that the lands within the proposed designation of critical habitat for the 47 species are not owned or managed by the Department of Defense, there are currently no HCPs for these species, and the proposed designation does not include any Tribal lands or trust resources. As such, we do not anticipate any impacts to national security, Tribal lands, or HCPs from this proposed critical habitat designation.

Economic Analysis

On May 28, 2002, we published a document in the **Federal Register** announcing the availability of the draft economic analysis (DEA) for the proposed designation of 99,206 acres (40,147 ha) of critical habitat on Kauai for 83 Kauai plants (67 FR 36851). The draft economic analysis covered the 10–year timeframe from 2002-2012, and characterizes both the total section 7 consultation cost, and the costs attributable to critical habitat (DEA VI-1). On February 27, 2003, the final rule (2003 rule) designated 52,549 acres (21,266 ha) as critical habitat on Kauai and 357 acres (145 ha) on Niihau, in 217 critical habitat units (68 FR 9116). The final economic analysis addendum was adjusted to delete costs related to units that were excluded or modified for biological reasons and to respond to public comments. No critical habitat units in the proposed rule were excluded or modified in the final rule because of economic impacts.

Ninety-four percent (26,026 acres of 27,674 acres) of the critical habitat in this proposed rule, encompassing all or part of 21 sections, occurs within 6 of the units that were designated in 2003. Proposed ecosystem sections Lowland Mesic 1, 2, 3, 4, 5; Lowland Wet 1, 2, 3, 4, 5, 6; Montane Mesic 1, 2; Montane Wet 1, 2, 3; Dry Cliff 1, 2; and Wet Cliff 1, 2, 3 overlap in whole or in part with critical habitat units designated in the 2003 rule. Only proposed Montane Mesic – Section 3 does not overlap any previously designated critical habitat unit. (See Table 5 for cross-reference of ecosystem section numbers with critical habitat unit numbers in the CFR).

The final economic analysis for the 2003 rule estimates that the listing of the 83 plants and the designation of this critical habitat could result in potential direct economic effects ranging from approximately $170,000 to $520,000. Of that, we estimate that $37,388 to $293,030 could be attributable to critical habitat in the units that overlap with the areas !proposedin this proposed rule.

On March 29, 2002, we published a notice in the **Federal Register** (67 FR 15159), announcing the availability of a draft economic analysis for the proposed designation of 16.3 miles (26.3 kilometers (km)) of main stream channel in nine critical habitat units for Newcomb's snail (*Erinna newcombi*) on Kauai. The draft economic analysis covers the 10–year timeframe from 2002-2012, and identifies the total section 7 consultation costs, and the incremental costs attributable to critical habitat (DEA ES-7).

On August 20, 2002, the final rule (67 FR 54026) designated eight stream segments and associated tributaries, springs and seeps, and adjacent riparian areas on the island of Kauai totaling 12.28 miles of stream channel and 4,479 acres (1,813 ha) as critical habitat for Newcomb's snail. It was determined that the designation could result in potential economic effects of $28,500, with $19,500 of this cost attributable to critical habitat. No critical habitat units in the proposed rule were excluded or modified in the final rule because of economic impacts.

The Na Pali Coast Streams/Critical Habitat Unit I designated as critical habitat for the Newcomb's snail (67 FR 54054), encompasses 609 acres (246 ha)). This unit is under State ownership and partially overlaps with three of the proposed critical habitat areas in this rule (Dry Cliff – Section 2, Lowland Mesic – Section 2, and Lowland Mesic – Section 4; see Table 5 for cross-reference with critical habitat unit numbers in the CFR). Of the $19,500 in potential costs that were identified in the Newcomb's snail final critical habitat designation, we estimate that $1,574 could be attributable to the area overlapping this proposal. The three critical habitat areas identified above also overlap with areas that were designated as critical habitat in the 2003 final rule for 83 Kauai plants.

The PCEs described in the 2003 rule and those for the 47 species proposedhere are similar. Because of this similarity, no additional economic costs are anticipated for the 26,026 acres (10,523 ha) of proposed critical habitat that overlaps with the 2003 rule beyond those identified in the previous economic analyses. Any management actions that may be necessary to avoid adverse modification of the existing critical habitat and PCEs in the 26,026 overlapping acres (10,532 ha) would likely coincidentally be adequate to avoid adverse modification of critical habitat for the additional species being considered in this proposed rule. Furthermore, in both cases the adverse modification standard considered both the conservation and recovery of the species as the goal of critical habitat. We are unaware of any new potential impacts in these overlap areas that were not considered in the previous economic analyses, but are seeking updated information from the public during the comment period on this proposed rule.

We are proposing to designate as critical habitat approximately 1,646 acres (667 ha) in six ecosystem areas that do not completely overlap with existing critical habitat units designated in the final rules for the 83 Kauai species and/or Newcomb's snail. Montane Mesic – Section 2 includes 7.8 acres (3.16 ha) classified as State Parks and Recreation lands; Montane Mesic – Section 3 includes 138 acres (55.8 ha) classified as State Forest Reserve lands; Montane Wet – Section 1 includes 1,116 acres (452 ha) classified as State Forest Reserve lands (the remainder of the unit is classified as State Conservation Area); Wet Cliff – Section 2 includes 296 acres (3 ha) classified as State Forest Reserve lands; Lowland Wet – Section 1 includes 65 acres (26.3) in the Limahuli Garden and Preserve, which is owned by the National Tropical Botanical Garden (NTBG); and Wet Cliff – Section 3 includes 23 acres of privately owned land (see Table 5 for cross-reference with critical habitat unit numbers in the CFR). There is no history of section 7 consultation in these areas, nor are we aware of any planned activities in any of these areas that would require section 7 consultation in the future. To the extent there may be consultations in the future on, for example, Federal grants to assist the NTBG in managing its lands or maintenance of an existing power transmission line on the private land in Wet Cliff – Section 3, any additional costs are expected to be minimal. However, we are also seeking public comment on the potential costs of critical habitat designation in these areas.

In summary, the areas being proposed as critical habitat are remote, lack development potential, and overlap with existing critical habitat units by approximately 94 percent. The economic analyses for the 83 Kauai plants and the Newcomb's snail final critical habitat rules took into account the potential economic costs of critical habitat designation over a 10–year timeframe (2002-2012). We have determined that over that timeframe, $38,862 to $294,604 in costs could be attributable to critical habitat designation in the units that overlap with the critical habitat areas proposed in this rule. Moreover, since these designations in 2002 and 2003, we have had no section 7 consultations for any of those overlapping lands. The management actions that may be necessary to avoid adverse modification in existing critical habitat units would likely also be adequate to avoid adverse modification of critical habitat being proposed for the 47 Kauai species in this rule because of the similar PCEs, and in both cases the consideration of possible adverse modification similarly holds to the standard of species recovery. The remaining 6 percent (1,646 acres, 667 ha) of land we are proposing as critical habitat in this rule that does not overlap with existing critical habitat is managed as State Parks and Recreation Land (7.8 acres, 3.16 ha), State Forest Reserve (1,550 acres, 627 ha), or is owned by private individuals (88 acres, 35.6 ha). We have no section 7 consultationhistory in these areas and are unaware of any planned activities that would require consultation.

Our draft analysis of the potential economic impacts posed by the critical habitat designation proposed here is available by mail from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or for download at *http://www.regulations.gov.*

We do not anticipate more than minimal (if any) economic or other impacts that would be additive to those already identified above. To ensure that our final critical habitat determination is based on the best available data, we are requesting updated information on potential effects of this additional designation in overlap areas, as well as information on potential impacts from critical habitat designation on lands not currently designated (e.g., the non-overlap areas), during the comment period. We will fully consider any new information or data in our final determination. We are hereby soliciting comments from the public on any potential economic or other impacts of this proposed critical habitat designation (see "Public Comments" section). We are not proposing to exclude any areas under section 4(b)(2) of the Act at this time. However, based on public comment on this proposed critical habitat designation, we may exclude areas from the final critical habitat designation under section 4(b)(2) of the Act.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are obtaining the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have posted our proposed peer review plan on our website at *http://www.fws.gov/pacific/informationquality/index.htm.* We will send these peer reviewers copies of this proposed rule, immediately following publication in the **Federal Register**. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to the person named in the **FOR FURTHER INFORMATION CONTACT** section, above. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first public hearing.

Persons needing reasonable accommodations to attend and participate in a public hearing should contact the Pacific Islands Fish and Wildlife Office at (808) 792-9400 as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this

proposal is available in alternative formats upon request.

Required Determinations

Regulatory Planning and Review

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

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

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

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

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if a designation of critical habitat could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected issubstantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities carried out, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. If there is a Federal nexus, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or carry out that may affect critical habitat. If we conclude, in a biological opinion, that a proposed action is likely to destroy or adversely modify critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid destroying or adversely modifying critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Within the proposed critical habitat designation, the types of actions or authorized activities that we have identified as potential concerns and that are subject to consultation under section 7 if there is a Federal nexus include:

- Activities that might degrade or destroy the primary constituent elements for the species including, but not limited to, the following: Grazing; maintaining or increasing feral ungulate levels; clearing or cutting native live trees and shrubs (e.g., woodcutting, bulldozing, construction, road building, mining, herbicide application); and taking actions that pose a risk of fire.
- Activities that may alter watershed characteristics in ways that would reduce groundwater recharge or alter natural, wetland, or vegetative communities. Such activities include new water diversion or impoundment, groundwater pumping, and manipulation of vegetation through activities such as the ones mentioned above.
- Recreational activities that may degrade vegetation.
- Mining sand or other minerals.
- Introducing or encouraging the spread of nonnative plant species.
- Importing nonnative species for research, agriculture, and aquaculture, and releasing biological control agents.

None of the proposed critical habitat units contains significant residential, commercial, industrial, or golf-course projects; crop farming; or intensive livestock operations. Few projects are planned for locations in the proposed critical habitat. This situation reflects the fact that (1) most of the land is unsuitable for development, farming, or other economic activities due to the rugged mountain terrain, lack of access, and remote locations; and (2) existing land-use controls severely limit development and most other economic

activities in the mountainous interior of Kauai. Although some existing and continuing activities involve the operation and maintenance of existing manmade features and structures in certain areas, these areas do not contain the primary constituent elements for the species, and would not be impacted by the designation. Any existing and planned projects, land uses, and activities that could affect the proposed critical habitat but have no Federal involvement would not require section 7 consultation with the Service, so they are not restricted by the requirements of the Act. Finally, for the anticipated projects and activities that will have Federal involvement, many are conservation efforts that will not negatively impact the species or their habitat, so they will be subject to a minimal level of informal section 7 consultation. We anticipate that a developer or other project proponent could modify a project or take measures to protect the 47 Kauai species. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

In addition, Federal agencies may also need to reinitiate a previous consultation if discretionary involvement or control over the Federal action has been retained or is authorized by law and the activities may affect critical habitat. However, between 2002 and 2007, there have been no formal consultations and 55 informal consultations on Kauai, in addition to consultations on Federal grants to State wildlife programs (which would not affect small entities). The majority of the consultations were related to project effects on seabird flyways, nesting by endangered waterbirds, or roosting by the endangered Hawaiian hoary bat or ope ape a. Several consultations were conducted with the U.S. Department of Agriculture (Natural Resources Conservation Service (NRCS)) for proposed funding for habitat restoration projects under the auspices of the Wildlife Habitat Incentives Program (WHIP), and one was conducted with the Navy for weed removal at the Pacific Missile Range Facility (PMRF). Five of the 55 informal consultations concerned designated critical habitat, and we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect critical habitat. In this rule, we are proposing to designate critical habitat on a total of 27,674 ac (11,199 ha) of land. Ninety-four percent (26,028 ac (10,533 ha)) of this proposed critical habitat designation is already designated critical habitat for one or more species, and six percent (1,646 ac (666 ha)) of the proposed designation is on lands newly proposed as critical habitat. However, none of the Federal actions that were subject to previous section 7 consultation are on the lands we are proposing as critical habitat in this rule. Therefore, there is no requirement to reinitiate consultation for any ongoing Federal projects.

Moreover, in the 2001 economic analysis of the designation of critical habitat for 83 species of plants from the islands of Kauai and Niihau, we evaluated the potential economic effects on s!mall business entities resulting from the protection of these plant species and their habitat related to the proposed designation of critical habitat and determined that it would not have a significant economic impact on a substantial number of small entities. The RFA/SBREFA defines "small governmental jurisdiction" as the government of a city, county, town, school district, or special district with a population of less than 50,000. By this definition, Kauai County is not a small governmental jurisdiction because its population was 58,463 in 2000. Certain State agencies may be affected by the proposed critical habitat designation—such as the Department of Land and Natural Resources and the State Department of Transportation. However, for the purposes of the RFA, State governments are considered independent sovereigns, not small governments. Because of Federal involvement, The Nature Conservancy in Hawaii (TNC) and the National Tropical Botanical Gardens (NTBG) could be affected by the proposed critical habitat designation and would possibly be considered to be small organizations. The SBREFA defines "small organization" as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. We determined that TNC and NTBG are both large organizations that are dominant in Kauai County in their respective fields. The significant overlap between the critical habitat designation for the 83 species and this proposed critical habitat designation is further evidence that this proposal will not have a significant economic impact on a substantial number of small entities.

We have made an initial RFA finding that the proposed designation of critical habitat for the 47 species will not have a significant effect on a substantial number of small entities, for the reasons described above. However, we will defer making a final RFA finding in order to allow the public an opportunity to comment on potential economic consequences of this critical habitat proposal.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This designation of critical habitat will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

(b) The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-

Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

We do not believe that this rule will significantly or uniquely affect small governments. The lands we are proposing for critical habitat designation are owned by the State of Hawaii and private citizens. None of these entities fit the definition of "small governmental jurisdiction." Therefore, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for each of the 47 species in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for each of these species does not pose significant takings implications for lands within or affected by the proposed designation.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Hawaii. The designation of critical habitat for each of these species (excluding *Pritchardia hardyi* for which no critical habitat has been proposed) would impose no additional restrictions to those currently in place and, therefore, would have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species would be more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species would be specifically identified. This information would not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have issued this proposed critical habitat designation in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of each of the species being considered in this proposed rule.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the United States Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that there are no Tribal lands essential for the conservation of the 48 Kauai species. Therefore, this proposed designation of critical habitat does not involve any Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for 47 of the 48 species is not a significant regulatory action under E.O. 12866 and we do not expect it to significantly affect energy supplies, distribution, or use because

these areas are not presently used for energy production, and we are unaware of any future plans in this regard. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of references cited in this rule is available upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**, above) or at *http://www.regulations.gov*.

Author(s)

The authors of this document are the staff of the Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as follows:

a. By adding entries for "Akekee (honeycreeper)" and "Akikiki (honeycreeper)" in alphabetical order under BIRDS; and

b. By adding an entry for "Fly, Hawaiian picture-wing" (*Drosophila attigua*) in alphabetical order under INSECTS, to read as set forth below.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
Akekee (honeycreeper)	*Loxops caeruleirostris*	U.S.A. (HI)	Entire	E		17.95(b)	NA
*	*	*	*	*	*	*	
Akikiki (honeycreeper)	*Oreomystis bairdi*	U.S.A. (HI)	Entire	E		17.95(b)	NA
*	*	*	*	*	*	*	
INSECTS							
*	*	*	*	*	*	*	
Fly, Hawaiian picture-wing	*Drosophila attigua*	U.S.A. (HI)	NA	E		17.95(i)	NA
*	*	*	*	*	*	*	

3. Amend § 17.12(h), the List of Endangered and Threatened Plants, as follows:

a. By adding entries for *Astelia waialealae*, *Canavalia napaliensis*, *Chamaesyce eleanoriae*, *Chamaesyce remyi* var. *kauaiensis*, *Chamaesyce remyi* var. *remyi*, *Charpentiera densiflora*, *Cyanea dolichopoda*, *Cyanea eleeleensis*, *Cyanea kolekoleensis*, *Cyanea kuhihewa*, *Cyrtandra oenobarba*, *Cyrtandra paliku*, *Dubautia imbricata* ssp. *imbricate*, *Dubautia kalalauensis*, *Dubautia kenwoodii*, *Dubautia plantaginea* ssp. *magnifolia*, *Dubautia waialealae*, *Geranium kauaiense*, *Keysseria erici*, *Keysseria helenae*, *Labordia helleri*, *Labordia pumila*, *Lysimachia daphnoides*, *Lysimachia iniki*, *Lysimachia pendens*, *Lysimachia scopulensis*, *Lysimachia venosa*, *Melicope degeneri*, *Melicope paniculata*, *Melicope puberula*, *Myrsine knudsenii*, *Myrsine mezii*, *Phyllostegia renovans*, *Pittosporum napaliense*, *Platydesma rostrata*, *Pritchardia hardyi*, *Psychotria grandiflora*, *Psychotria hobdyi*, *Schiedea attenuata*, *Stenogyne kealiae*, *Tetraplasandra bisattenuata*, and *Tetraplasandra flynnii* in alphabetical order under FLOWERING PLANTS; and

b. By adding entries for *Diellia mannii*, *Doryopteris angelica*, and *Dryopteris crinalis* var. *podosorus* in alphabetical order under FERNS AND ALLIES, to read as set forth below.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* * * * * * * *							
Astelia waialealae	Painiu	U.S.A. (HI)	Asteliaceae	E		17.99(a)	NA
* * * * * * * *							
Canavalia napaliensis	Awikiwiki	U.S.A. (HI)	Fabaceae	E		17.99(a)	NA
* * * * * * * *							
Chamaesyce eleanoriae	Akoko	U.S.A. (HI)	Euphorbiaceae	E		17.99(a)	NA
* * * * * * * *							
Chamaesyce remyi var. kauaiensis	Akoko	U.S.A. (HI)	Euphorbiaceae	E		17.99(a)	NA
Chamaesyce remyi var. remyi	Akoko	U.S.A. (HI)	Euphorbiaceae	E		17.99(a)	NA
* * * * * * * *							
Charpentiera densiflora	Papala	U.S.A. (HI)	Amaranathaceae	E		17.99(a)	NA
* * * * * * * *							
Cyanea dolichopoda	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(a)	NA
* * * * * * * *							
Cyanea eleeleensis	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(a)	NA
* * * * * * * *							
Cyanea kolekoleensis	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(a)	NA
* * * * * * * *							
Cyanea kuhihewa	Haha	U.S.A. (HI)	Campanulaceae	E		17.99(a)	NA
* * * * * * * *							
Cyrtandra oenobarba	Haiwale	U.S.A. (HI)	Gesneriaceae	E		17.99(a)	NA
Cyrtandra paliku	Haiwale	U.S.A. (HI)	Gesneriaceae	E		17.99(a)	NA
* * * * * * * *							
Dubautia imbricata ssp. imbricata	Naenae	U.S.A. (HI)	Asteraceae	E		17.99(a)	NA
Dubautia kalalauensis	Naenae	U.S.A. (HI)	Asteraceae	E		17.99(a)	NA
Dubautia kenwoodii	Naenae	U.S.A. (HI)	Asteraceae	E		17.99(a)	NA
* * * * * * * *							
Dubautia plantaginea ssp. magnifolia	Naenae	U.S.A. (HI)	Asteraceae	E		17.99(a)	NA
Dubautia waialealae	Naenae	U.S.A. (HI)	Asteraceae	E		17.99(a)	NA
* * * * * * * *							
Geranium kauaiense	Nohoanu	U.S.A. (HI)	Geraniaceae	E		17.99(a)	NA
* * * * * * * *							
Keysseria erici	No common name	U.S.A. (HI)	Asteraceae	E		17.99(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Keysseria helenae	No common name	U.S.A. (HI)	Asteraceae	E		17.99(a)	NA
* * * * * * *							
Labordia helleri	Kamakahala	U.S.A. (HI)	Loganiaceae	E		17.99(a)	NA
* * * * * * *							
Labordia pumila	Kamakahala	U.S.A. (HI)	Loganiaceae	E		17.99(a)	NA
* * * * * * *							
Lysimachia daphnoides	Lehua makanoe	U.S.A. (HI)	Myrsinaceae	E		17.99(a)	NA
* * * * * * *							
Lysimachia iniki	No common name	U.S.A. (HI)	Myrsinaceae	E		17.99(a)	NA
* * * * * * *							
Lysimachia pendens	No common name	U.S.A. (HI)	Myrsinaceae	E		17.99(a)	NA
Lysimachia scopulensis	No common name	U.S.A. (HI)	Myrsinaceae	E		17.99(a)	NA
Lysimachia venosa	No common name	U.S.A. (HI)	Myrsinaceae	E		17.99(a)	NA
* * * * * * *							
Melicope degeneri	Alani	U.S.A. (HI)	Rutaceae	E		17.99(a)	NA
* * * * * * *							
Melicope paniculata	Alani	U.S.A. (HI)	Rutaceae	E		17.99(a)	NA
Melicope puberula	Alani	U.S.A. (HI)	Rutaceae	E		17.99(a)	NA
* * * * * * *							
Myrsine knudsenii	Kolea	U.S.A. (HI)	Myrsinaceae	E		17.99(a)	NA
* * * * * * *							
Myrsine mezii	Kolea	U.S.A. (HI)	Myrsinaceae	E		17.99(a)	NA
* * * * * * *							
Phyllostegia renovans	No common name	U.S.A. (HI)	Lamiaceae	E		17.99(a)	NA
* * * * * * *							
Pittosporum napaliense	Hoawa	U.S.A. (HI)	Pittosporaceae	E		17.99(a)	NA
* * * * * * *							
Platydesma rostrata	Pilo kea lau lii	U.S.A. (HI)	Rutaceae	E		17.99(a)	NA
* * * * * * *							
Pritchardia hardyi	Loulu	U.S.A. (HI)	Arecaceae	E		NA	NA
* * * * * * *							
Psychotria grandiflora	Kopiko	U.S.A. (HI)	Rubiaceae	E		17.99(a)	NA
Psychotria hobdyi	Kopiko	U.S.A. (HI)	Rubiaceae	E		17.99(a)	NA
* * * * * * *							
Schiedea attenuata	No common name	U.S.A. (HI)	Caryophyllaceae	E		17.99(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
* * * * * * *							
Stenogyne kealiae	No common name	U.S.A. (HI)	Lamiaceae	E		17.99(a)	NA
* * * * * * *							
Tetraplasandra bisattenuata	No common name	U.S.A. (HI)	Araliaceae	E		17.99(a)	NA
Tetraplasandra flynnii	No common name	U.S.A. (HI)	Araliaceae	E		17.99(a)	NA
* * * * * * *							
FERNS AND ALLIES							
* * * * * * *							
Diellia mannii	No common name	U.S.A. (HI)	Aspleniaceae	E		17.99(a)	NA
* * * * * * *							
Doryopteris angelica	No common name	U.S.A. (HI)	Pteridaceae	E		17.99(a)	NA
Dryopteris crinalis var. podosorus	Palapalai aumakua	U.S.A. (HI)	Dryopteridaceae	E		17.99(a)	NA
* * * * * * *							

4. Amend § 17.95 as follows:

a. In paragraph (b), by adding critical habitat for "Akekee (*Loxops caeruleirostris*)" and "Akikiki (*Oreomystis bairdi*)" in the same alphabetical order as these species occur in the table at § 17.11(h); and

b. In paragraph (i), by adding critical habitat for "Hawaiian picture-wing fly (*Drosophila attigua*)" in the same alphabetical order as this species occurs in the table at § 17.11(h), to read as set forth below.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

Akekee (*Loxops caeruleirostris*)

(1) Critical habitat units are depicted for Kauai County, Hawaii, on the maps below.

(2) *Primary constituent elements.*

(i) In units 1, 2, and 3, the primary constituent elements of critical habitat for Akekee (*Loxops caeruleirostris*) are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum.*

(E) Subcanopy: *Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine.*

(F) Understory: *Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora.*

(G) Arthropod prey.

(ii) In units 4, 5, and 6, the primary constituent elements of critical habitat for Akekee (*Loxops caeruleirostris*) are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(G) Arthropod prey.

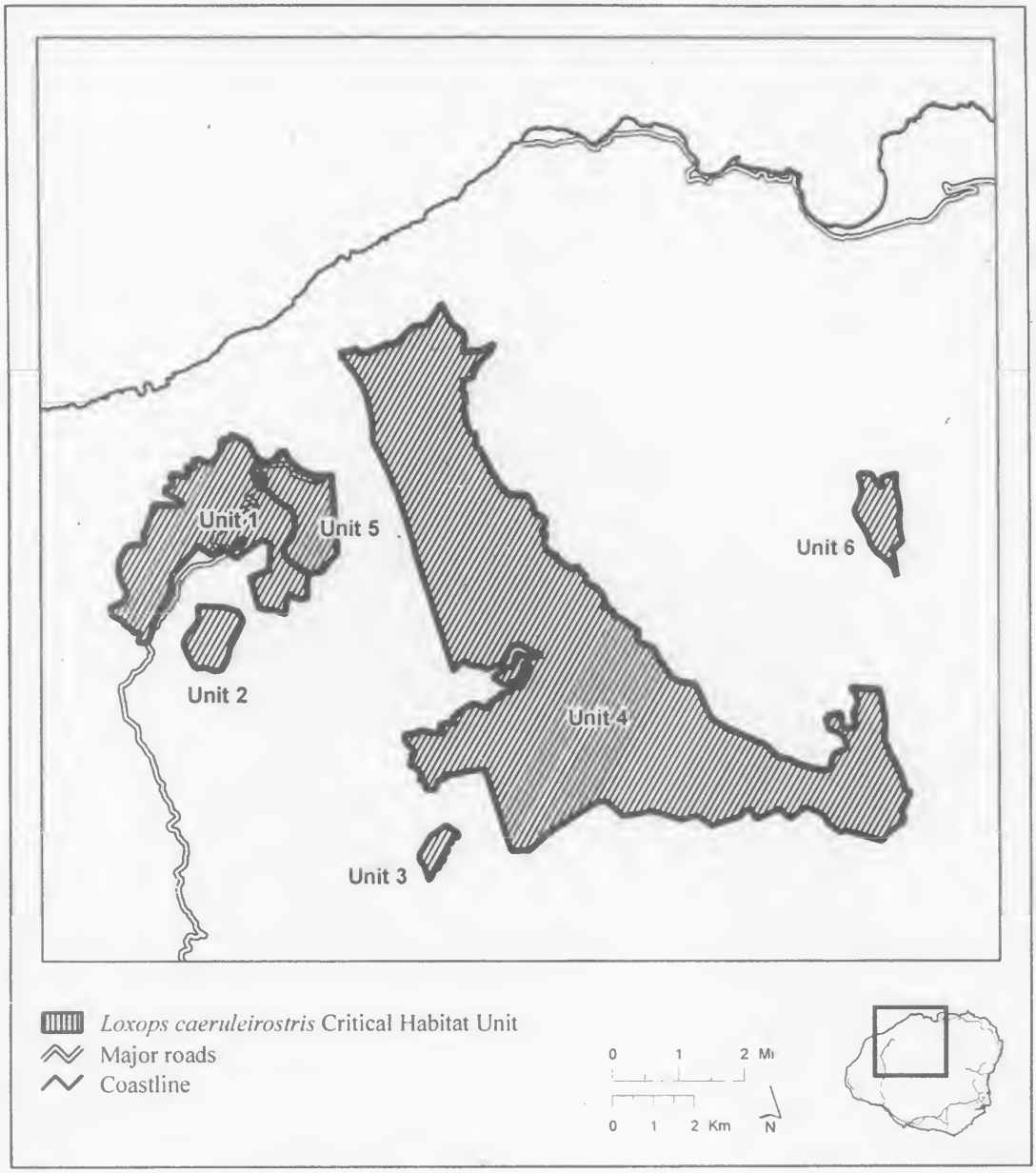
(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or primary constituent elements in adjacent critical habitat.

(4) Critical habitat maps. Maps were created in GIS, with coordinates in UTM Zone 4, units in meters using North American datum of 1983 (NAD 83).

(5) Index map of critical habitat units for Akekee (*Loxops caeruleirostris*) follows:

BILLING CODE 4310–55–S

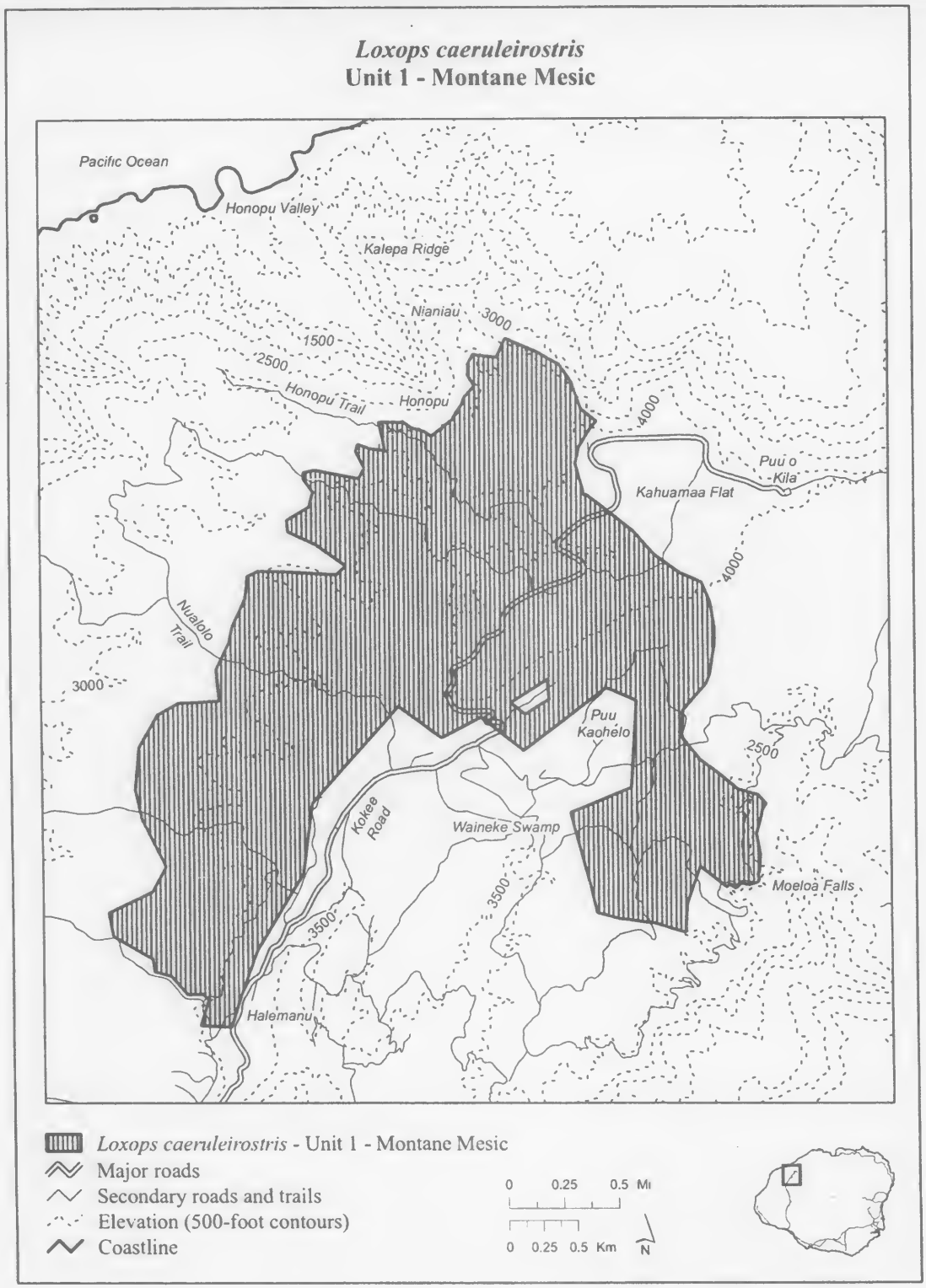
Map 1
***Loxops caeruleirostris*–Index Map**



(6) Unit 1, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

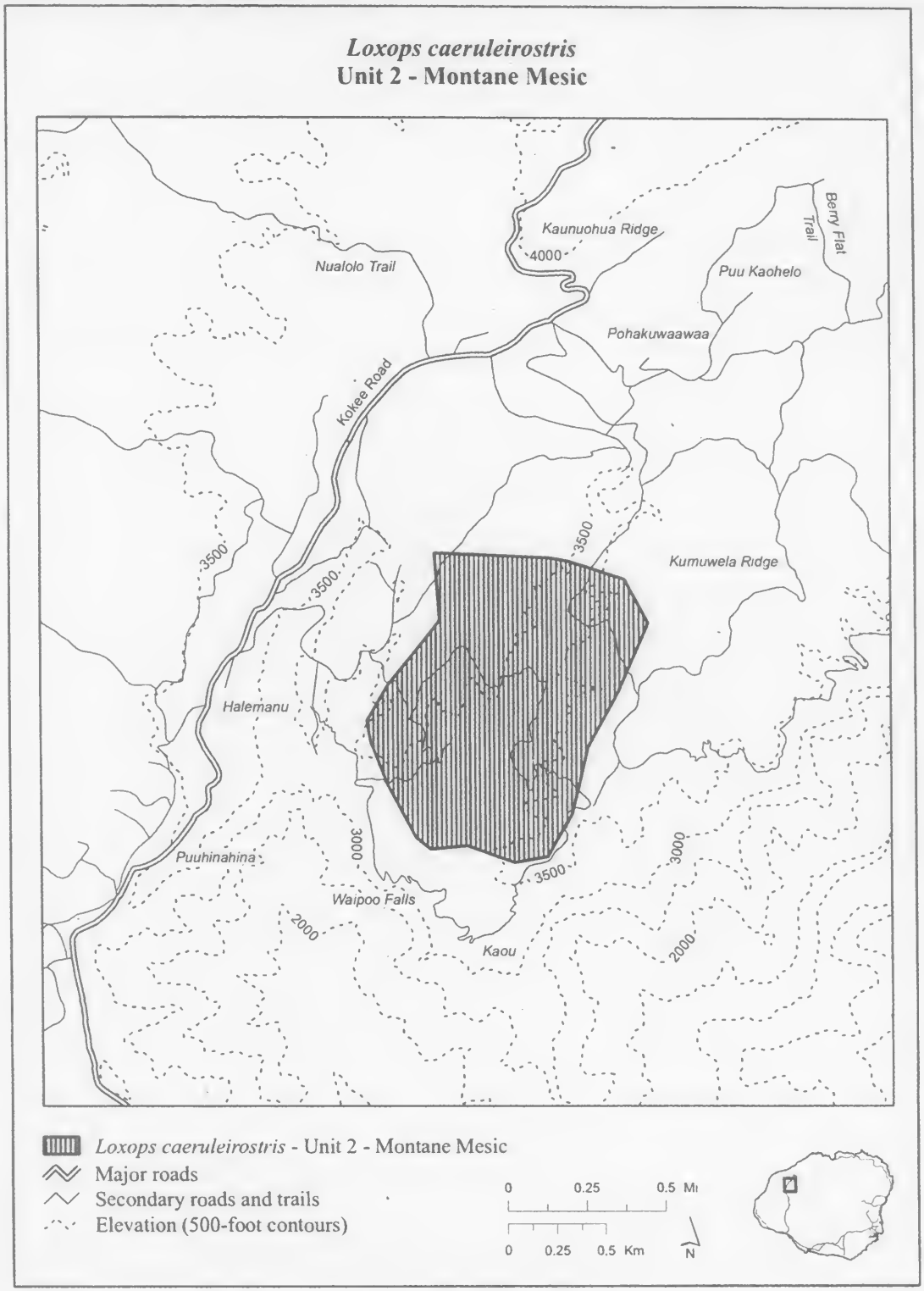
(ii) Map of Unit 1 for Akekee (*Loxops caeruleirostris*) follows:



(7) Unit 2, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

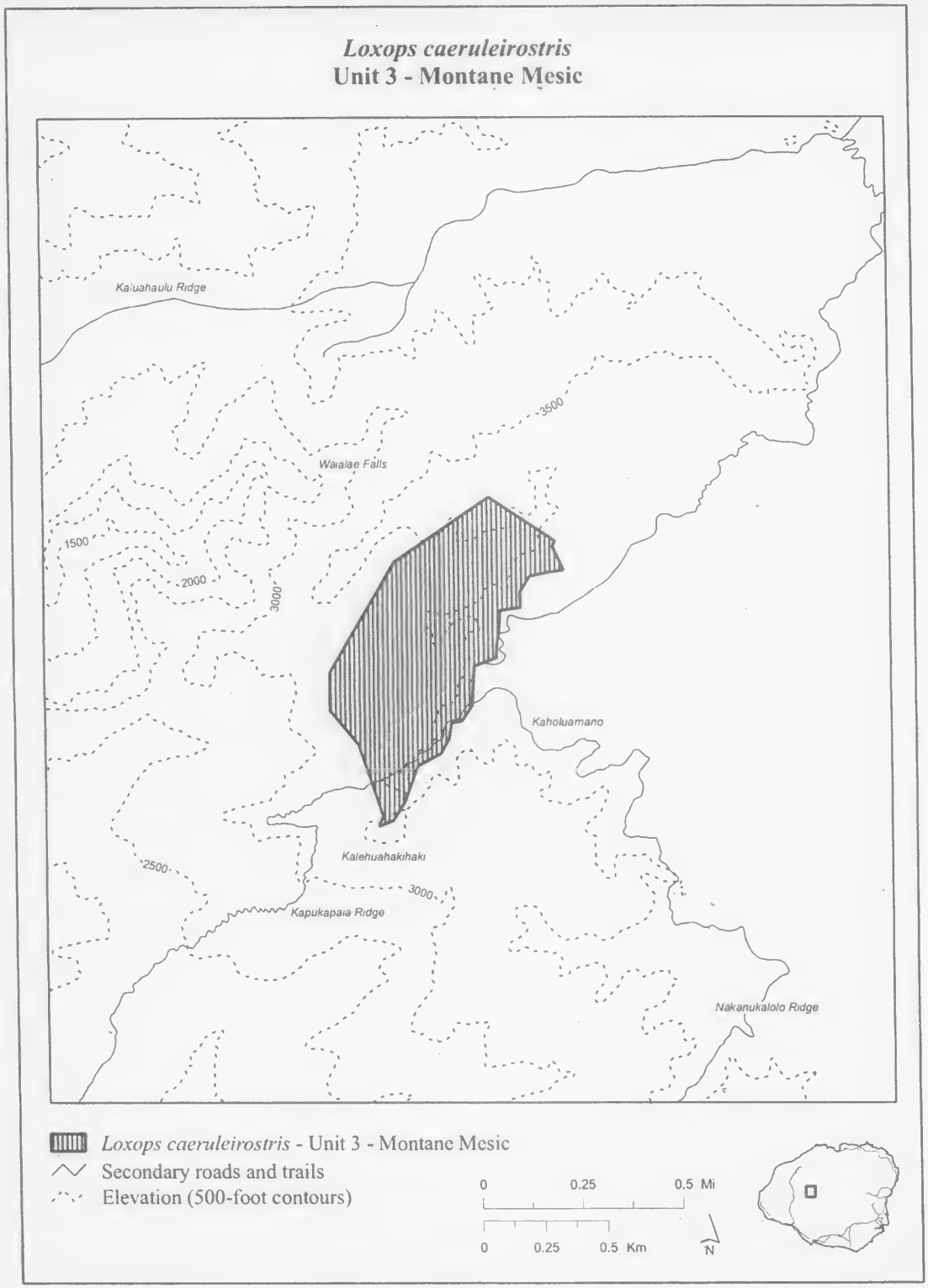
(ii) Map of Unit 2 for Akekee (*Loxops caeruleirostris*) follows:



(8) Unit 3, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

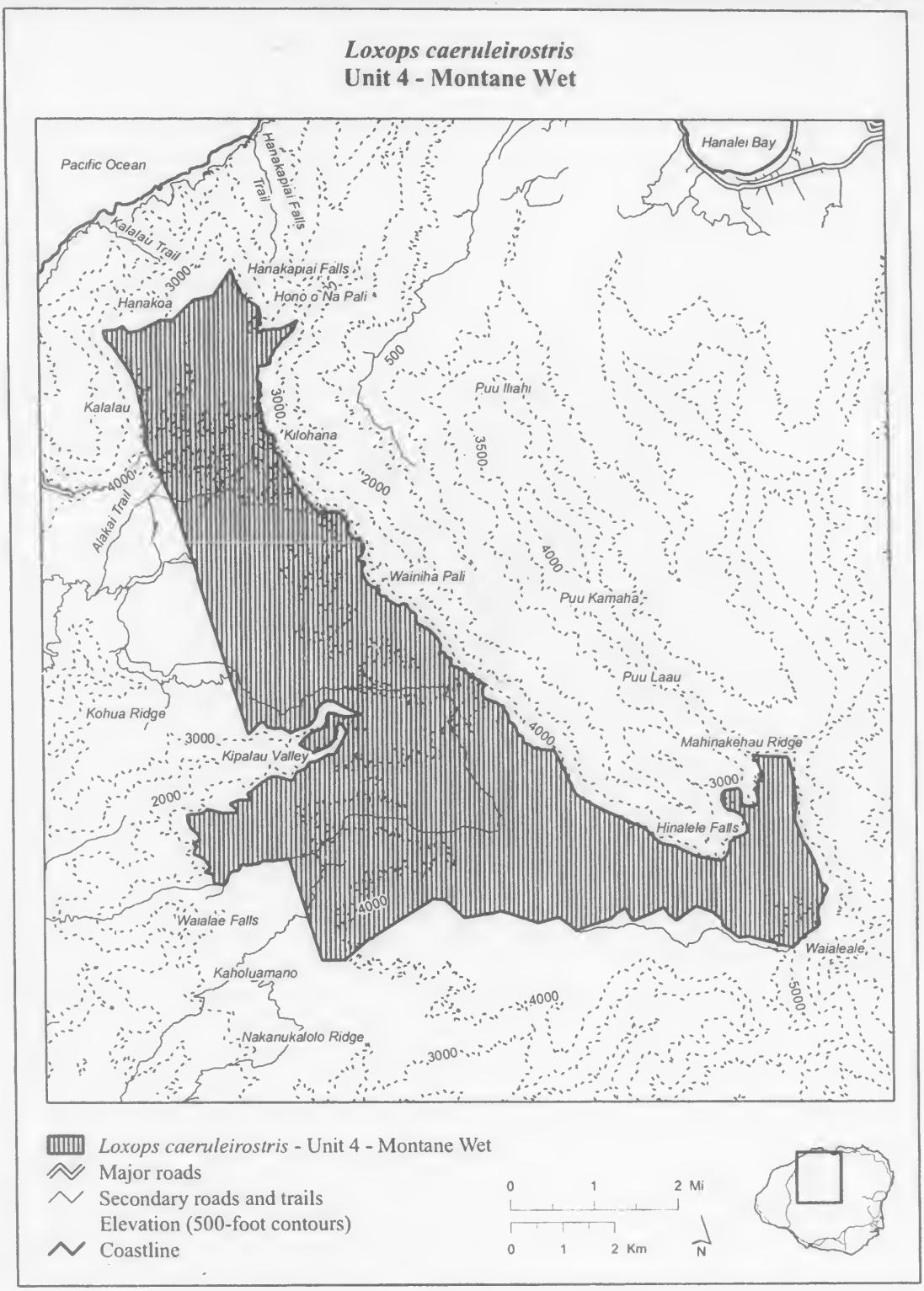
(ii) Map of Unit 3 for Akekee (*Loxops caeruleirostris*) follows:



(9) Unit 4, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

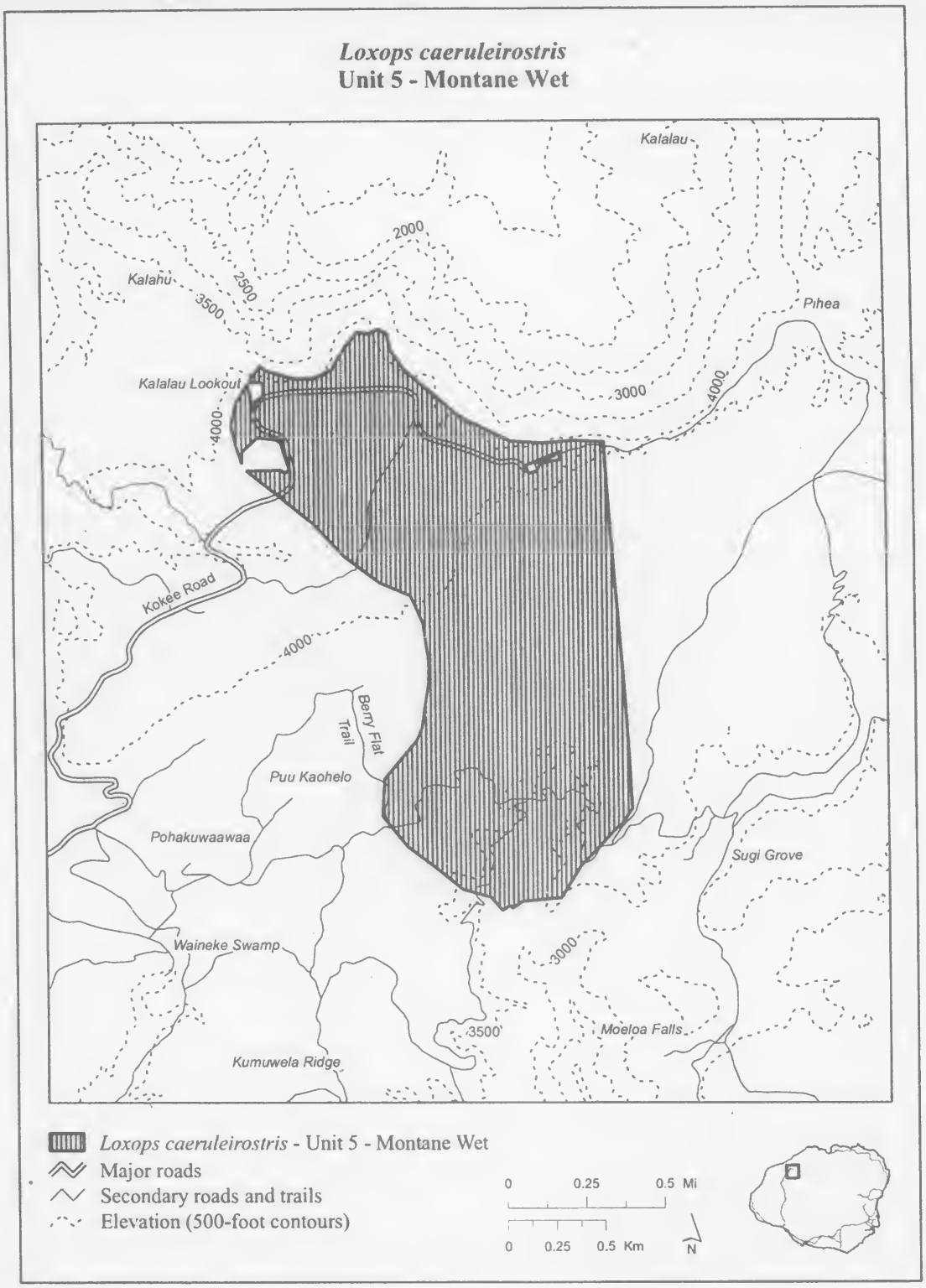
(ii) Map of Unit 4 for Akekee (*Loxops caeruleirostris*) follows:



(10) Unit 5, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

(ii) Map of Unit 5 for Akekee (*Loxops caeruleirostris*) follows:

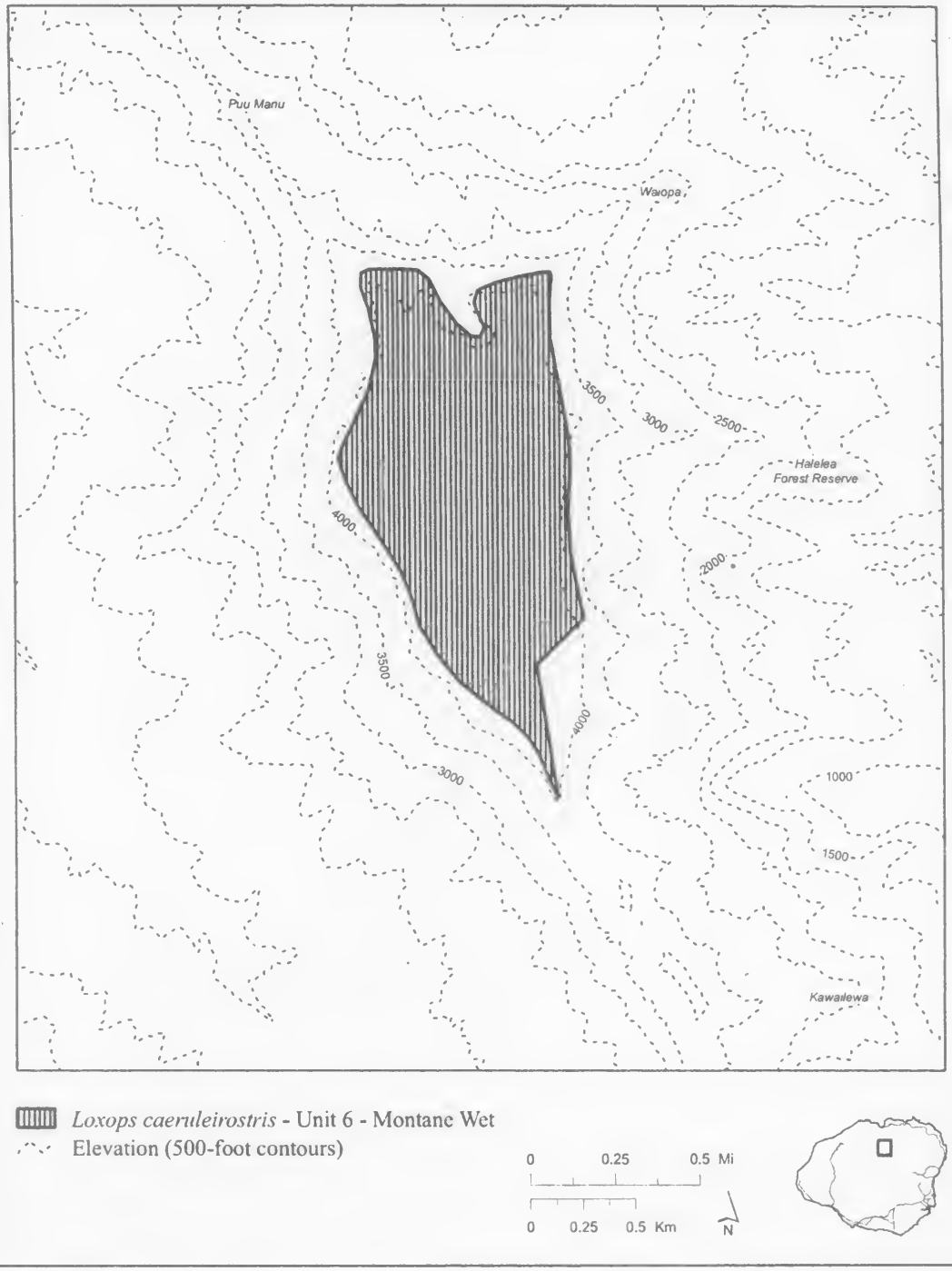


(11) Unit 6, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

(ii) Map of Unit 6 for Akekee (*Loxops caeruleirostris*) follows:

Loxops caeruleirostris
Unit 6 - Montane Wet



Akikiki (*Oreomystis bairdi*)

(1) Critical habitat units are depicted for Kauai County, Hawaii, on the map below.

(2) The primary constituent elements of critical habitat for Akikiki (*Oreomystis bairdi*) are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

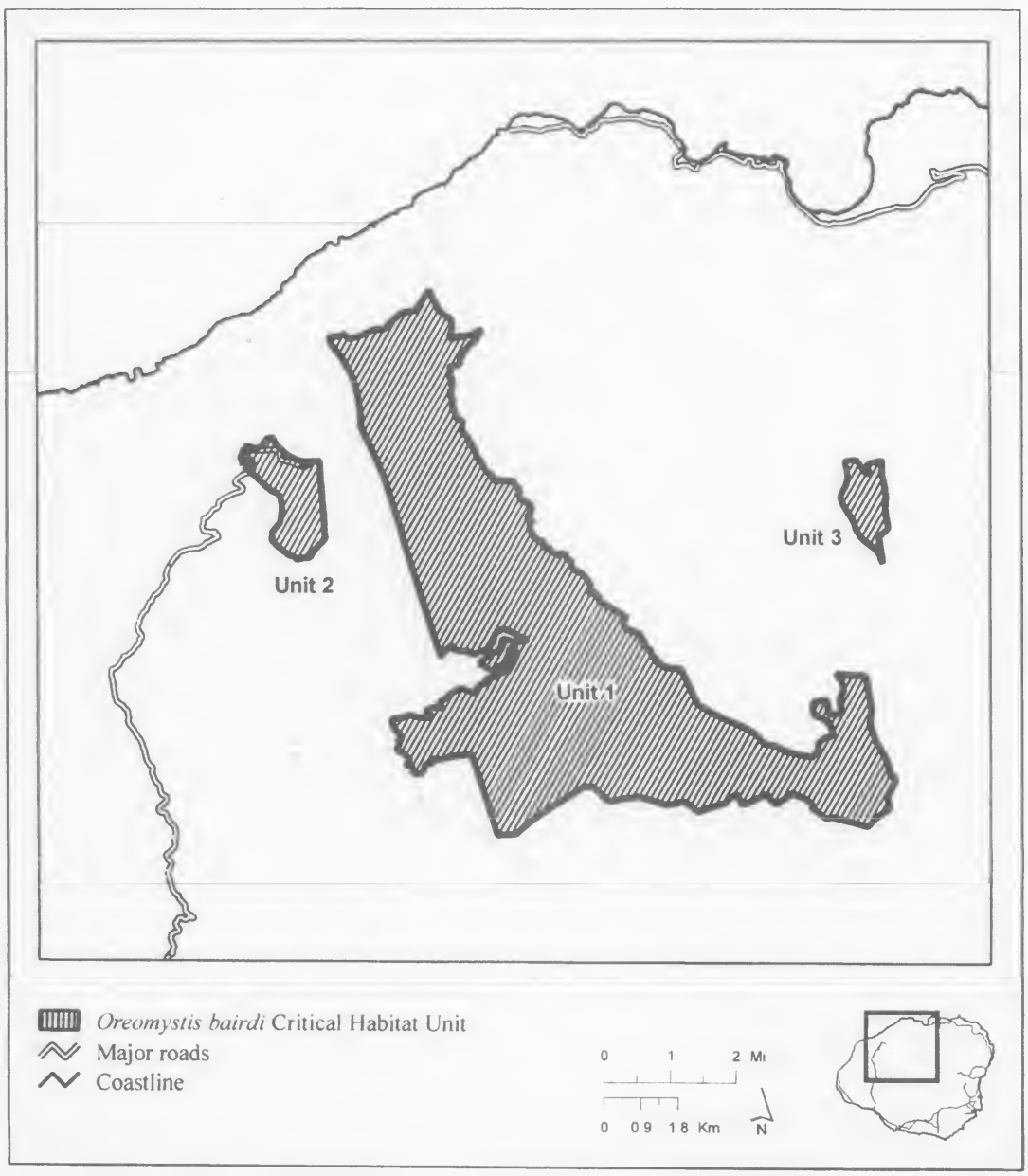
(vii) Arthropod prey.

(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or primary constituent elements in adjacent critical habitat.

(4) Critical habitat maps. Maps were created in GIS, with coordinates in UTM Zone 4 with units in meters using North American datum of 1983 (NAD 83).

(5) Index map of critical habitat units for Akikiki (*Oreomystis bairdi*) follows:

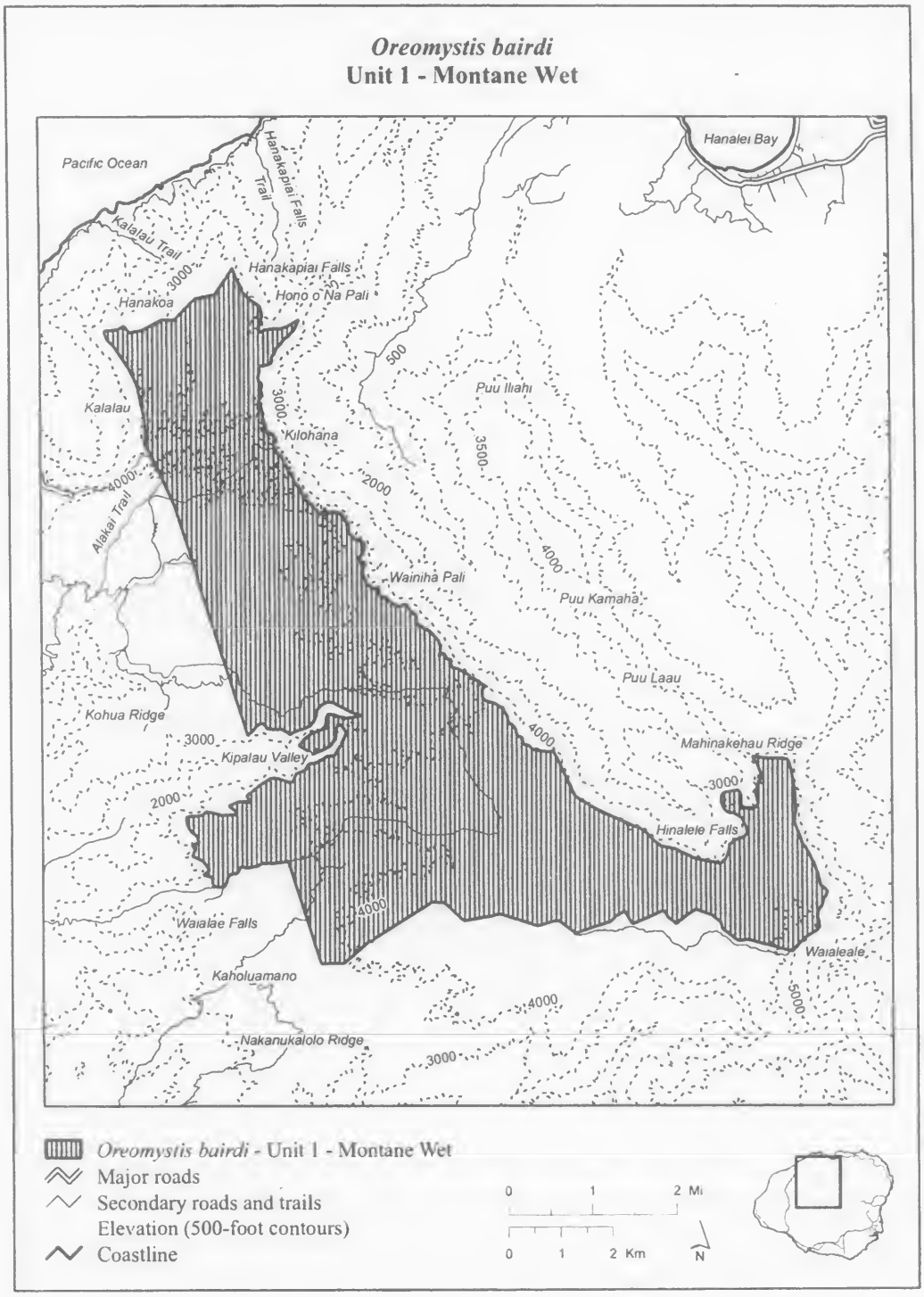
Map 1
***Oreomystis bairdi*–Index Map**



(6) Unit 1, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

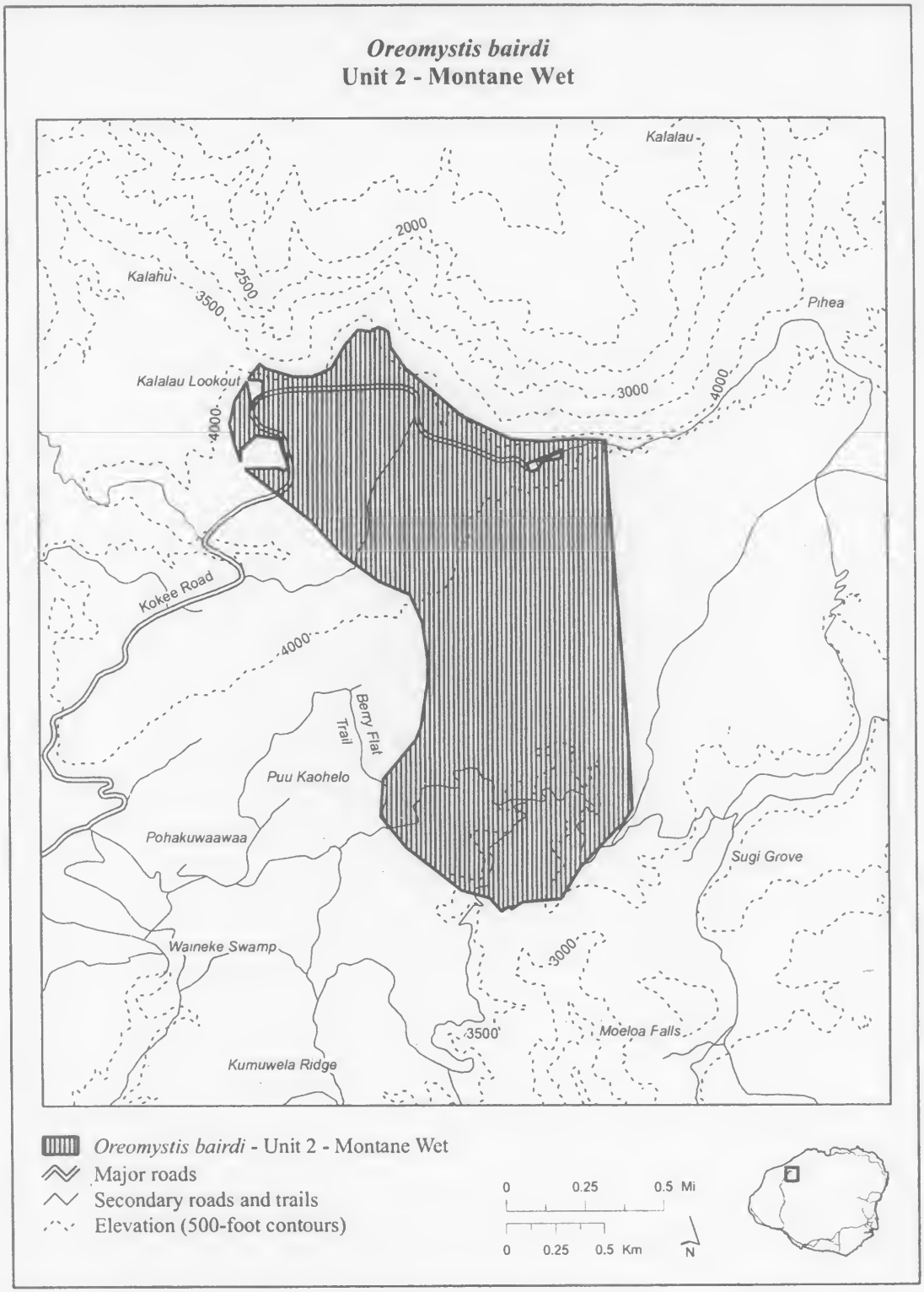
(ii) Map of Unit 1 for Akikiki (*Oreomystis bairdi*) follows:



(7) Unit 2, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

(ii) Map of Unit 2 for Akikiki (*Oreomystis bairdi*) follows:

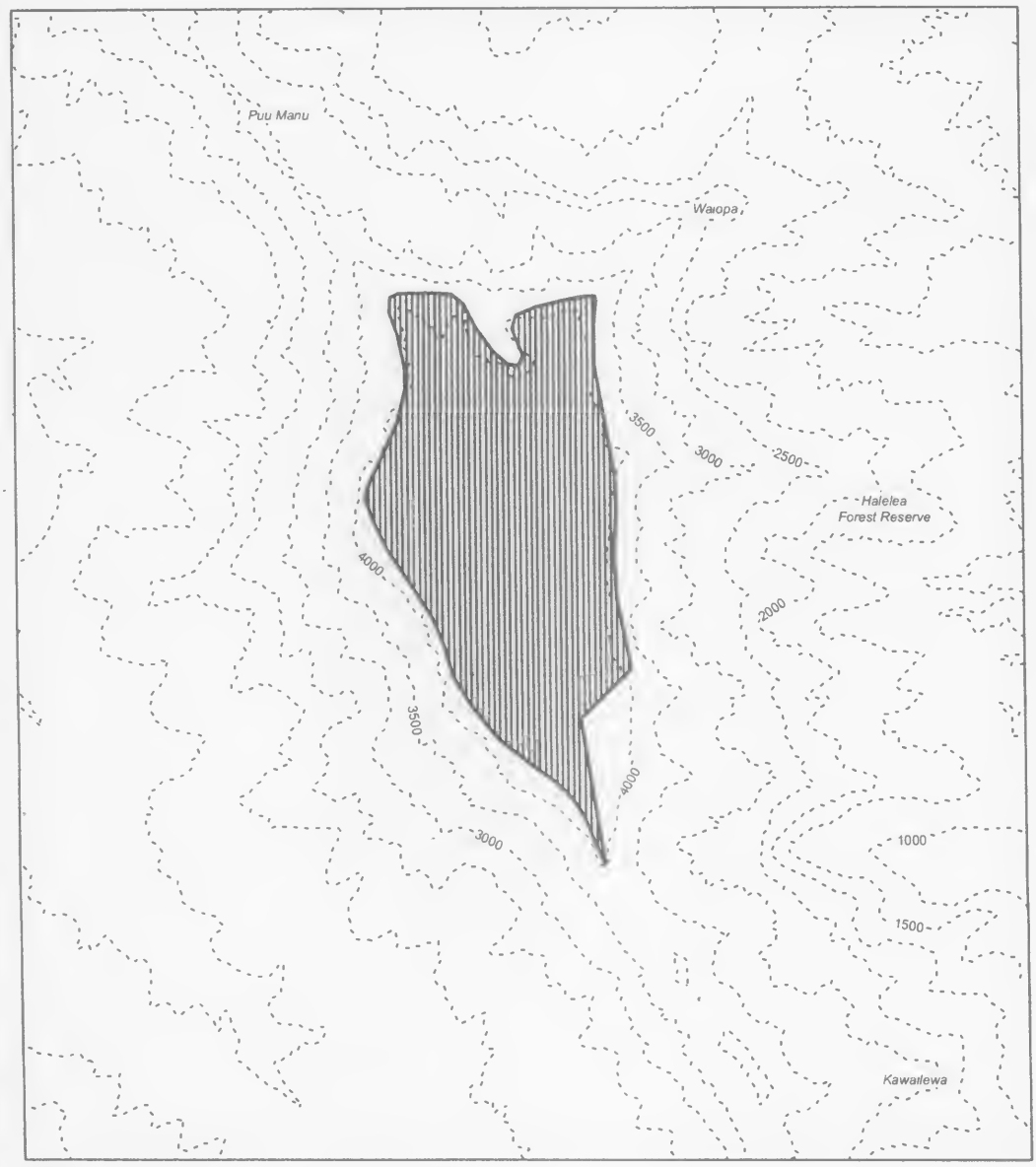


(8) Unit 3, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

(ii) Map of Unit 3 for Akikiki (*Oreomystis bairdi*) follows:

Oreomystis bairdi
Unit 3 - Montane Wet



Oreomystis bairdi - Unit 3 - Montane Wet
Elevation (500-foot contours)

0 0.25 0.5 Mi
0 0.25 0.5 Km
N

* * * * *

(i) *Insects.*

* * * * *

Hawaiian picture-wing fly (*Drosophila attigua*)

(1) Critical habitat units are depicted for Kauai County, Hawaii, on the maps below.

(2) *Primary constituent elements.*

(i) In units 1, 2, and 3, the primary constituent elements of critical habitat for Hawaiian picture-wing fly (*Drosophila attigua*) are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum.*

(E) Subcanopy: *Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine.*

(F) Understory: *Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora.*

(G) Larval host plants (*Cheirodendron* sp.).

(ii) In units 4, 5, and 6, the primary constituent elements of critical habitat for Hawaiian picture-wing fly (*Drosophila attigua*) are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

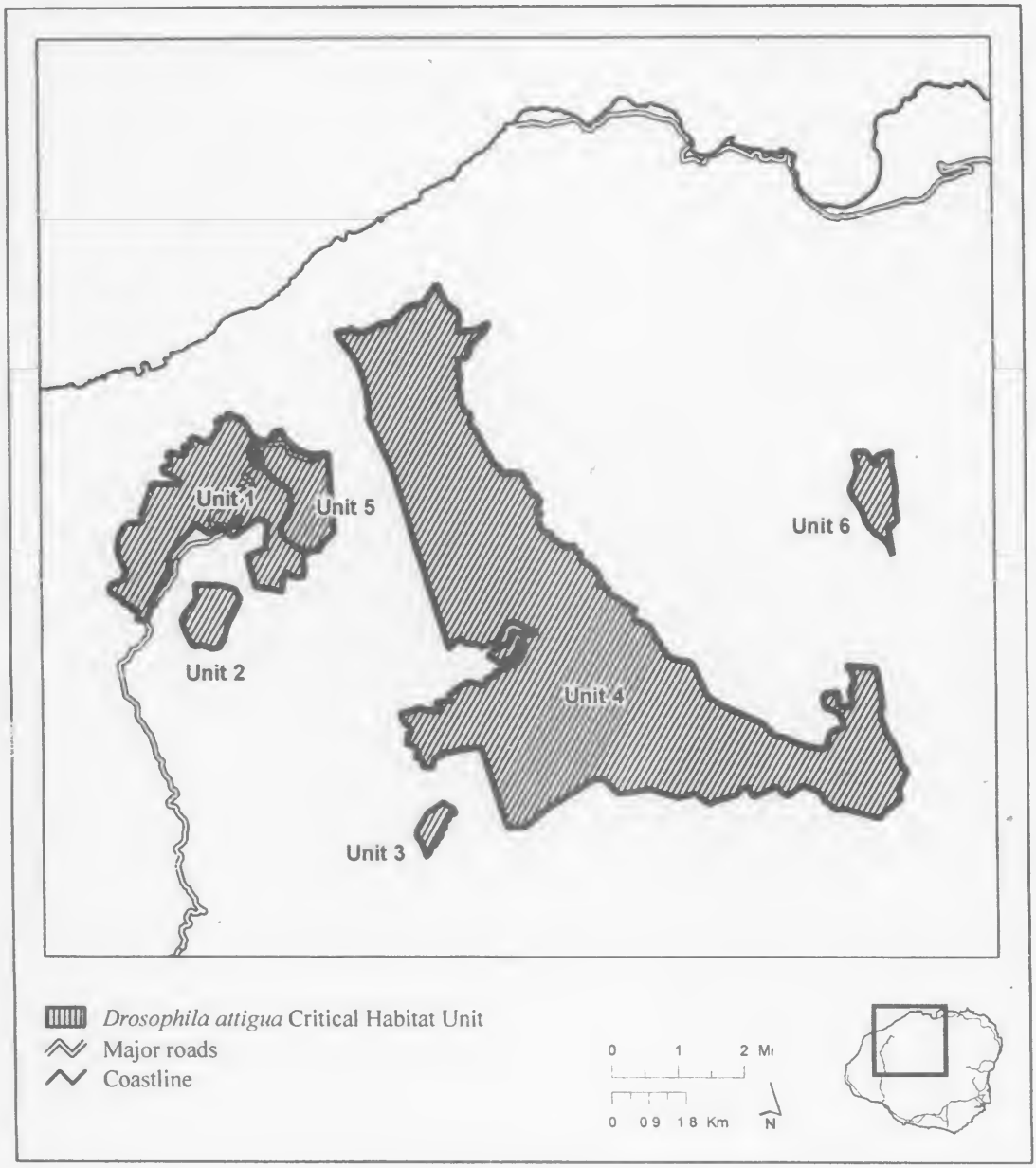
(G) Larval host plants (*Cheirodendron* sp.).

(3) Existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species or primary constituent elements in adjacent critical habitat.

(4) Critical habitat maps. Maps were created in GIS, with coordinates in UTM Zone 4 with units in meters using North American datum of 1983 (NAD 83).

(5) Index map of critical habitat units for Hawaiian picture-wing fly (*Drosophila attigua*) follows:

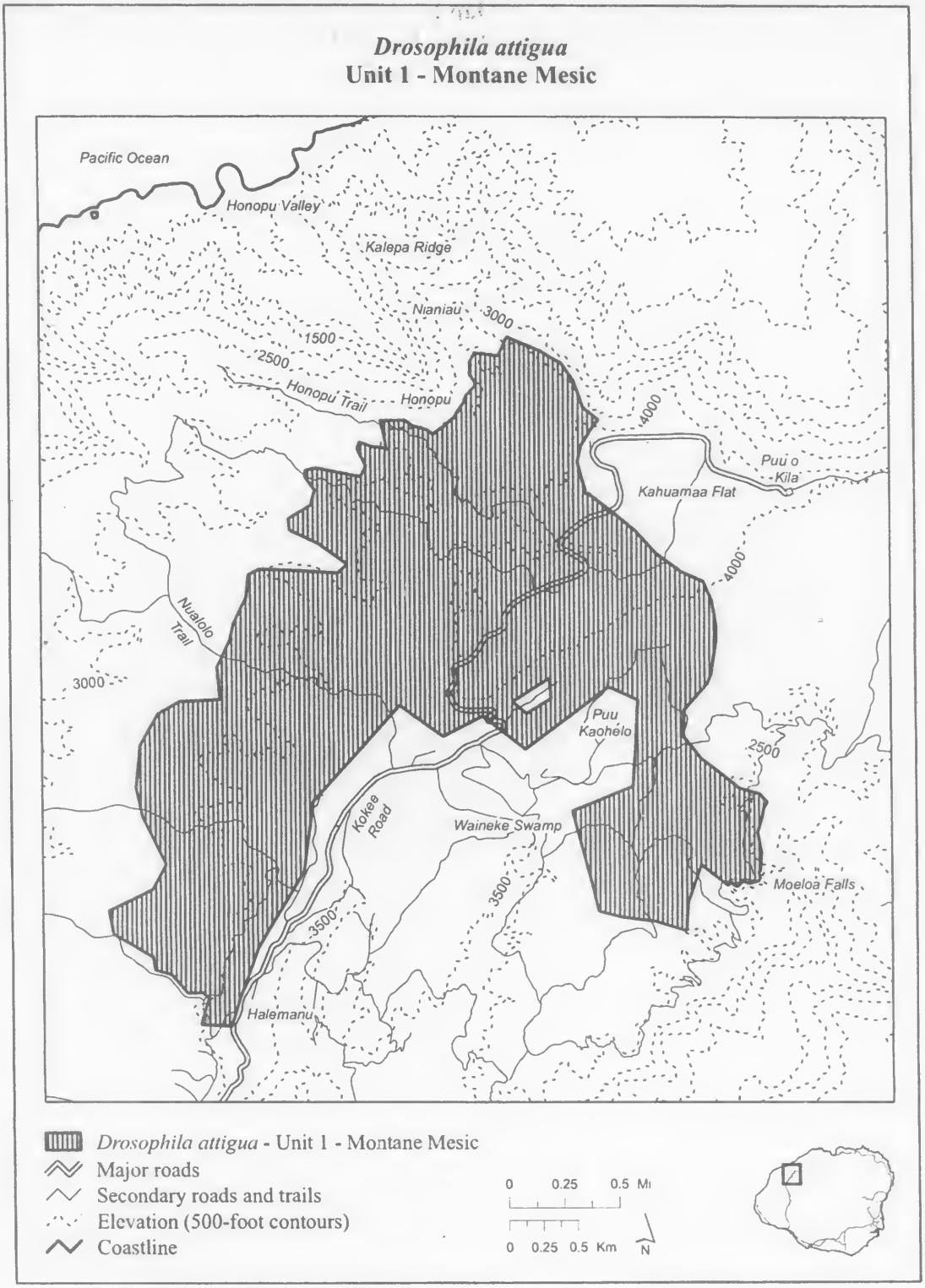
Map 1
***Drosophila attigua*–Index Map**



(6) Unit 1, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

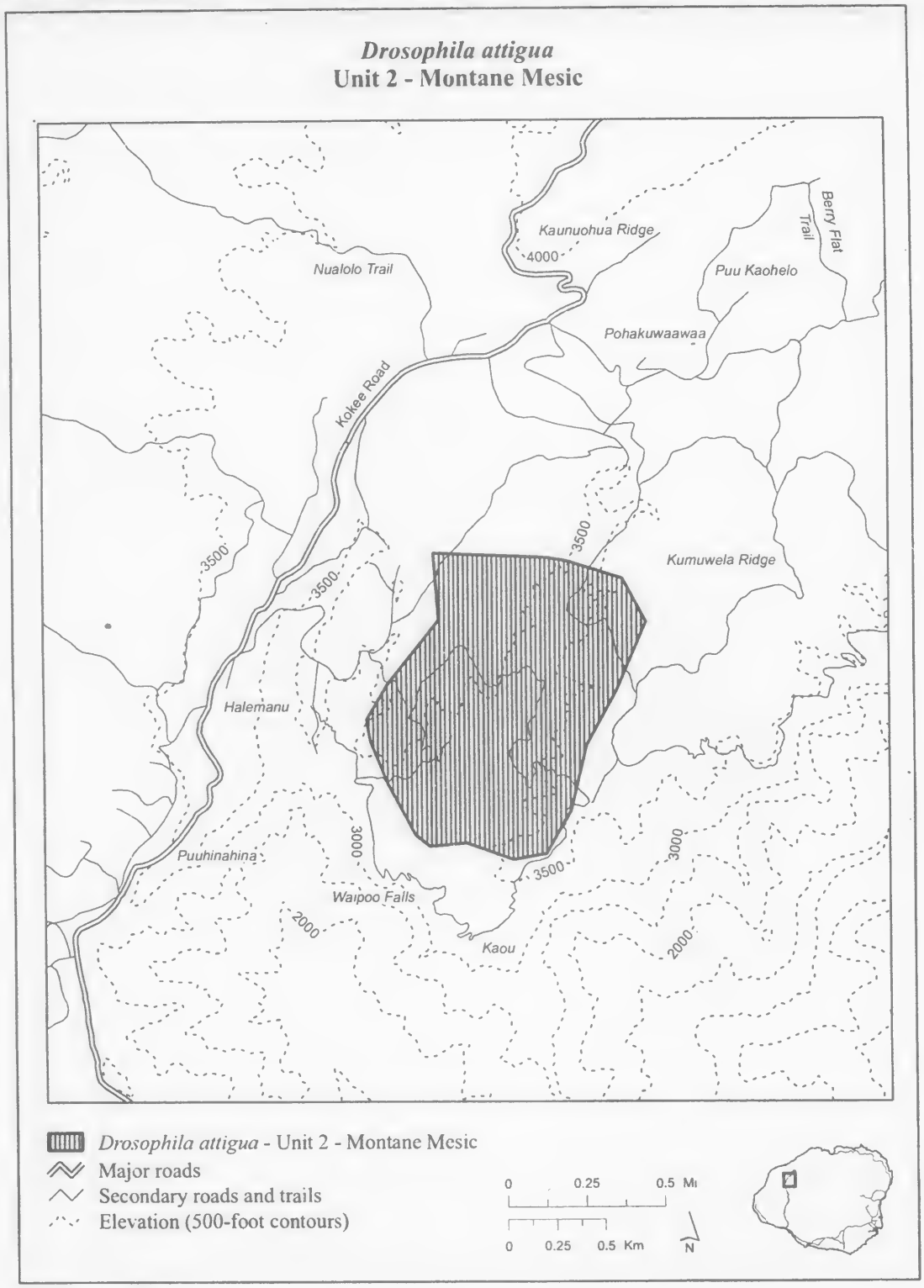
(ii) Map of Unit 1 for Hawaiian picture-wing fly (*Drosophila attigua*) follows:



(7) Unit 2, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

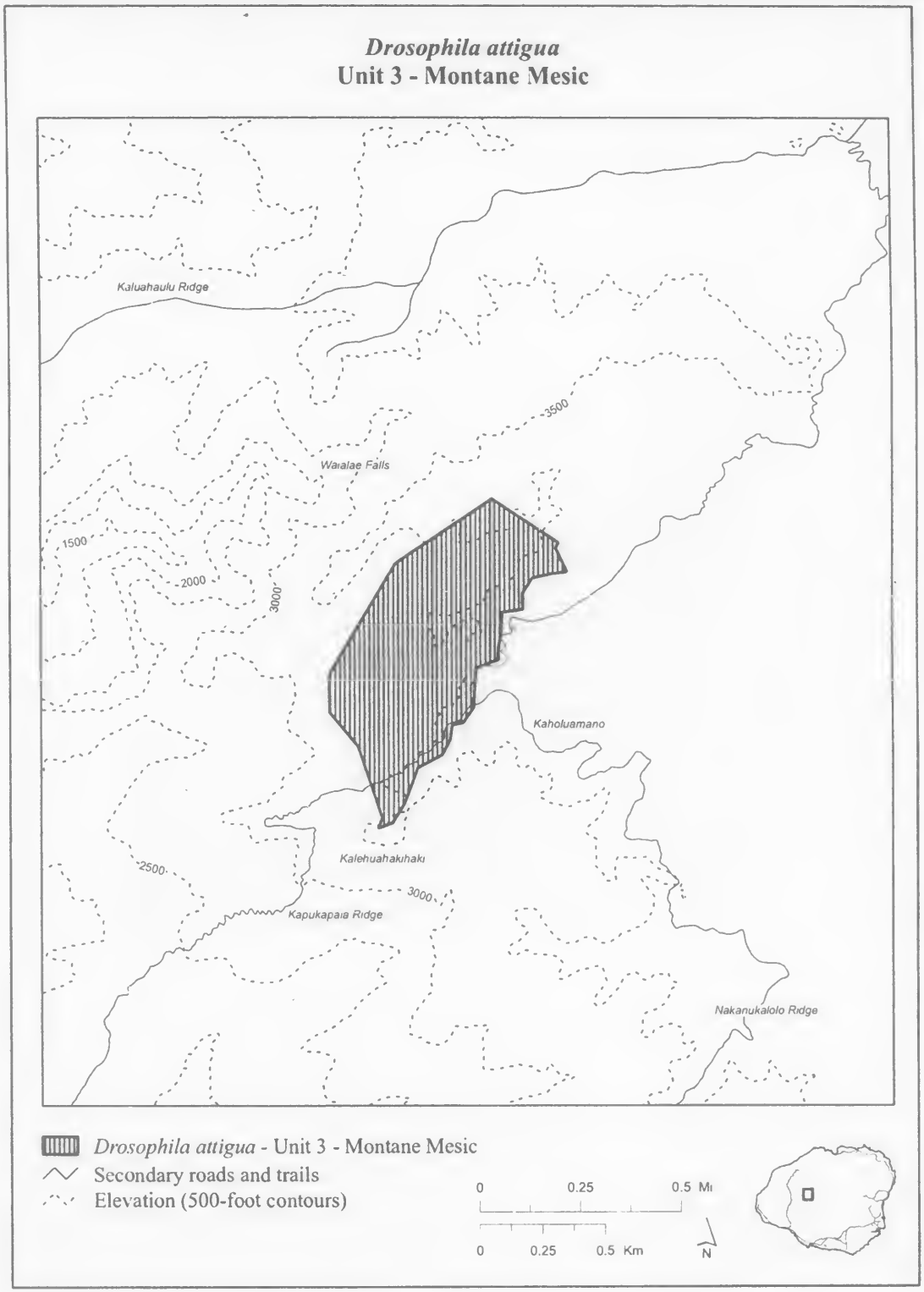
(ii) Map of Unit 2 for Hawaiian picture-wing fly (*Drosophila attigua*) follows:



(8) Unit 3, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

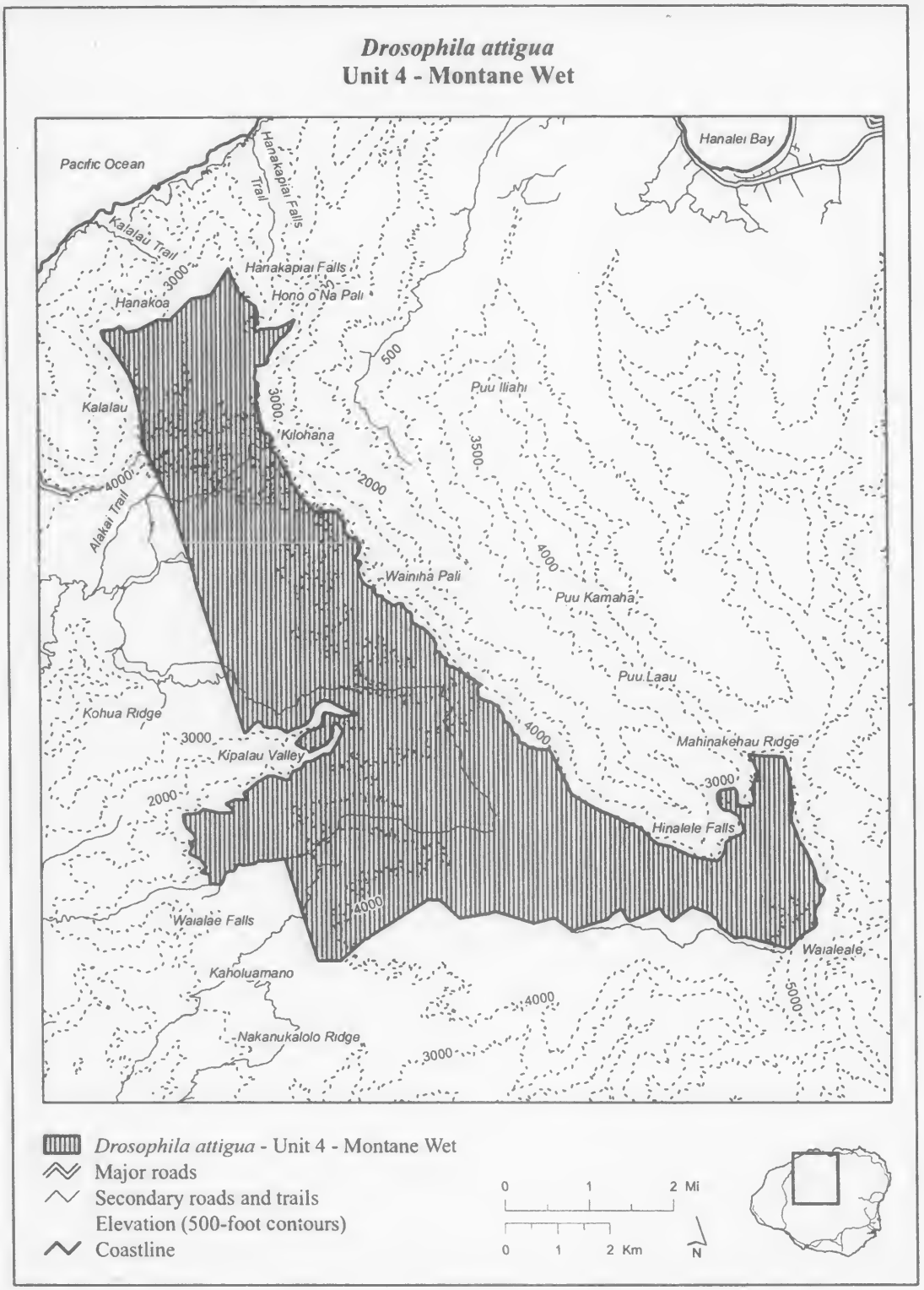
(ii) Map of Unit 3 for Hawaiian picture-wing fly (*Drosophila attigua*) follows:



(9) Unit 4, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

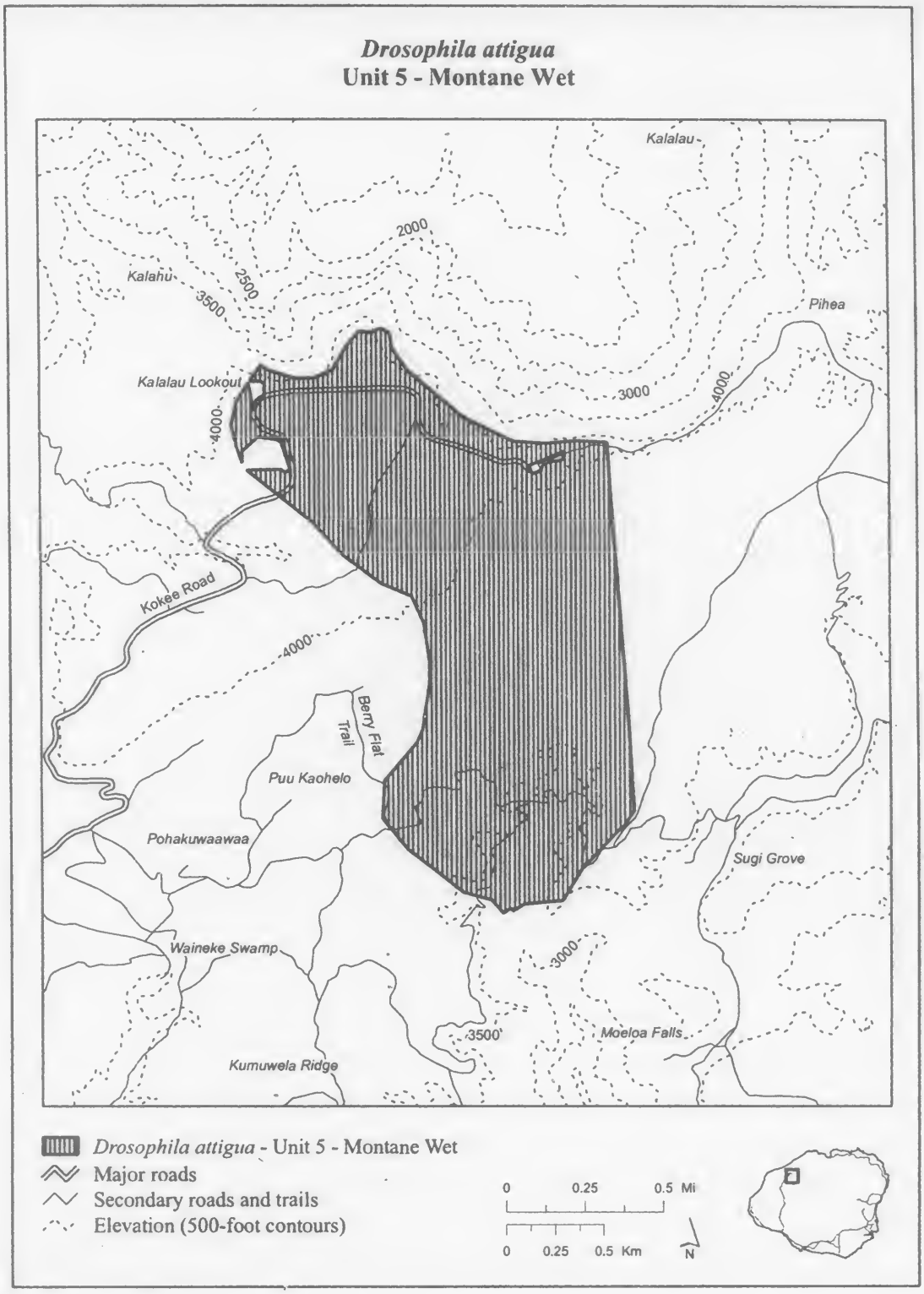
(ii) Map of Unit 4 for Hawaiian picture-wing fly (*Drosophila attigua*) follows:



(10) Unit 5, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

(ii) Map of Unit 5 for Hawaiian picture-wing fly (*Drosophila attigua*) follows:

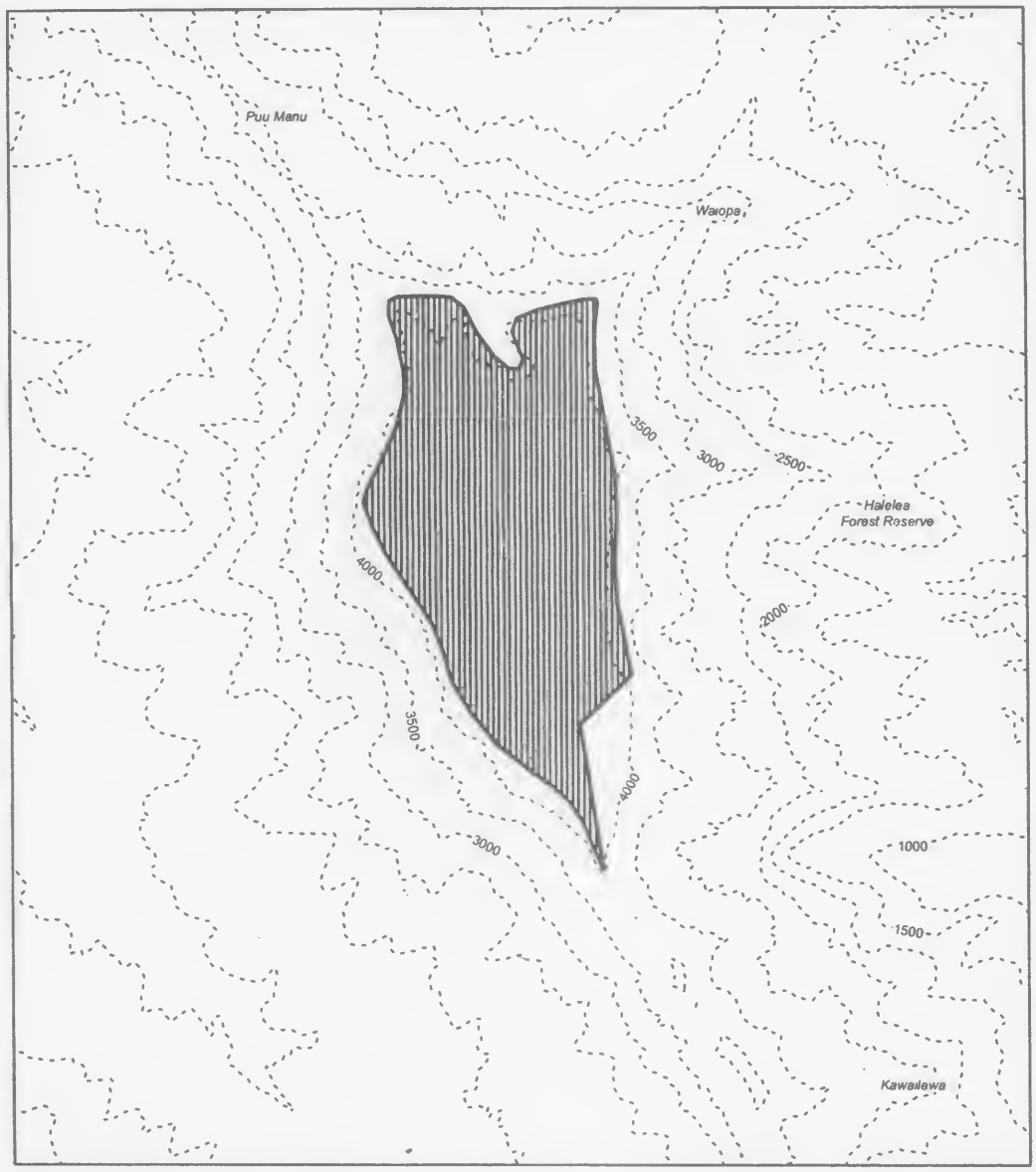


(11)Unit 6, Kauai County, Hawaii.

(i) [Reserved for textual description of unit.]

(ii) Map of Unit 6 for Hawaiian picture-wing fly (*Drosophila attigua*) follows:

Drosophila attigua
Unit 6 - Montane Wet



Drosophila attigua - Unit 6 - Montane Wet
Elevation (500-foot contours)

0 0.25 0.5 Mi
0 0.25 0.5 Km
N

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* * * * *

5. Amend § 17.99 as follows:

a. By revising the introductory text of paragraph (a)(1) to read as set forth below;

b. By revising paragraph (a)(1)(i) as set forth below;

c. By redesignating paragraphs (a)(1)(vi) through (a)(1)(ccxviii) as paragraphs (a)(1)(viii) through (a)(1)(ccxx);

d. By adding new paragraphs (a)(1)(vi) and (a)(1)(vii) to read as set forth below;

e. By redesignating newly designated paragraphs (a)(1)(ix) through (a)(1)(ccxx) as paragraphs (a)(1)(x) through (a)(1)(ccxxi);

f. By adding new paragraph (a)(1)(ix) to read as set forth below;

g. By redesignating newly designated paragraphs (a)(1)(xvi) through (a)(1)(ccxxi) as paragraphs (a)(1)(xix) through (a)(1)(ccxxiv);

h. By adding new paragraphs (a)(1)(xvi), (a)(1)(xvii), and (a)(1)(xviii) to read as set forth below;

i. By redesignating newly designated paragraphs (a)(1)(xxv) through (a)(1)(ccxxiv) as paragraphs (a)(1)(xxviii) through (a)(1)(ccxxvii);

j. By adding new paragraphs (a)(1)(xxv), (a)(1)(xxvi), and (a)(1)(xxvii) to read as set forth below;

k. By redesignating newly designated paragraphs (a)(1)(xxix) through (a)(1)(ccxxvii) as paragraphs (a)(1)(xxx) through (a)(1)(ccxxviii);

l. By adding a new paragraph (a)(1)(xxix) to read as set forth below;

m. By redesignating newly designated paragraphs (a)(1)(xxxiv) through (a)(1)(ccxxviii) as paragraphs (a)(1)(xxxviii) through (a)(1)(ccxxxii);

n. By adding new paragraphs (a)(1)(xxxiv), (a)(1)(xxxv), (a)(1)(xxxvi), and (a)(1)(xxxvii) to read as set forth below;

o. By redesignating newly designated paragraphs (a)(1)(xxxix) through (a)(1)(ccxxxii) as paragraphs (a)(1)(xli) through (a)(1)(ccxxxiv);

p. By adding new paragraphs (a)(1)(xxxix) and (a)(1)(xl) to read as set forth below;

q. By redesignating newly designated paragraphs (a)(1)(xlii) through (a)(1)(ccxxxiv) as paragraphs (a)(1)(xliii) through (a)(1)(ccxxxv);

r. By adding a new paragraph (a)(1)(xlii) to read as set forth below;

s. By redesignating newly designated paragraphs (a)(1)(xlviii) through (a)(1)(ccxxxv) as paragraphs (a)(1)(li) through (a)(1)(ccxxxviii);

t. By adding new paragraphs (a)(1)(xlviii), (a)(1)(xlix), and (a)(1)(l) to read as set forth below;

u. By redesignating newly designated paragraphs (a)(1)(liii) through (a)(1)(ccxxxviii) as paragraphs (a)(1)(liv) through (a)(1)(ccxxxix);

v. By adding a new paragraph (a)(1)(liii) to read as set forth below;

w. By redesignating newly designated paragraphs (a)(1)(lvii) through (a)(1)(ccxxxix) as paragraphs (a)(1)(lviii) through (a)(1)(ccxl);

x. By adding a new paragraph (a)(1)(lvii) to read as set forth below;

y. By redesignating newly designated paragraphs (a)(1)(lix) through (a)(1)(ccxl) as paragraphs (a)(1)(lxv) through (a)(1)(ccxlvi);

z. By adding new paragraphs (a)(1)(lix), (a)(1)(lx), (a)(1)(lxi), (a)(1)(lxii), (a)(1)(lxiii), and (a)(1)(lxiv) to read as set forth below;

aa. By redesignating newly designated paragraphs (a)(1)(lxvi) through (a)(1)(ccxlvi) as paragraphs (a)(1)(lxx) through (a)(1)(ccl);

bb. By adding new paragraphs (a)(1)(lxvi), (a)(1)(lxvii), (a)(1)(lxviii), and (a)(1)(lxix) to read as set forth below;

cc. By redesignating newly designated paragraphs (a)(1)(lxxiii) through (a)(1)(ccl) as paragraphs (a)(1)(lxxix) through (a)(1)(cclvi);

dd. By adding new paragraphs (a)(1)(lxxiii), (a)(1)(lxxiv), (a)(1)(lxxv), (a)(1)(lxxvi), (a)(1)(lxxvii), and (a)(1)(lxxviii) to read as set forth below;

ee. By redesignating newly designated paragraphs (a)(1)(lxxx) through (a)(1)(cclvi) as paragraphs (a)(1)(lxxxii) through (a)(1)(cclviii);

ff. By adding new paragraphs (a)(1)(lxxx) and (a)(1)(lxxxi) to read as set forth below;

gg. By redesignating newly designated paragraphs (a)(1)(lxxxiii) through (a)(1)(cclviii) as paragraphs (a)(1)(lxxxiv) through (a)(1)(cclix);

hh. By adding a new paragraph (a)(1)(lxxxiii) to read as set forth below;

ii. By redesignating newly designated paragraphs (a)(1)(lxxxvi) through (a)(1)(cclix) as paragraphs (a)(1)(xc) through (a)(1)(cclxiii);

jj. By adding new paragraphs (a)(1)(lxxxvi), (a)(1)(lxxxvii), (a)(1)(lxxxviii), and (a)(1)(lxxxix) to read as set forth below;

kk. By redesignating newly designated paragraphs (a)(1)(xci) through (a)(1)(cclxiii) as paragraphs (a)(1)(xcii) through (a)(1)(cclxiv);

ll. By adding a new paragraph (a)(1)(xci) to read as set forth below;

mm. By redesignating newly designated paragraphs (a)(1)(xciii) through (a)(1)(cclxiv) as paragraphs (a)(1)(xciv) through (a)(1)(cclxv);

nn. By adding a new paragraph (a)(1)(xciii) to read as set forth below;

oo. By redesignating newly designated paragraphs (a)(1)(xcv) through (a)(1)(cclxv) as paragraphs (a)(1)(cii) through (a)(1)(cclxxii);

pp. By adding new paragraphs (a)(1)(xcv), (a)(1)(xcvi), (a)(1)(xcvii), (a)(1)(xcviii), (a)(1)(xcix), (a)(1)(c), and (a)(1)(ci) to read as set forth below;

qq. By redesignating newly designated paragraphs (a)(1)(ciii) through (a)(1)(cclxxii) as paragraphs (a)(1)(civ) through (a)(1)(cclxxiii);

rr. By adding a new paragraph (a)(1)(ciii) to read as set forth below;

ss. By redesignating newly designated paragraphs (a)(1)(cv) through (a)(1)(cclxxiii) as paragraphs (a)(1)(cvii) through (a)(1)(cclxxv);

tt. By adding new paragraphs (a)(1)(cv) and (a)(1)(cvi) to read as set forth below;

uu. By redesignating newly designated paragraphs (a)(1)(cviii) through (a)(1)(cclxxv) as paragraphs (a)(1)(cxii) through (a)(1)(cclxxix);

vv. By adding new paragraphs (a)(1)(cviii), (a)(1)(cix), (a)(1)(cx), and (a)(1)(cxi) to read as set forth below;

ww. By redesignating newly designated paragraphs (a)(1)(cxiii) through (a)(1)(cclxxix) as paragraphs (a)(1)(cxvi) through (a)(1)(cclxxxii);

xx. By adding new paragraphs (a)(1)(cxiii), (a)(1)(cxiv), and (a)(1)(cxv) to read as set forth below;

yy. By redesignating newly designated paragraphs (a)(1)(cxxix) through (a)(1)(cclxxxii) as paragraphs (a)(1)(cxxx) through (a)(1)(cclxxxiii);

zz. By adding a new paragraph (a)(1)(cxxix) to read as set forth below;

aaa. By redesignating newly designated paragraphs (a)(1)(cxxxii) through (a)(1)(cclxxxiii) as paragraphs (a)(1)(cxxxiii) through (a)(1)(cclxxxiv);

bbb. By adding a new paragraph (a)(1)(cxxxii) to read as set forth below;

ccc. By redesignating newly designated paragraphs (a)(1)(cxxxiv) through (a)(1)(cclxxxiv) as paragraphs (a)(1)(cxxxvi) through (a)(1)(cclxxxvi);

ddd. By adding new paragraphs (a)(1)(cxxxiv) and (a)(1)(cxxxv) to read as set forth below;

eee. By redesignating newly designated paragraphs (a)(1)(cxxxix) through (a)(1)(cclxxxvi) as paragraphs (a)(1)(cxlviii) through (a)(1)(ccxcv);

fff. By adding new paragraphs (a)(1)(cxxxix), (a)(1)(cxl), (a)(1)(cxli), (a)(1)(cxlii), (a)(1)(cxliii), (a)(1)(cxliv), (a)(1)(cxlv), (a)(1)(cxlvi), and (a)(1)(cxlvii) to read as set forth below;

ggg. By redesignating newly designated paragraphs (a)(1)(cxlix) through (a)(1)(ccxcv) as paragraphs (a)(1)(cliii) through (a)(1)(ccxcix);

hhh. By adding new paragraphs (a)(1)(cxlix), (a)(1)(cl), (a)(1)(cli), and (a)(1)(clii) to read as set forth below;

iii. By redesignating newly designated paragraphs (a)(1)(clxii) through

(a)(1)(ccxcix) as paragraphs (a)(1)(clxv) through (a)(1)(cccii);

jjj. By adding new paragraphs (a)(1)(clxii), (a)(1)(clxiii), and (a)(1)(clxiv) to read as set forth below;

kkk. By redesignating newly designated paragraphs (a)(1)(clxxi) through (a)(1)(cccii) as paragraphs (a)(1)(clxxii) through (a)(1)(ccciii);

lll. By adding a new paragraph (a)(1)(clxxi) to read as set forth below;

mmm. By redesignating newly designated paragraphs (a)(1)(clxxv) through (a)(1)(ccciii) as paragraphs (a)(1)(clxxx) through (a)(1)(cccviii);

nnn. By adding new paragraphs (a)(1)(clxxv), (a)(1)(clxxvi), (a)(1)(clxxvii), (a)(1)(clxxviii), and (a)(1)(clxxix) to read as set forth below;

ooo. By redesignating newly designated paragraphs (a)(1)(clxxxiii) through (a)(1)(cccviii) as paragraphs (a)(1)(clxxxv) through (a)(1)(cccx);

ppp. By adding new paragraphs (a)(1)(clxxxiii) and (a)(1)(clxxxiv) to read as set forth below;

qqq. By redesignating newly designated paragraphs (a)(1)(cxcviii) through (a)(1)(cccx) as paragraphs (a)(1)(cxcix) through (a)(1)(ccccxi);

rrr. By adding a new paragraph (a)(1)(cxcviii) to read as set forth below;

sss. By redesignating newly designated paragraphs (a)(1)(ccxv) through (a)(1)(ccccxi) as paragraphs (a)(1)(ccxvii) through (a)(1)(ccccxiii);

ttt. By adding new paragraphs (a)(1)(ccxv) and (a)(1)(ccxvi) to read as set forth below;

uuu. By redesignating newly designated paragraphs (a)(1)(ccxxi) through (a)(1)(ccccxiii) as paragraphs (a)(1)(ccxxv) through (a)(1)(ccccxvii);

vvv. By adding new paragraphs (a)(1)(ccxxi), (a)(1)(ccxxii), (a)(1)(ccxxiii), and (a)(1)(ccxxiv) to read as set forth below;

www. By redesignating newly designated paragraphs (a)(1)(ccxxviii) through (a)(1)(ccccxvii) as paragraphs (a)(1)(ccxxix) through (a)(1)(ccccxviii);

xxx. By adding a new paragraph (a)(1)(ccxxviii) to read as set forth below;

yyy. By redesignating newly designated paragraphs (a)(1)(ccxxxiv) through (a)(1)(ccccxviii) as paragraphs (a)(1)(ccxxxix) through (a)(1)(ccccxxiii);

zzz. By adding new paragraphs (a)(1)(ccxxxiv), (a)(1)(ccxxxv), (a)(1)(ccxxxvi), (a)(1)(ccxxxvii), and (a)(1)(ccxxxviii) to read as set forth below;

aaaa. By redesignating newly designated paragraphs (a)(1)(ccxl) through (a)(1)(ccccxiii) as paragraphs (a)(1)(ccxli) through (a)(1)(ccccxiv);

bbbb. By adding a new paragraph (a)(1)(ccxl) to read as set forth below;

cccc. By redesignating newly designated paragraphs (a)(1)(ccxlvii) through (a)(1)(ccccxiv) as paragraphs (a)(1)(ccl) through (a)(1)(ccccxxvii);

dddd. By adding new paragraphs (a)(1)(ccxlvii), (a)(1)(ccxlviii), and (a)(1)(ccxlix) to read as set forth below;

eeee. By redesignating newly designated paragraphs (a)(1)(cclii) through (a)(1)(ccccxxvii) as paragraphs (a)(1)(ccliii) through (a)(1)(ccccxxviii);

ffff. By adding a new paragraph (a)(1)(cclii) to read as set forth below;

gggg. By redesignating newly designated paragraphs (a)(1)(cclvii) through (a)(1)(ccccxxviii) as paragraphs (a)(1)(cclix) through (a)(1)(ccccxxx);

hhhh. By adding new paragraphs (a)(1)(cclvii) and (a)(1)(cclviii) to read as set forth below;

iiii. By redesignating newly designated paragraphs (a)(1)(cclxv) through (a)(1)(ccccxxx) as paragraphs (a)(1)(cclxvii) through (a)(1)(ccccxxxii);

jjjj. By adding new paragraphs (a)(1)(cclxv) and (a)(1)(cclxvi) to read as set forth below;

kkkk. By redesignating newly designated paragraphs (a)(1)(cclxxi) through (a)(1)(ccccxxxii) as paragraphs (a)(1)(cclxxii) through (a)(1)(ccccxxxiii);

llll. By adding a new paragraph (a)(1)(cclxxi) to read as set forth below;

mmmm. By redesignating newly designated paragraphs (a)(1)(cclxxvi) through (a)(1)(ccccxxxiii) as paragraphs (a)(1)(cclxxxi) through (a)(1)(ccccxxxviii);

nnnn. By adding new paragraphs (a)(1)(cclxxvi), (a)(1)(cclxxvii), (a)(1)(cclxxviii), (a)(1)(cclxxix), and (a)(1)(cclxxx) to read as set forth below;

oooo. By redesignating newly designated paragraphs (a)(1)(cclxxxix) through (a)(1)(ccccxxxviii) as paragraphs (a)(1)(ccxcii) through (a)(1)(ccccxli);

pppp. By adding new paragraphs (a)(1)(cclxxxix), (a)(1)(ccxc), and (a)(1)(ccxci) to read as set forth below;

qqqq. By redesignating newly designated paragraphs (a)(1)(cccviii) through (a)(1)(ccccxli) as paragraphs (a)(1)(cccix) through (a)(1)(ccccxlii);

rrrr. By adding a new paragraph (a)(1)(cccviii) to read as set forth below;

ssss. By redesignating newly designated paragraphs (a)(1)(ccccxxviii) through (a)(1)(ccccxlii) as paragraphs (a)(1)(ccccxxxv) through (a)(1)(ccccxlix);

tttt. By adding new paragraphs (a)(1)(ccccxxviii), (a)(1)(ccccxxix), (a)(1)(ccccxxx), (a)(1)(ccccxxxi), (a)(1)(ccccxxxii), (a)(1)(ccccxxxiii), and (a)(1)(ccccxxxiv) to read as set forth below;

uuuu. By redesignating newly designated paragraph (a)(1)(ccccxlix) as paragraph (a)(1)(cdlvi);

vvvv. By adding new paragraphs (a)(1)(ccccxlix), (a)(1)(ccccl), (a)(1)(ccccli), (a)(1)(ccccli), (a)(1)(ccccliii), (a)(1)(ccccliv), (a)(1)(ccccv), (a)(1)(ccccvi), (a)(1)(ccccvii), (a)(1)(ccccviii), (a)(1)(ccccix), (a)(1)(ccccx), (a)(1)(ccccxi), (a)(1)(ccccxii), (a)(1)(ccccxiii), (a)(1)(ccccxiv), (a)(1)(ccccxv), (a)(1)(ccccxvi), (a)(1)(ccccxvii), (a)(1)(ccccxviii), (a)(1)(ccccxix), (a)(1)(ccccxx), (a)(1)(ccccxxi), (a)(1)(ccccxxii), (a)(1)(ccccxxiii), (a)(1)(ccccxxiv), (a)(1)(ccccxxv), (a)(1)(ccccxxvi), (a)(1)(ccccxxvii), (a)(1)(ccccxxviii), (a)(1)(ccccxxix), (a)(1)(cccxc), (a)(1)(cccxci), (a)(1)(cccxcii), (a)(1)(cccxciii), (a)(1)(cccxciv), (a)(1)(cccxcv), (a)(1)(cccxcvi), (a)(1)(cccxcvii), (a)(1)(cccxcviii), (a)(1)(cccxcix), (a)(1)(cd), (a)(1)(cdi), (a)(1)(cdii), (a)(1)(cdiii), (a)(1)(cdiv), (a)(1)(cdv), (a)(1)(cdvi), (a)(1)(cdvii), (a)(1)(cdviii), (a)(1)(cdix), (a)(1)(cdx), (a)(1)(cdxi), (a)(1)(cdxii), (a)(1)(cdxiii), (a)(1)(cdxiv), (a)(1)(cdxv), (a)(1)(cdxvi), (a)(1)(cdxvii), (a)(1)(cdxviii), (a)(1)(cdxix), (a)(1)(cdxx), (a)(1)(cdxxi), (a)(1)(cdxxii), (a)(1)(cdxxiii), (a)(1)(cdxxiv), (a)(1)(cdxxv), (a)(1)(cdxxvi), (a)(1)(cdxxvii), (a)(1)(cdxxviii), (a)(1)(cdxxix), (a)(1)(cdxxx), (a)(1)(cdxxxi), (a)(1)(cdxxxii), (a)(1)(cdxxxiii), (a)(1)(cdxxxiv), (a)(1)(cdxxxv), (a)(1)(cdxxxvi), (a)(1)(cdxxxvii), (a)(1)(cdxxxviii), (a)(1)(cdxxxix), (a)(1)(cdxl), (a)(1)(cdxli), (a)(1)(cdxlii), (a)(1)(cdxliii), (a)(1)(cdxliv), (a)(1)(cdxlv), (a)(1)(cdxlvi), (a)(1)(cdxlvii), (a)(1)(cdxlviii), (a)(1)(cdxlix), (a)(1)(cdl), (a)(1)(cdli), (a)(1)(cdlii), (a)(1)(cdliii), (a)(1)(cdliv), and (a)(1)(cdlv) to read as set forth below;

wwww. By amending the table at newly designated paragraph (a)(1)(cdlvi) by adding the following entries, first by unit number and then alphabetically by species name, in the same order as these units are presented in the preceding subparagraphs of this section, as set forth below:

New entry:

Kauai 4–*Chamaesyce remyi* var. *kauaiensis*–a

Kauai 4–*Chamaesyce remyi* var. *remyi*–a

Kauai 4–*Cyanea dolichopoda*–a

Kauai 4–*Cyrtandra oenobarba*–a

Kauai 4–*Cyrtandra paliku*–a

Kauai 4–*Dubautia plantaginea* ssp. *magnifolia*–a

Kauai 4–*Lysimachia iniki*–a

Kauai 4–*Lysimachia pendens*–a

Kauai 4–*Lysimachia venosa*–a

Kauai 4–*Platydesma rostrata*–a

Kauai 7–*Canavalia napaliensis*–a
Kauai 7–*Chamaesyce eleanoriae*–a
Kauai 7–*Chamaesyce remyi* var. *remyi*–b
Kauai 7–*Charpentiera densiflora*–a
Kauai 7–*Doryopteris angelica*–a
Kauai 7–*Dubautia kenwoadii*–a
Kauai 7–*Labordia helleri*–a
Kauai 7–*Pittosparum napaliense*–a
Kauai 7–*Platydesma rastrata*–b
Kauai 7–*Psychotria habdyi*–a
Kauai 7–*Tetraplasandra bisattenuata*–a
Kauai 10–*Astelia waialealae*–a
Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–b
Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–c
Kauai 10–*Chamaesyce remyi* var. *remyi*–c
Kauai 10–*Chamaesyce remyi* var. *remyi*–d
Kauai 10–*Chamaesyce remyi* var. *remyi*–e
Kauai 10–*Charpentiera densiflora*–b
Kauai 10–*Cyanea dolichopoda*–b
Kauai 10–*Cyanea eleeleensis*–a
Kauai 10–*Cyanea kolekoleensis*–a
Kauai 10–*Cyanea kuhihewa*–a
Kauai 10–*Cyrtandra aenabarba*–b
Kauai 10–*Cyrtandra oenabarba*–c
Kauai 10–*Cyrtandra paliku*–b
Kauai 10–*Dryapteris crinalis* var. *padasorus*–a
Kauai 10–*Dubautia imbricata* ssp. *imbricata*–a
Kauai 10–*Dubautia kalalauensis*–a
Kauai 10–*Dubautia plantaginea* ssp. *magnifalia*–b
Kauai 10–*Dubautia waialealae*–a
Kauai 10–*Geranium kauaiense*–a
Kauai 10–*Keysseria erici*–a
Kauai 10–*Keysseria helenae*–a
Kauai 10–*Labordia helleri*–b
Kauai 10–*Labordia helleri*–c
Kauai 10–*Labordia pumila*–a
Kauai 10–*Lysimachia daphnoides*–a
Kauai 10–*Lysimachia iniki*–b
Kauai 10–*Lysimachia pendens*–b
Kauai 10–*Lysimachia venasa*–b
Kauai 10–*Melicape degeneri*–a
Kauai 10–*Melicope paniculata*–a
Kauai 10–*Melicope puberula*–a
Kauai 10–*Melicope puberula*–b
Kauai 10–*Myrsine mezii*–a
Kauai 10–*Phyllastegia renovans*–a
Kauai 10–*Phyllostegia renavans*–b
Kauai 10–*Platydesma rostrata*–c
Kauai 10–*Platydesma rostrata*–d
Kauai 10–*Platydesma rastrata*–e
Kauai 10–*Psychotria grandiflara*–a
Kauai 10–*Stenagyne kealiae*–a
Kauai 10–*Tetraplasandra bisattenuata*–b
Kauai 10–*Tetraplasandra flynnii*–a
Kauai 11–*Astelia waialealae*–b
Kauai 11–*Canavalia napaliensis*–b
Kauai 11–*Chamaesyce eleanoriae*–b
Kauai 11–*Chamaesyce eleanoriae*–c
Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–d
Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–e
Kauai 11–*Chamaesyce remyi* var. *remyi*–f
Kauai 11–*Chamaesyce remyi* var. *remyi*–g
Kauai 11–*Chamaesyce remyi* var. *remyi*–h
Kauai 11–*Chamaesyce remyi* var. *remyi*–i
Kauai 11–*Chamaesyce remyi* var. *remyi*–j
Kauai 11–*Charpentiera densiflora*–c
Kauai 11–*Charpentiera densiflara*–d
Kauai 11–*Cyanea dolichopoda*–c
Kauai 11–*Cyanea eleeleensis*–b
Kauai 11–*Cyanea kolekoleensis*–b
Kauai 11–*Cyanea kuhihewa*–b
Kauai 11–*Cyrtandra aenobarba*–d
Kauai 11–*Cyrtandra oenabarba*–e
Kauai 11–*Cyrtandra paliku*–c
Kauai 11–*Diellia mannii*–a
Kauai 11–*Daryapteris angelica*–b
Kauai 11–*Dryopteris crinalis* var. *podasarus*–b
Kauai 11–*Dubautia imbricata* ssp. *imbricata*–b
Kauai 11–*Dubautia kalalauensis*–b
Kauai 11–*Dubautia kenwaadii*–b
Kauai 11–*Dubautia plantaginea* ssp. *magnifolia*–c
Kauai 11–*Dubautia waialealae*–b
Kauai 11–*Geranium kauaiense*–b
Kauai 11–*Keysseria erici*–b
Kauai 11–*Keysseria helenae*–b
Kauai 11–*Labordia helleri*–d
Kauai 11–*Labordia helleri*–e
Kauai 11–*Labordia helleri*–f
Kauai 11–*Labordia helleri*–g
Kauai 11–*Labardia pumila*–b
Kauai 11–*Lysimachia daphnoides*–b
Kauai 11–*Lysimachia iniki*–c
Kauai 11–*Lysimachia pendens*–c
Kauai 11–*Lysimachia scapulensis*–a
Kauai 11–*Lysimachia venosa*–c
Kauai 11–*Melicope degeneri*–b
Kauai 11–*Melicope paniculata*–b
Kauai 11–*Melicape puberula*–c
Kauai 11–*Melicape puberula*–d
Kauai 11–*Myrsine knudsenii*–a
Kauai 11–*Myrsine mezii*–b
Kauai 11–*Myrsine mezii*–c
Kauai 11–*Phyllastegia renavans*–c
Kauai 11–*Phyllastegia renovans*–d
Kauai 11–*Pittosparum napaliense*–b
Kauai 11–*Platydesma rastrata*–f
Kauai 11–*Platydesma rostrata*–g
Kauai 11–*Platydesma rostrata*–h
Kauai 11–*Platydesma rastrata*–i
Kauai 11–*Platydesma rostrata*–j
Kauai 11–*Psychatria grandiflara*–b
Kauai 11–*Psychotria grandiflara*–c
Kauai 11–*Psychatria hobdyi*–b
Kauai 11–*Schiedea attenuata*–a
Kauai 11–*Stenogyne kealiae*–b
Kauai 11–*Stenogyne kealiae*–c
Kauai 11–*Stenogyne kealiae*–d
Kauai 11–*Tetraplasandra bisattenuata*–c
Kauai 11–*Tetraplasandra bisattenuata*–d
Kauai 11–*Tetraplasandra flynnii*–b
Kauai 11–*Tetraplasandra flynnii*–c
Kauai 18–*Astelia waialealae*–c
Kauai 18–*Chamaesyce remyi* var. *remyi*–k
Kauai 18–*Dryapteris crinalis* var. *padasarus*–c
Kauai 18–*Dubautia kalalauensis*–c
Kauai 18–*Dubautia waialealae*–c
Kauai 18–*Geranium kauaiense*–c
Kauai 18–*Keysseria erici*–c
Kauai 18–*Keysseria helenae*–c
Kauai 18–*Labordia helleri*–h
Kauai 18–*Labordia pumila*–c
Kauai 18–*Lysimachia daphnaides*–c
Kauai 18–*Melicope degeneri*–c
Kauai 18–*Melicape puberula*–e
Kauai 18–*Myrsine mezii*–d
Kauai 18–*Phyllostegia renovans*–e
Kauai 18–*Platydesma rastrata*–k
Kauai 18–*Psychotria grandiflara*–d
Kauai 18–*Tetraplasandra flynnii*–d
Kauai 19–*Chamaesyce remyi* var. *kauaiensis*–f
Kauai 19–*Chamaesyce remyi* var. *remyi*–l
Kauai 19–*Cyanea dalichapada*–d
Kauai 19–*Cyrtandra oenobarba*–f
Kauai 19–*Cyrtandra paliku*–d
Kauai 19–*Dubautia plantaginea* ssp. *magnifolia*–d
Kauai 19–*Lysimachia iniki*–d
Kauai 19–*Lysimachia pendens*–d
Kauai 19–*Lysimachia venosa*–d
Kauai 19–*Platydesma rastrata*–l
Kauai 20–*Chamaesyce remyi* var. *kauaiensis*–g
Kauai 20–*Chamaesyce remyi* var. *remyi*–m
Kauai 20–*Cyanea dalichapada*–e
Kauai 20–*Cyrtandra oenabarba*–g
Kauai 20–*Cyrtandra paliku*–e
Kauai 20–*Dubautia plantaginea* ssp. *magnifalia*–e
Kauai 20–*Lysimachia iniki*–e
Kauai 20–*Lysimachia pendens*–e
Kauai 20–*Lysimachia venosa*–e
Kauai 20–*Platydesma rastrata*–m
Kauai 21–*Chamaesyce remyi* var. *kauaiensis*–h
Kauai 21–*Chamaesyce remyi* var. *remyi*–n
Kauai 21–*Charpentiera densiflara*–e
Kauai 21–*Cyanea eleeleensis*–c
Kauai 21–*Cyanea kalekaleensis*–c
Kauai 21–*Cyanea kuhihewa*–c
Kauai 21–*Cyrtandra oenobarba*–h
Kauai 21–*Dubautia imbricata* ssp. *imbricata*–c
Kauai 21–*Labardia helleri*–i
Kauai 21–*Melicope paniculata*–c
Kauai 21–*Melicape puberula*–f
Kauai 21–*Phyllastegia renavans*–f
Kauai 21–*Platydesma rostrata*–n
Kauai 21–*Stenogyne kealiae*–e

Kauai 21–*Tetraplasandra bisattenuata*–e
Kauai 22–*Chamaesyce remyi* var. *remyi*–o
Kauai 22–*Diellia mannii*–b
Kauai 22–*Labordia helleri*–j
Kauai 22–*Myrsine knudsenii*–b
Kauai 22–*Myrsine mezii*–e
Kauai 22–*Platydesma rostrata*–o
Kauai 22–*Psychotria grandiflora*–e
Kauai 22–*Stenogyne kealiae*–f
Kauai 22–*Tetraplasandra flynnii*–e
Kauai 23–*Chamaesyce remyi* var. *remyi*–p
Kauai 23–*Diellia mannii*–c
Kauai 23–*Labordia helleri*–k
Kauai 23–*Myrsine knudsenii*–c
Kauai 23–*Myrsine mezii*–f
Kauai 23–*Platydesma rostrata*–p
Kauai 23–*Psychotria grandiflora*–f
Kauai 23–*Stenogyne kealiae*–g
Kauai 23–*Tetraplasandra flynnii*–f
Kauai 24–*Astelia waialealae*–d
Kauai 24–*Chamaesyce remyi* var. *remyi*–q
Kauai 24–*Dryopteris crinalis* var. *podosorus*–d
Kauai 24–*Dubautia kalalauensis*–d
Kauai 24–*Dubautia waialealae*–d
Kauai 24–*Geranium kauaiense*–d
Kauai 24–*Keysseria erici*–d
Kauai 24–*Keysseria helenae*–d
Kauai 24–*Labordia helleri*–l
Kauai 24–*Labordia pumila*–d
Kauai 24–*Lysimachia daphnoides*–d
Kauai 24–*Melicope degeneri*–d
Kauai 24–*Melicope puberula*–g
Kauai 24–*Myrsine mezii*–g
Kauai 24–*Phyllostegia renovans*–g
Kauai 24–*Platydesma rostrata*–q
Kauai 24–*Psychotria grandiflora*–g
Kauai 24–*Tetraplasandra flynnii*–g
Kauai 25–*Astelia waialealae*–e
Kauai 25–*Chamaesyce remyi* var. *remyi*–r
Kauai 25–*Dryopteris crinalis* var. *podosorus*–e
Kauai 25–*Dubautia kalalauensis*–e
Kauai 25–*Dubautia waialealae*–e
Kauai 25–*Geranium kauaiense*–e
Kauai 25–*Keysseria erici*–e
Kauai 25–*Keysseria helenae*–e
Kauai 25–*Labordia helleri*–m
Kauai 25–*Labordia pumila*–e
Kauai 25–*Lysimachia daphnoides*–e
Kauai 25–*Melicope degeneri*–e
Kauai 25–*Melicope puberula*–h
Kauai 25–*Myrsine mezii*–h
Kauai 25–*Phyllostegia renovans*–h
Kauai 25–*Platydesma rostrata*–r
Kauai 25–*Psychotria grandiflora*–h
Kauai 25–*Tetraplasandra flynnii*–h
xxxx. By amending paragraph (b) as follows:

i. In paragraph (b)(1), by adding "Family Amaranathaceae", "Family Asteliaceae" "Family Geraniaceae", and "Family Pittosporaceae" in alphabetical order to the list of family names;

ii. In paragraph (b)(1), by adding entries in alphabetical order by family name to read as set forth below:

New entry:
Family Amaranathaceae: *Charpentiera densiflora*
Family Araliaceae: *Tetraplasandra bisattenuata*
Family Araliaceae: *Tetraplasandra flynnii*
Family Asteliaceae: *Astelia waialealae*
Family Asteraceae: *Dubautia imbricata* ssp. *imbricata*
Family Asteraceae: *Dubautia kalalauensis*
Family Asteraceae: *Dubautia kenwoodii*
Family Asteraceae: *Dubautia plantaginea* ssp. *magnifolia*
Family Asteraceae: *Dubautia waialealae*
Family Asteraceae: *Keysseria erici*
Family Asteraceae: *Keysseria helenae*
Family Campanulaceae: *Cyanea dolichopoda*
Family Campanulaceae: *Cyanea eleeleensis*
Family Campanulaceae: *Cyanea kolekoleensis*
Family Campanulaceae: *Cyanea kuhihewa*
Family Caryophyllaceae: *Schiedea attenuate*
Family Euphorbiaceae: *Chamaesyce eleanoriae*
Family Euphorbiaceae: *Chamaesyce remyi* var. *kauaiensis*
Family Euphorbiaceae: *Chamaesyce remyi* var. *remyi*
Family Fabaceae: *Canavalia napaliensis*
Family Geraniaceae: *Geranium kauaiense*
Family Gesneriaceae: *Cyrtandra oenobarba*
Family Gesneriaceae: *Cyrtandra paliku*
Family Lamiaceae: *Phyllostegia renovans*
Family Lamiaceae: *Stenogyne kealiae*
Family Loganiaceae: *Labordia helleri*
Family Loganiaceae: *Labordia pumila*
Family Myrsinaceae: *Lysimachia daphnoides*
Family Myrsinaceae: *Lysimachia iniki*
Family Myrsinaceae: *Lysimachia pendens*
Family Myrsinaceae: *Lysimachia scopulensis*
Family Myrsinaceae: *Lysimachia venosa*
Family Myrsinaceae: *Myrsine knudsenii*
Family Myrsinaceae: *Myrsine mezii*
Family Pittosporaceae: *Pittosporum napaliense*
Family Rubiaceae: *Psychotria grandiflora*
Family Rubiaceae: *Psychotria hobdyi*
Family Rutaceae: *Melicope degeneri*
Family Rutaceae: *Melicope paniculata*
Family Rutaceae: *Melicope puberula*
Family Rutaceae: *Platydesma rostrata*

iii. In paragraph (b)(2), by adding "Family Dryopteridaceae" and "Family Pteridaceae" in alphabetical order to the list of family names; and

iv. In paragraph (b)(2), by adding entries in alphabetical order by family name to read as set forth below:

New entry:
Family Aspleniaceae: *Diellia mannii*
Family Dryopteridaceae: *Dryopteris crinalis* var. *podosorus*
Family Pteridaceae: *Doryopteris angelica*

§ 17.99 Critical habitat; plants on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Oahu, and Hawaii, HI, and on the Northwestern Hawaiian Islands.

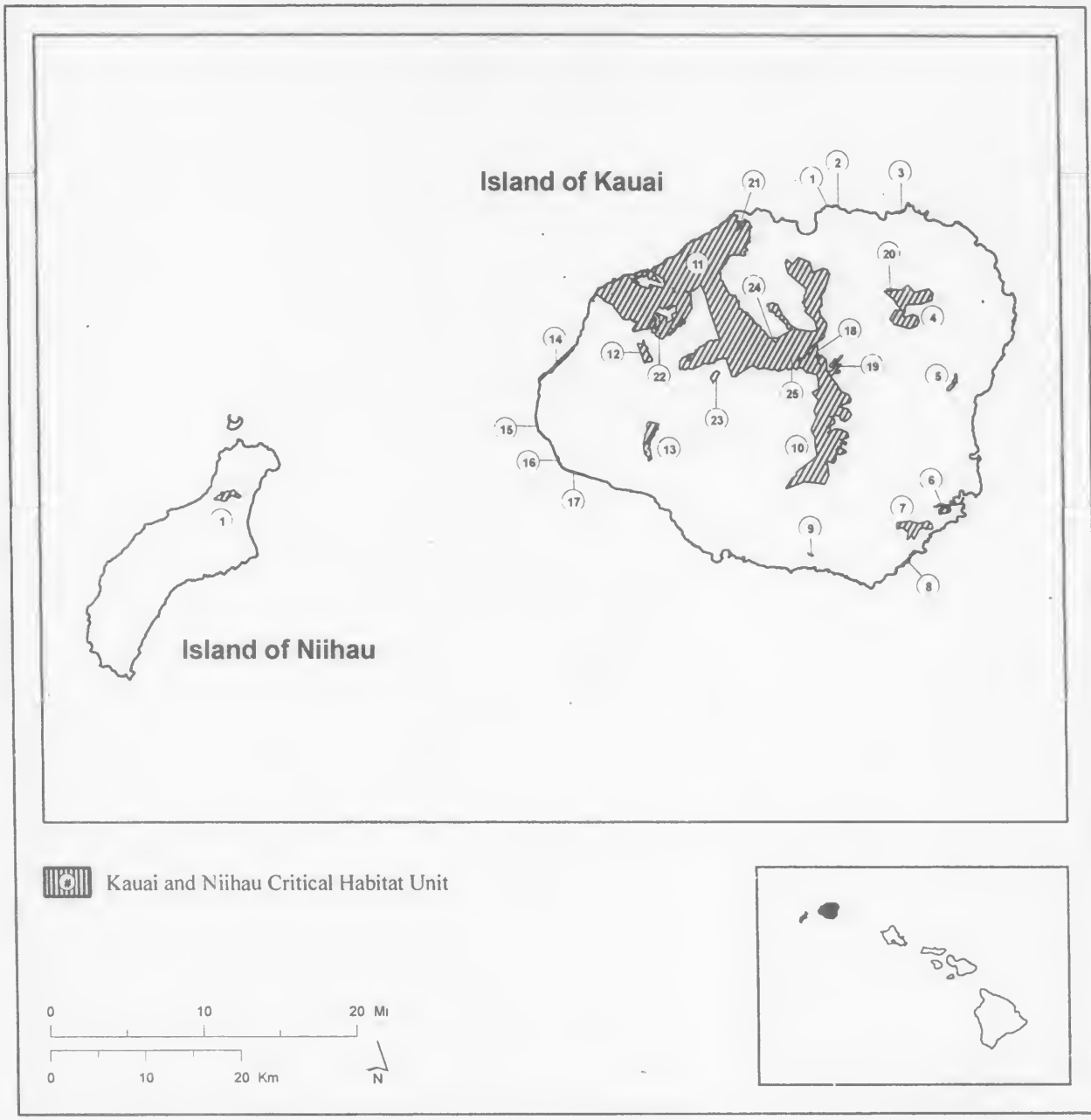
(a) * * *

(1) *Kauai.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the critical habitat units designated on the island of Kauai.

(i) *Note*: Map 1—Index map follows:

BILLING CODE 4310–55–S

Map 1
Kauai and Niihau Critical Habitat–Island Index Map



* * * * *

(vi) Kauai 4–*Chamaesyce remyi* var. *kauaiensis*–a (15.4 ha; 38 ac)

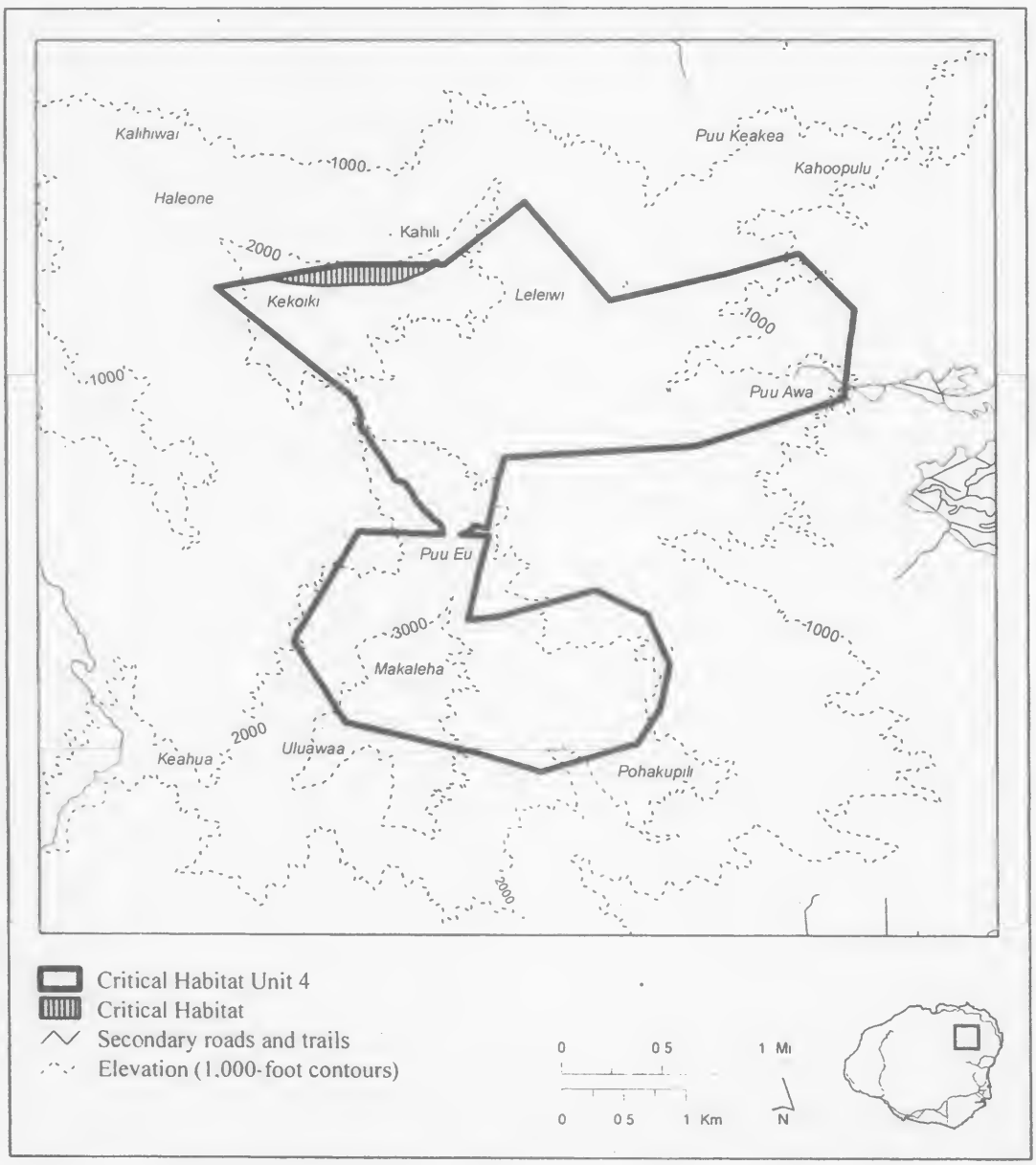
(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 4–*Chamaesyce remyi* var. *remyi*–a, Kauai 4–*Cyanea dolichopoda*–a, Kauai 4–*Cyrtandra oenobarba*–a, Kauai 4–*Cyrtandra paliku*–a, Kauai 4–*Dubautia plantaginea* ssp. *magnifolia*–a, Kauai 4–*Lysimachia iniki*–a, Kauai 4–*Lysimachia pendens*–a, Kauai 4–*Lysimachia venosa*–a, and Kauai 4–*Platydesma rostrata*–a (see paragraphs (a)(1)(vii), (a)(1)(ix), (a)(1)(xvi), (a)(1)(xvii), (a)(1)(xviii), (a)(1)(xxv), (a)(1)(xxvi), (a)(1)(xxvii), and (a)(1)(xxix), respectively, of this section).

(B) Note: Map 5a follows:

Map 5a

Kauai 4–*Chamaesyce remyi* var. *kauaiensis*–a, Kauai 4–*Chamaesyce remyi* var. *remyi*–a, Kauai 4–*Cyanea dolichopoda*–a, Kauai 4–*Cyrtandra oenobarba*–a, Kauai 4–*Cyrtandra paliku*–a, Kauai 4–*Dubautia plantaginea* ssp. *magnifolia*–a, Kauai 4–*Lysimachia iniki*–a, Kauai 4–*Lysimachia pendens*–a, Kauai 4–*Lysimachia venosa*–a,Kauai 4–*Platydesma rostrata*–a

Wet Cliff



(vii) Kauai 4–*Chamaesyce remyi* var. *remyi*–a (15.4 ha; 38 ac)

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

* * * * *

(ix) Kauai 4–*Cyanea dolichopoda*–a (15.4 ha; 38 ac)

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

* * * * *

(xvi) Kauai 4–*Cyrtandra oenobarba*–a (15.4 ha; 38 ac)

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

(xvii) Kauai 4–*Cyrtandra paliku*–a (15.4 ha; 38 ac)

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B} of this section for the map of this unit.

(xviii) Kauai 4–*Dubautia plantaginea* ssp. *magnifolia*–a (15.4 ha; 38 ac)

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

* * * * *

(xxv) Kauai 4–*Lysimachia iniki*–a (15.4 ha; 38 ac)

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

(xxvi) Kauai 4–*Lysimachia pendens*–a (15.4 ha; 38 ac)

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

(xxvii) Kauai 4– *Lysimachia venosa*–a (15.4 ha; 38 ac)

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

* * * * *

(xxix) Kauai 4–*Platydesma rostrata*–a (15.4 ha; 38 ac)

(A) See paragraph (a)(1)(vi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(vi)(B) of this section for the map of this unit.

* * * * *

(xxxiv) Kauai 7–*Canavalia napaliensis*–a (15 ha; 37 ac)

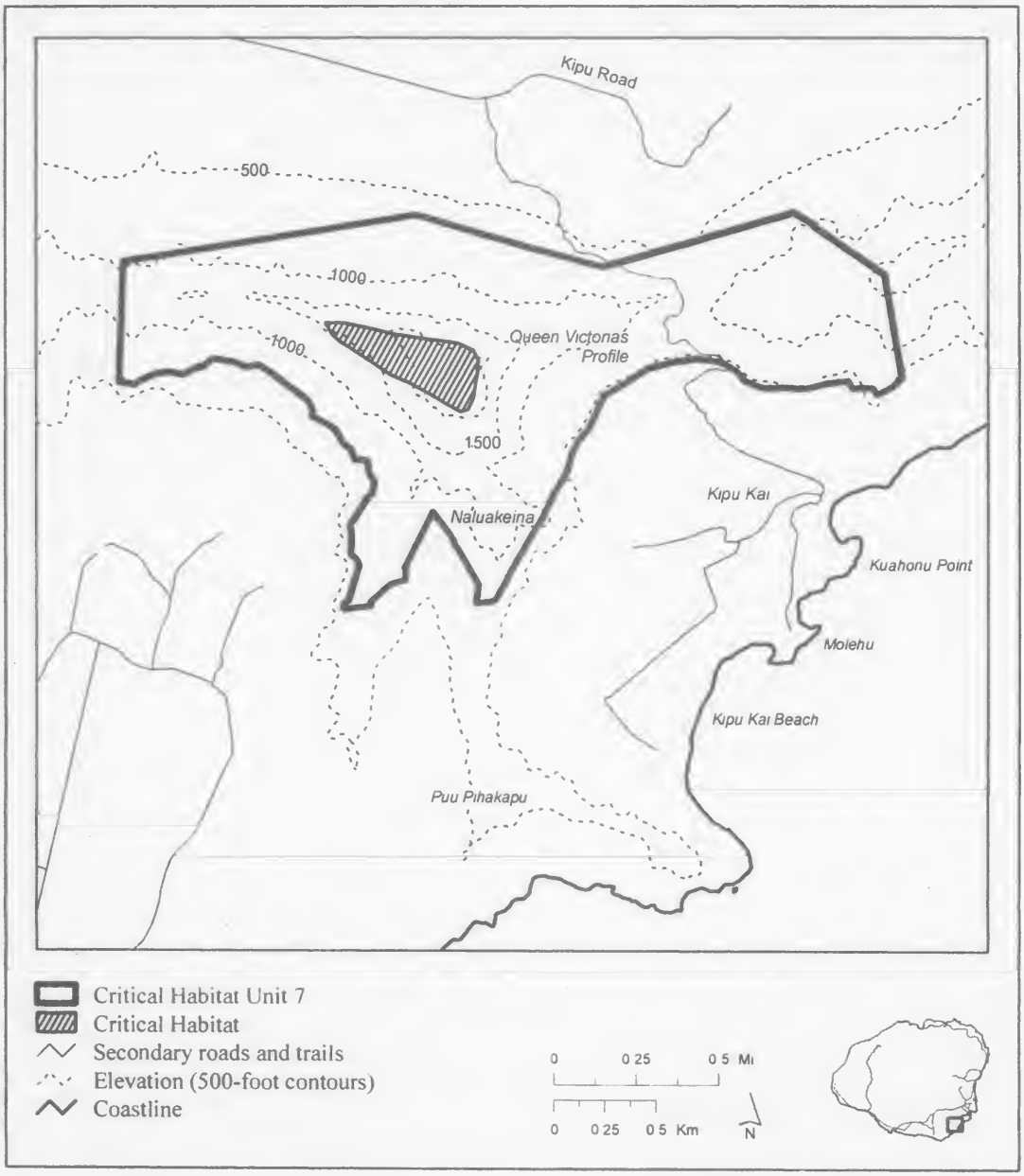
(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 7–*Chamaesyce eleanoriae*–a, Kauai 7–*Chamaesyce remyi* var. *remyi*–b, Kauai 7–*Charpentiera densiflora*–a, Kauai 7–*Doryopteris angelica*–a, Kauai 7–*Dubautia kenwoodii*–a, Kauai 7–*Labordia helleri*–a, Kauai 7–*Pittosporum napaliense*–a, Kauai 7–*Platydesma rostrata*–b, Kauai 7–*Psychotria hobdyi*–a, and Kauai 7–*Tetraplasandra bisattenuata*–a (see paragraphs (a)(1)(xxxv), (a)(1)(xxxvi), (a)(1)(xxxvii), (a)(1)(xxxix), (a)(1)(xl), (a)(1)(xlii), (a)(1)(xlviii), (a)(1)(xlix), (a)(1)(l), and (a)(1)(liii), respectively, of this section).

(B) Note: Map 23a follows:

Map 23a

Kauai 7–*Canavalia napaliensis*–a, Kauai 7–*Chamaesyce eleanoriae*–a, Kauai 7–*Chamaesyce remyi* var. *remyi*–b, Kauai 7–*Charpentiera densiflora*–a, Kauai 7–*Doryopteris angelica*–a, Kauai 7–*Dubautia kenwoodii*–a, Kauai 7–*Labordia helleri*–a, Kauai 7–*Pittosporum napaliense*–a, Kauai 7–*Platydesma rostrata*–b, Kauai 7–*Psychotria hobdyi*–a, Kauai 7–*Tetraplasandra bisattenuata*–a

Lowland Mesic



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(xxxv) Kauai 7–*Chamaesyce eleanoriae*–a (15 ha; 37 ac)

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

(xxxvi) Kauai 7–*Chamaesyce remyi* var. *remyi*–b (15 ha; 37 ac)

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

(xxxvii) Kauai 7–*Charpentiera densiflora*–a (15 ha; 37 ac)

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

* * * * *

(xxxix) Kauai 7–*Doryopteris angelica*–a (15 ha; 37 ac)

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

(xl) Kauai 7–*Dubautia kenwoodii*–a (15 ha; 37 ac)

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

* * * * *

(xli) Kauai 7–*Labordia helleri*–a (15 ha; 37 ac)

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

* * * * *

(xlviii) Kauai 7–*Pittosporum napaliense*–a (15 ha; 37 ac)

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

(xlix) Kauai 7–*Platydesma rostrata*–b (15 ha; 37 ac)

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

(l) Kauai 7–*Psychotria hobdyi*–a (15 ha; 37 ac)

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

* * * * *

(liii) Kauai 7–*Tetraplasandra bisattenuata*–a (15 ha; 37 ac)

(A) See paragraph (a)(1)(xxxiv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(xxxiv)(B) of this section for the map of this unit.

* * * * *

(lvii) Kauai 10—*Astelia waialealae*—a (40 ha; 99 ac)

(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 10–*Chamaesyce remyi* var. *remyi*–c, Kauai 10–*Dryopteris crinalis* var. *podosorus*–a, Kauai 10–*Dubautia kalalauensis*–a, Kauai 10–*Dubautia waialealae*–a, Kauai 10–*Geranium kauaiense*–a, Kauai 10–*Keysseria erici*–a, Kauai 10–*Keysseria helenae*–a, Kauai 10–*Labordia helleri*–b, Kauai 10–*Labordia pumila*–a, Kauai 10–*Lysimachia daphnoides*–a, Kauai 10–*Melicope degeneri*–a, Kauai 10–*Melicope puberula*–a, Kauai 10–*Myrsine mezii*–a, Kauai 10–*Phyllostegia renovans*–a, Kauai 10–*Platydesma rostrata*–c, Kauai 10–*Psychotria grandiflora*–a, and Kauai 10–*Tetraplasandra flynnii*–a (see paragraphs (a)(1)(lxi), (a)(1)(lxxvi), (a)(1)(lxxviii), (a)(1)(lxxxi), (a)(1)(lxxxiii), (a)(1)(lxxxvi), (a)(1)(lxxxvii), (a)(1)(lxxxviii), (a)(1)(xci), (a)(1)(xciii), (a)(1)(xcviii), (a)(1)(c), (a)(1)(ciii), (a)(1)(cv), (a)(1)(cviii), (a)(1)(cxi), and (a)(1)(cxv), respectively, of this section).

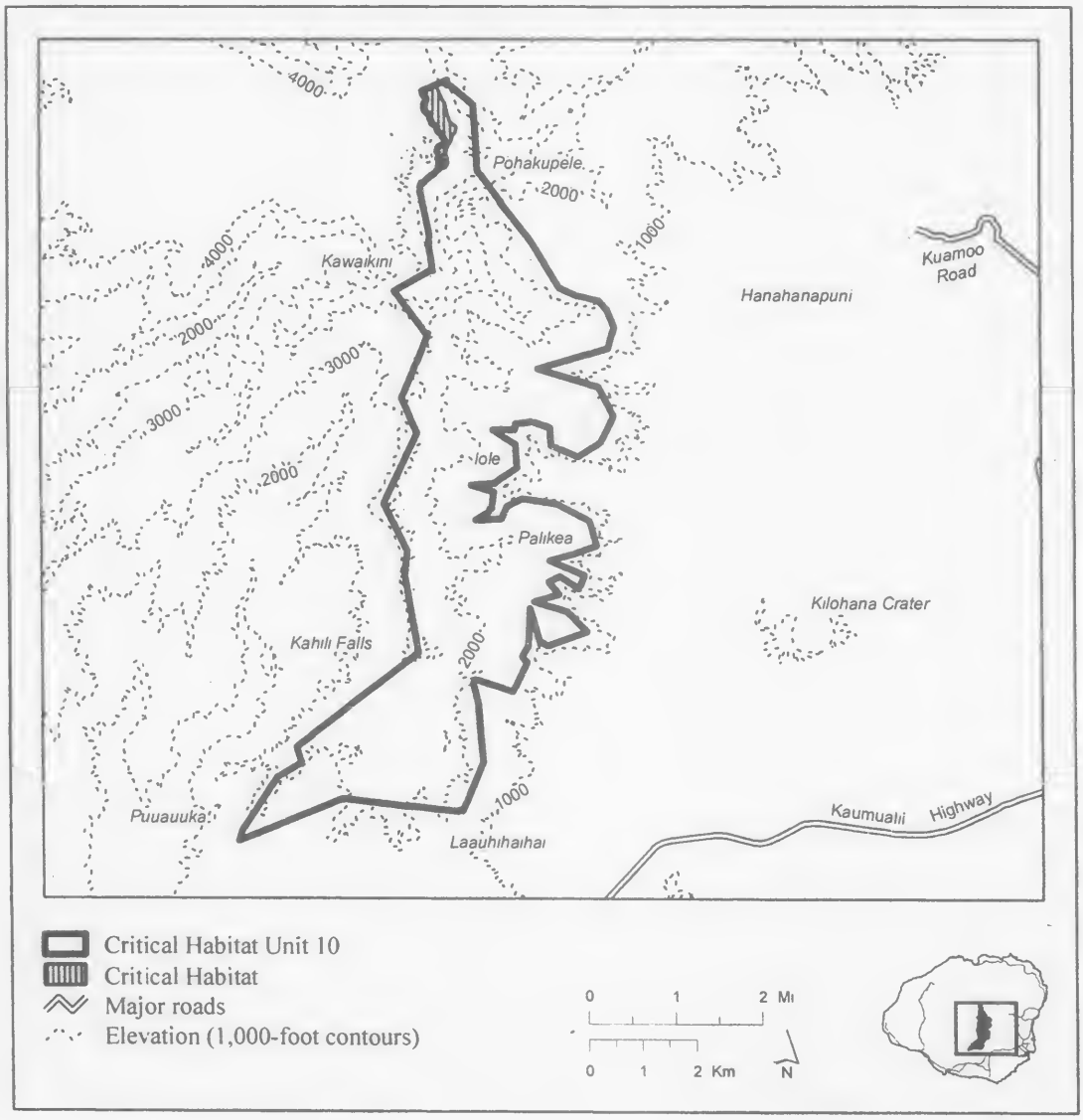
(B) Note: Map 35a follows:

BILLING CODE 4310–55–S

Map 35a

Kauai 10–*Astelia waialealae*–a, Kauai 10–*Chamaesyce remyi* var. *remyi*–c, Kauai 10–*Dryopteris crinalis* var. *podosorus*–a, Kauai 10–*Dubautia kalalauensis*–a, Kauai 10–*Dubautia waialealae*–a, Kauai 10–*Geranium kauaiense*–a, Kauai 10–*Keysseria erici*–a, Kauai 10–*Keysseria helenae*–a, Kauai 10–*Labordia helleri*–b, Kauai 10–*Labordia pumila*–a, Kauai 10–*Lysimachia daphnoides*–a, Kauai 10–*Melicope degeneri*–a, Kauai 10–*Melicope puberula*–a, Kauai 10–*Myrsine mezii*–a, Kauai 10–*Phyllostegia renovans*–a, Kauai 10–*Platydesma rostrata*–c, Kauai 10–*Psychotria grandiflora*–a, Kauai 10–*Tetraplasandra flynnii*–a

Montane Wet



* * * * *

(lix) Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–b (943 ha; 2,330 ac)

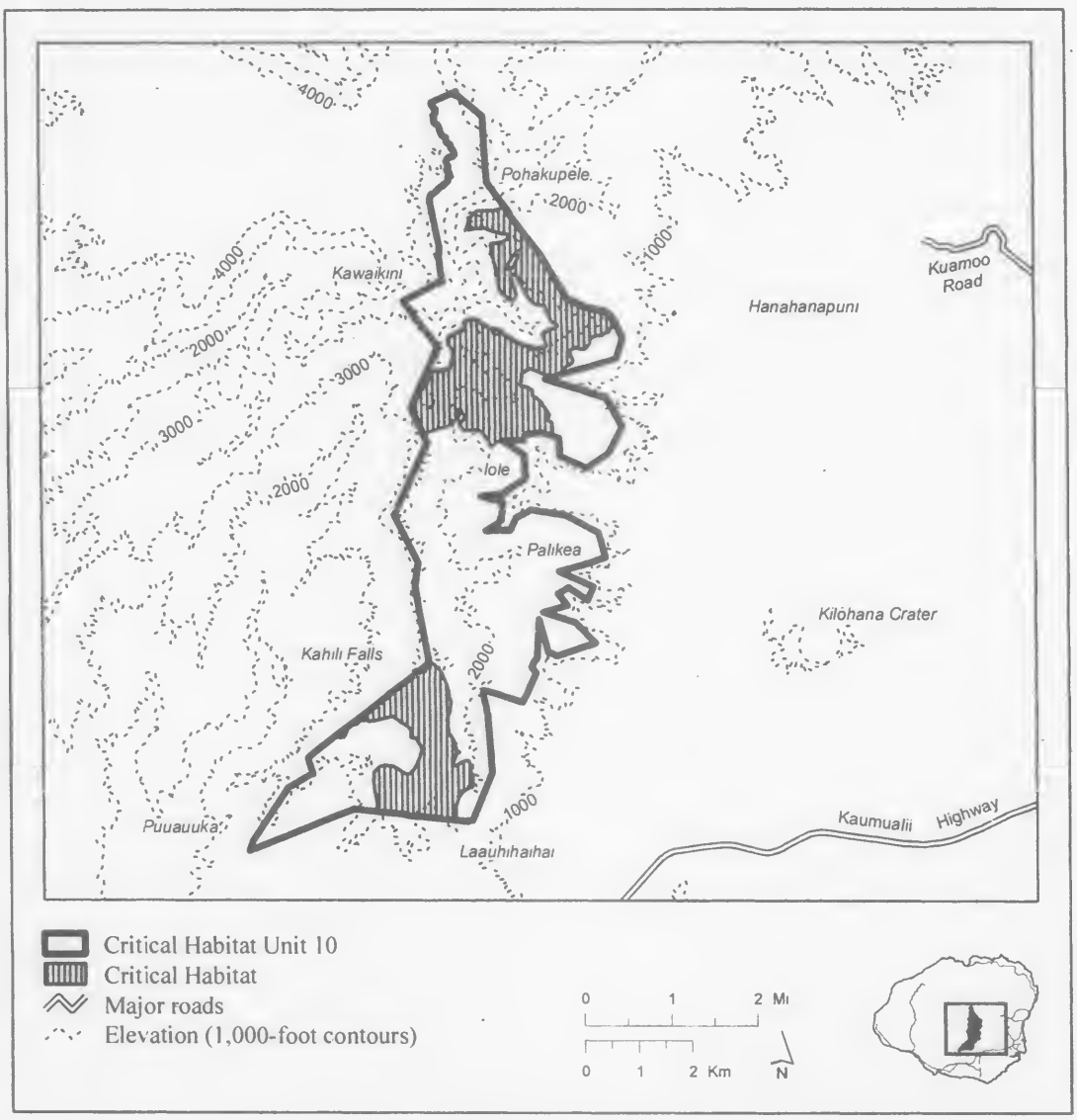
(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 10–*Chamaesyce remyi* var. *remyi*–d, Kauai 10–*Charpentiera densiflora*–b, Kauai 10–*Cyanea eleeleensis*–a, Kauai 10–*Cyanea kolekoleensis*–a, Kauai 10–*Cyanea kuhihewa*–a, Kauai 10–*Cyrtandra oenobarba*–b, Kauai 10–*Dubautia imbricata* ssp. *imbricata*–a, Kauai 10–*Labordia helleri*–c, Kauai 10–*Melicope paniculata*–a, Kauai 10–*Melicope puberula*–b, Kauai 10–*Phyllostegia renovans*–b, Kauai 10–*Platydesma rostrata*–d, Kauai 10–*Stenogyne kealiae*–a, and Kauai 10–*Tetraplasandra bisattenuata*–b (see paragraphs (a)(1)(lxii), (a)(1)(lxiv), (a)(1)(lxvii), (a)(1)(lxviii), (a)(1)(lxix), (a)(1)(lxxiii), (a)(1)(lxxvii), (a)(1)(lxxxix), (a)(1)(xcix), (a)(1)(ci), (a)(1)(cvi), (a)(1)(cix), (a)(1)(cxiii), and (a)(1)(cxiv), respectively, of this section).

(B) Note: Map 36a follows:

Map 36a

Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–b, Kauai 10–*Chamaesyce remyi* var. *remyi*–d, Kauai 10–*Charpentiera densiflora*–b, Kauai 10–*Cyanea eleeleensis*–a, Kauai 10–*Cyanea kolekoleensis*–a, Kauai 10–*Cyanea kuhihewa*–a, Kauai 10–*Cyrtandra oenobarba*–b, Kauai 10–*Dubautia imbricata* ssp. *imbricata*–a, Kauai 10–*Labordia helleri*–c, Kauai 10–*Melicope paniculata*–a, Kauai 10–*Melicope puberula*–b, Kauai 10–*Phyllostegia renovans*–b, Kauai 10–*Platydesma rostrata*–d, Kauai 10–*Stenogyne kealiae*–a, Kauai 10–*Tetraplasandra bisattenuata*–b

Lowland Wet



(lx) Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–c (198 ha; 489 ac)

(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 10–*Chamaesyce remyi* var. *remyi*–e, Kauai 10–*Cyanea dolichopoda*–b, Kauai 10–*Cyrtandra oenobarba*–c, Kauai 10–*Cyrtandra paliku*–b, Kauai 10–*Dubautia plantaginea* ssp. *magnifolia*–b, Kauai 10–*Lysimachia iniki*–b, Kauai 10–*Lysimachia pendens*–b, Kauai 10–*Lysimachia venosa*–b, and Kauai 10–

Platydesma rostrata–e (see paragraphs (a)(1)(lxiii), (a)(1)(lxvi), (a)(1)(lxxiv), (a)(1)(lxxv), (a)(1)(lxxx), (a)(1)(xcv), (a)(1)(xcvi), (a)(1)(xcvii), and (a)(1)(cx), respectively, of this section).

(B) Note: Map 36b follows:

Map 36b

Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–c, Kauai 10–*Chamaesyce remyi* var. *remyi*–e, Kauai 10–*Cyanea dolichopoda*–b, Kauai 10–*Cyrtandra oenobarba*–c, Kauai 10–*Cyrtandra paliku*–b, Kauai 10–*Dubautia plantaginea* ssp. *magnifolia*–b, Kauai 10–*Lysimachia iniki*–b, Kauai 10–*Lysimachia pendens*–b, Kauai 10–*Lysimachia venosa*–b, Kauai 10–*Platydesma rostrata*–e

Wet Cliff

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(lxi) Kauai 10–*Chamaesyce remyi* var. *remyi*–c (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(lxii) Kauai 10–*Chamaesyce remyi* var. *remyi*–d (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(lxiii) Kauai 10–*Chamaesyce remyi* var. *remyi*–e (198 ha; 489 ac)

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(lxiv) Kauai 10–*Charpentiera densiflora*–b (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

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(lxvi) Kauai 10–*Cyanea dolichopoda*–b (198 ha; 489 ac)

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(lxvii) Kauai 10–*Cyanea eleeleensis*–a (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(lxviii) Kauai 10–*Cyanea kolekoleensis*–a (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(lxix) Kauai 10–*Cyanea kuhihewa*–a (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

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(lxxiii) Kauai 10–*Cyrtandra oenobarba*–b (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(lxxiv) Kauai 10–*Cyrtandra oenobarba*–c (198 ha; 489 ac)

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(lxxv) Kauai 10–*Cyrtandra paliku*–b (198 ha; 489 ac)

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(lxxvi) Kauai 10–*Dryopteris crinalis* var. *podosorus*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(lxxvii) Kauai 10–*Dubautia imbricata* ssp. *imbricata*–a (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(lxxviii) Kauai 10–*Dubautia kalalauensis*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

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(lxxx) Kauai 10–*Dubautia plantaginea* ssp. *magnifolia*–b (198 ha; 489 ac)

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(lxxxi) Kauai 10–*Dubautia waialealae*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

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(lxxxiii) Kauai 10–*Geranium kauaiense*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

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(lxxxvi) Kauai 10–*Keysseria erici*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(lxxxvii) Kauai 10–*Keysseria helenae*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(lxxxviii) Kauai 10–*Labordia helleri*–b (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(lxxxix) Kauai 10–*Labordia helleri*–c (943 ha; 2,330ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

* * * * *

(xci) Kauai 10–*Labordia pumila*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

* * * * *

(xciii) Kauai 10–*Lysimachia daphnoides*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

* * * * *

(xcv) Kauai 10–*Lysimachia iniki*–b (198 ha; 489 ac)

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(xcvi) Kauai 10–*Lysimachia pendens*–b (198 ha; 489 ac)

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(xcvii) Kauai 10–*Lysimachia venosa*–b (198 ha; 489 ac)

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(xcviii) Kauai 10–*Melicope degeneri*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(xcix) Kauai 10–*Melicope paniculata*–a (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(c) Kauai 10–*Melicope puberula*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(ci) Kauai 10–*Melicope puberula*–b (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

* * * * *

(ciii) Kauai 10–*Myrsine mezii*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

* * * * *

(cv) Kauai 10–*Phyllostegia renovans*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(cvi) Kauai 10–*Phyllostegia renovans*–b (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

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(cviii) Kauai 10–*Platydesma rostrata*–c (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

(cix) Kauai 10–*Platydesma rostrata*–d (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(cx) Kauai 10–*Platydesma rostrata*–e (198 ha; 489 ac)

(A) See paragraph (a)(1)(lx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lx)(B) of this section for the map of this unit.

(cxi) Kauai 10–*Psychotria grandiflora*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

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(cxiii) Kauai 10–*Stenogyne kealiae*–a (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(cxiv) Kauai 10–*Tetraplasandra bisattenuata*–b (943 ha; 2,330 ac)

(A) See paragraph (a)(1)(lix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lix)(B) of this section for the map of this unit.

(cxv) Kauai 10–*Tetraplasandra flynnii*–a (40 ha; 99 ac)

(A) See paragraph (a)(1)(lvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(lvii)(B) of this section for the map of this unit.

* * * * *

(cxxix) Kauai 11—*Astelia waialealae*—b (5,705 ha; 14,096 ac)

(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 11–*Chamaesyce remyi* var. *remyi*–f, Kauai 11–*Dryopteris crinalis* var. *podosorus*–b, Kauai 11–*Dubautia kalalauensis*–b, Kauai 11–*Dubautia waialealae*–b, Kauai 11–*Geranium kauaiense*–b, Kauai 11–*Keysseria erici*–b, Kauai 11–*Keysseria helenae*–b, Kauai 11–*Labordia helleri*–d, Kauai 11–*Labordia pumila*–b, Kauai 11–*Lysimachia daphnoides*–b, Kauai 11–*Melicope degeneri*–b, Kauai 11–*Melicope puberula*–c, Kauai 11–*Myrsine mezii*–b, Kauai 11–*Phyllostegia renovans*–c, Kauai 11–*Platydesma rostrata*–f, Kauai 11–*Psychotria grandiflora*–b, and Kauai 11–*Tetraplasandra flynnii*–b (see paragraphs (a)(1)(cxli), (a)(1)(clxxvi), (a)(1)(clxxviii), (a)(1)(clxxxiv), (a)(1)(cxcviii), (a)(1)(ccxv), (a)(1)(ccxvi). (a)(1)(ccxxi), (a)(1)(ccxxviii), (a)(1)(ccxxxiv), (a)(1)(ccxl), (a)(1)(ccxlviii), (a)(1)(cclvii), (a)(1)(cclxv), (a)(1)(cclxxvi), (a)(1)(cclxxxix), and (a)(1)(cccxxxiii), respectively, of this section).

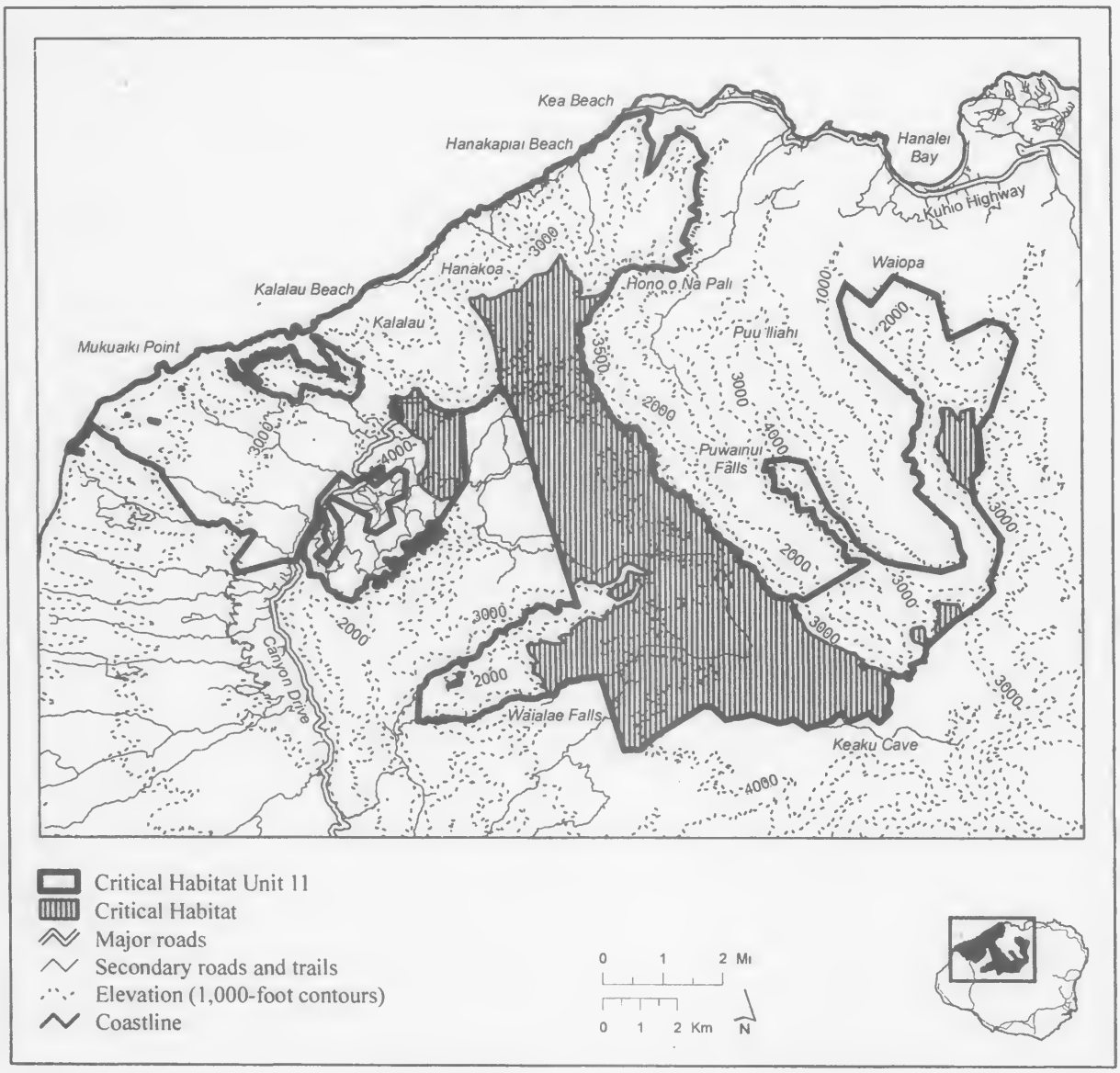
(B) Note: Map 64a follows:

BILLING CODE 4310–55–S

Map 64a

**Kauai 11–*Astelia waialealae*–b, Kauai 11–*Chamaesyce remyi* var. *remyi*–f, Kauai 11–*Dryopteris crinalis* var. *podosorus*–b, Kauai 11–*Dubautia kalalauensis*–b, Kauai 11–*Dubautia waialealae*–b, Kauai 11–*Geranium kauaiense*–b, Kauai 11–*Keysseria erici*–b, Kauai 11–*Keysseria helenae*–b, Kauai 11–*Labordia helleri*–d, Kauai 11–*Labordia pumila*–b, Kauai 11–*Lysimachia daphnoides*–b, Kauai 11–*Melicope degeneri*–b, Kauai 11–*Melicope puberula*–c, Kauai 11–*Myrsine mezii*–b, Kauai 11–*Phyllostegia renovans*–c, Kauai 11–*Platydesma rostrata*–f, Kauai 11–*Psychotria grandiflora*–b, Kauai 11–*Tetraplasandra flynnii*–b

Montane Wet



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(cxxxii) Kauai 11–*Canavalia napaliensis*–b (1,048 ha; 2,591 ac)

(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 11–*Chamaesyce eleanoriae*–b, Kauai 11–*Chamaesyce remyi* var. *remyi*–g, Kauai 11–*Charpentiera densiflora*–c, Kauai 11–*Doryopteris angelica*–b, Kauai

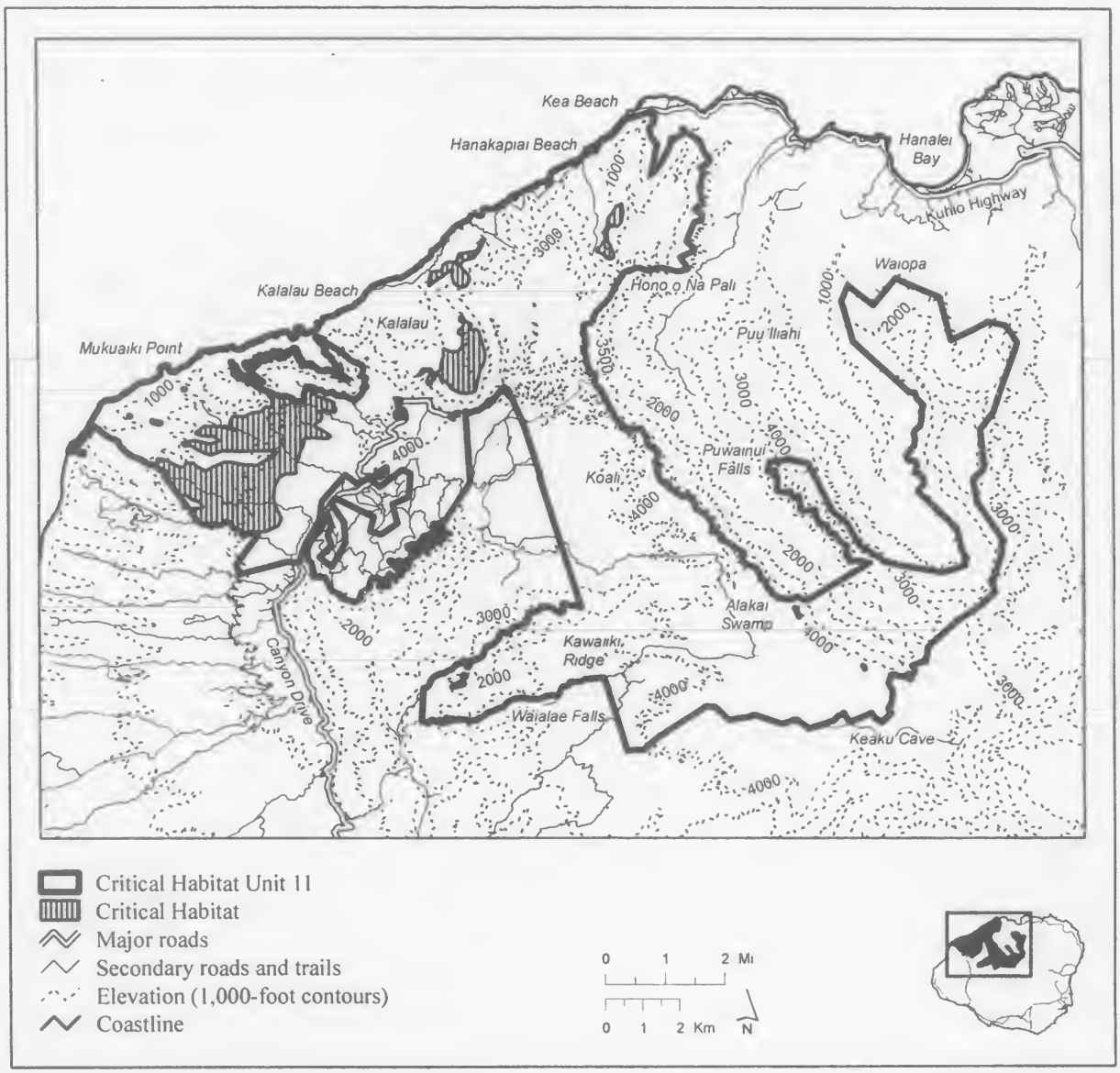
11–*Dubautia kenwoodii*–b, Kauai 11–*Labordia helleri*–e, Kauai 11–*Pittosporum napaliense*–b, Kauai 11–*Platydesma rostrata*–g, Kauai 11–*Psychotria hobdyi*–b, and Kauai 11–*Tetraplasandra bisattenuata*–c (see paragraphs (a)(1)(cxxxiv), (a)(1)(cxlii), (a)(1)(cxlvi), (a)(1)(clxxv), (a)(1)(clxxix), (a)(1)(ccxxii), (a)(1)(cclxxi), (a)(1)(cclxxvii), (a)(1)(ccxci), and (a)(1)(cccxxxi), respectively, of this section).

(B) Note: Map 66a follows:

Map 66a

Kauai 11–*Canavalia napaliensis*–b, Kauai 11–*Chamaesyce eleanoriae*–b, Kauai 11–*Chamaesyce remyi* var. *remyi*–g, Kauai 11–*Charpentiera densiflora*–c, Kauai 11–*Doryopteris angelica*–b, Kauai 11–*Dubautia kenwoodii*–b, Kauai 11–*Labordia helleri*–e, Kauai 11–*Pittosporum napaliense*–b, Kauai 11–*Platydesma rostrata*–g, Kauai 11–*Psychotria hobdyi*–b, Kauai 11–*Tetraplasandra bisattenuata*–c

Lowland Mesic



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(cxxxiv) Kauai 11–*Chamaesyce eleanoriae*–b (1,048 ha; 2,591 ac)

(A) See paragraph (a)(1)(cxxxii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxii)(B) of this section for the map of this unit.

(cxxxv) Kauai 11–*Chamaesyce eleanoriae*–c (288 ha; 712 ac)

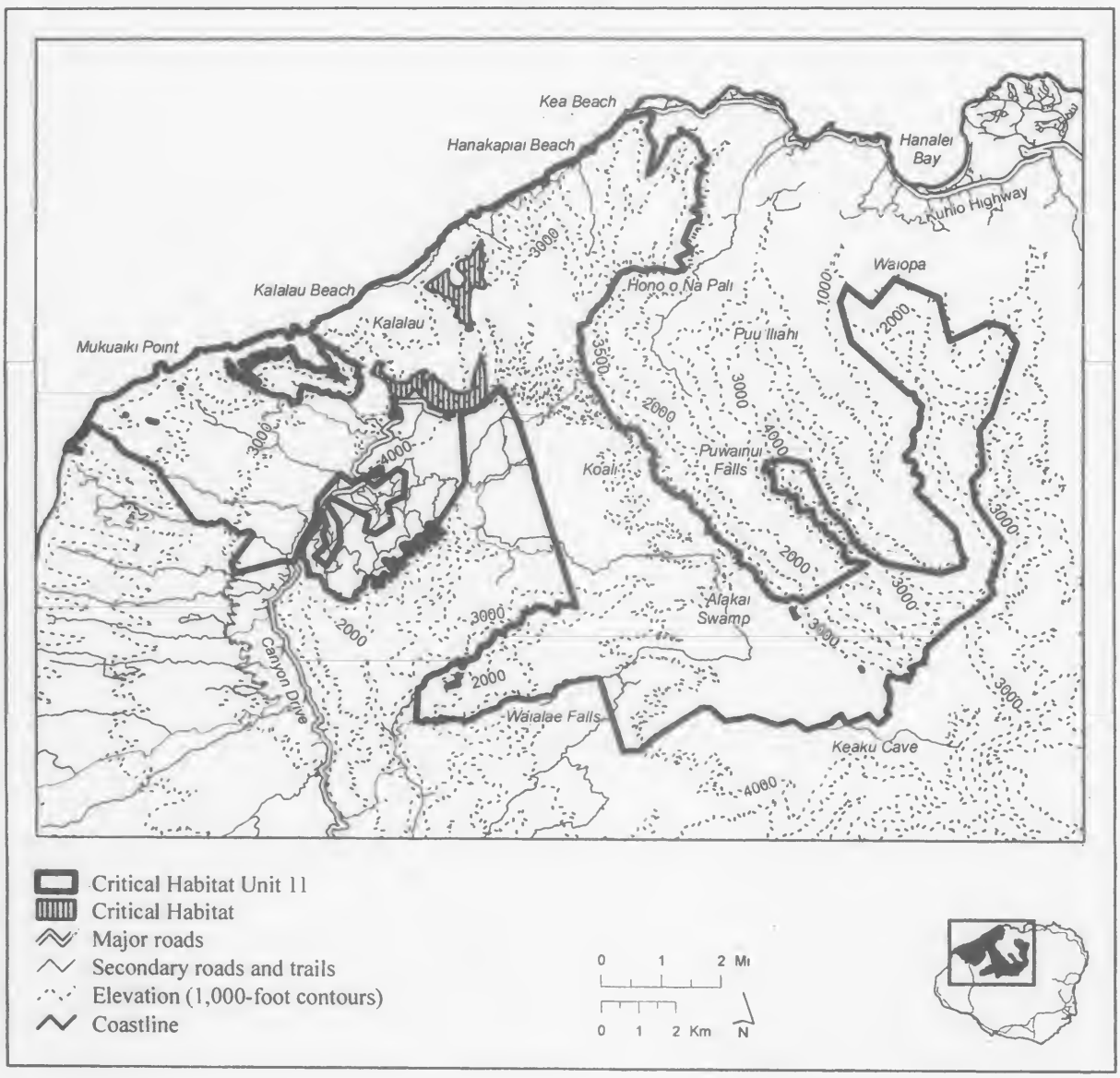
(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 11–*Lysimachia scopulensis*–a, Kauai 11–*Schiedea attenuata*–a, and Kauai 11–*Stenogyne kealiae*–b (see paragraphs (a)(1)(ccxxxvii), (a)(1)(cccviii), and (a)(1)(cccxxviii), respectively, of this section).

(B) Note: Map 67a follows:

Map 67a

Kauai 11–*Chamaesyce eleanoriae*–c, Kauai 11–*Lysimachia scopulensis*–a, Kauai 11–*Schiedea attenuata*–a, Kauai 11–*Stenogyne kealiae*–b

Dry Cliff



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(cxxxix) Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–d (1,060 ha; 2,618 ac)

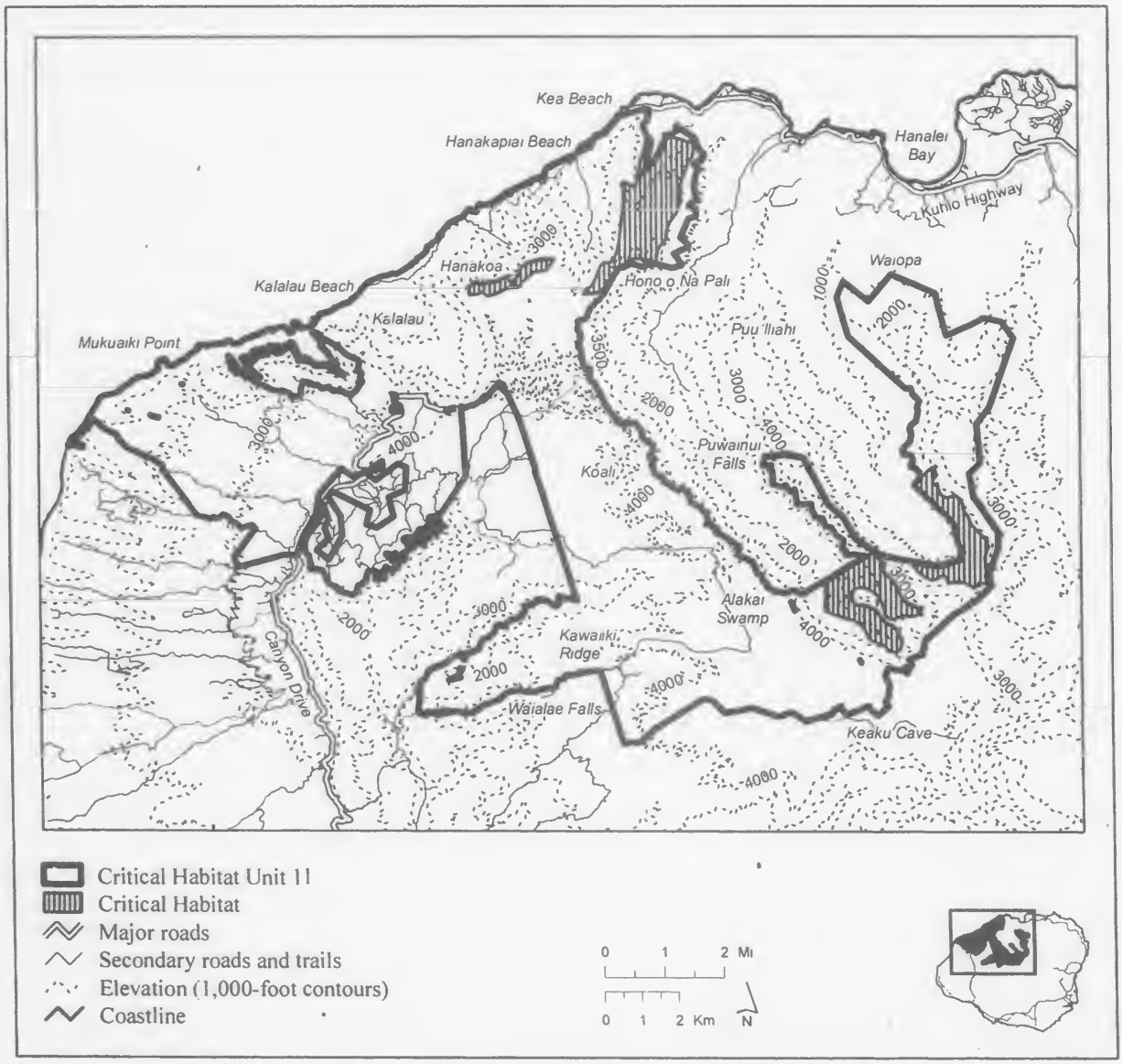
(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 11–*Chamaesyce remyi* var. *remyi*–h, Kauai 11–*Charpentiera densiflora*–d, Kauai 11–*Cyanea eleeleensis*–b, Kauai 11–*Cyanea kolekoleensis*–b, Kauai 11–*Cyanea kuhihewa*–b, Kauai 11–*Cyrtandra oenobarba*–d, Kauai 11–*Dubautia imbricata* ssp. *imbricata*–b, Kauai 11–*Labordia helleri*–f, Kauai 11–*Melicope paniculata*–b, Kauai 11–*Melicope puberula*–d, Kauai 11–*Phyllostegia renovans*–d, Kauai 11–*Platydesma rostrata*–h, Kauai 11–*Stenogyne kealiae*–c, and Kauai 11–*Tetraplasandra bisattenuata*–d (see paragraphs (a)(1)(cxliii), (a)(1)(cxlvii), (a)(1)(cl), (a)(1)(cli), (a)(1)(clii), (a)(1)(clxii), (a)(1)(clxxvii), (a)(1)(ccxxiii), (a)(1)(ccxlvii), (a)(1)(ccxlix), (a)(1)(cclxvi), (a)(1)(cclxxviii), (a)(1)(cccxxix), and (a)(1)(cccxxxii), respectively, of this section).

(B) Note: Map 70a follows:

Map 70a

Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–d, Kauai 11–*Chamaesyce remyi* var. *remyi*–h, Kauai 11–*Charpentiera densiflora*–d, Kauai 11–*Cyanea eleeleensis*–b, Kauai 11–*Cyanea kolekoleensis*–b, Kauai 11–*Cyanea kuhihewa*–b, Kauai 11–*Cyrtandra oenobarba*–d, Kauai 11–*Dubautia imbricata* ssp. *imbricata*–b, Kauai 11–*Labordia helleri*–f, Kauai 11–*Melicope paniculata*–b, Kauai 11–*Melicope puberula*–d, Kauai 11–*Phyllostegia renovans*–d, Kauai 11–*Platydesma rostrata*–h, Kauai 11–*Stenogyne kealiae*–c, Kauai 11–*Tetraplasandra bisattenuata*–d

Lowland Wet



(cxl) Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–e (77 ha; 190 ac)

(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 11–*Chamaesyce remyi* var. *remyi*–i, Kauai 11–*Cyanea dolichopoda*–c, Kauai 11–*Cyrtandra oenobarba*–e, Kauai 11–*Cyrtandra paliku*–c, Kauai 11–

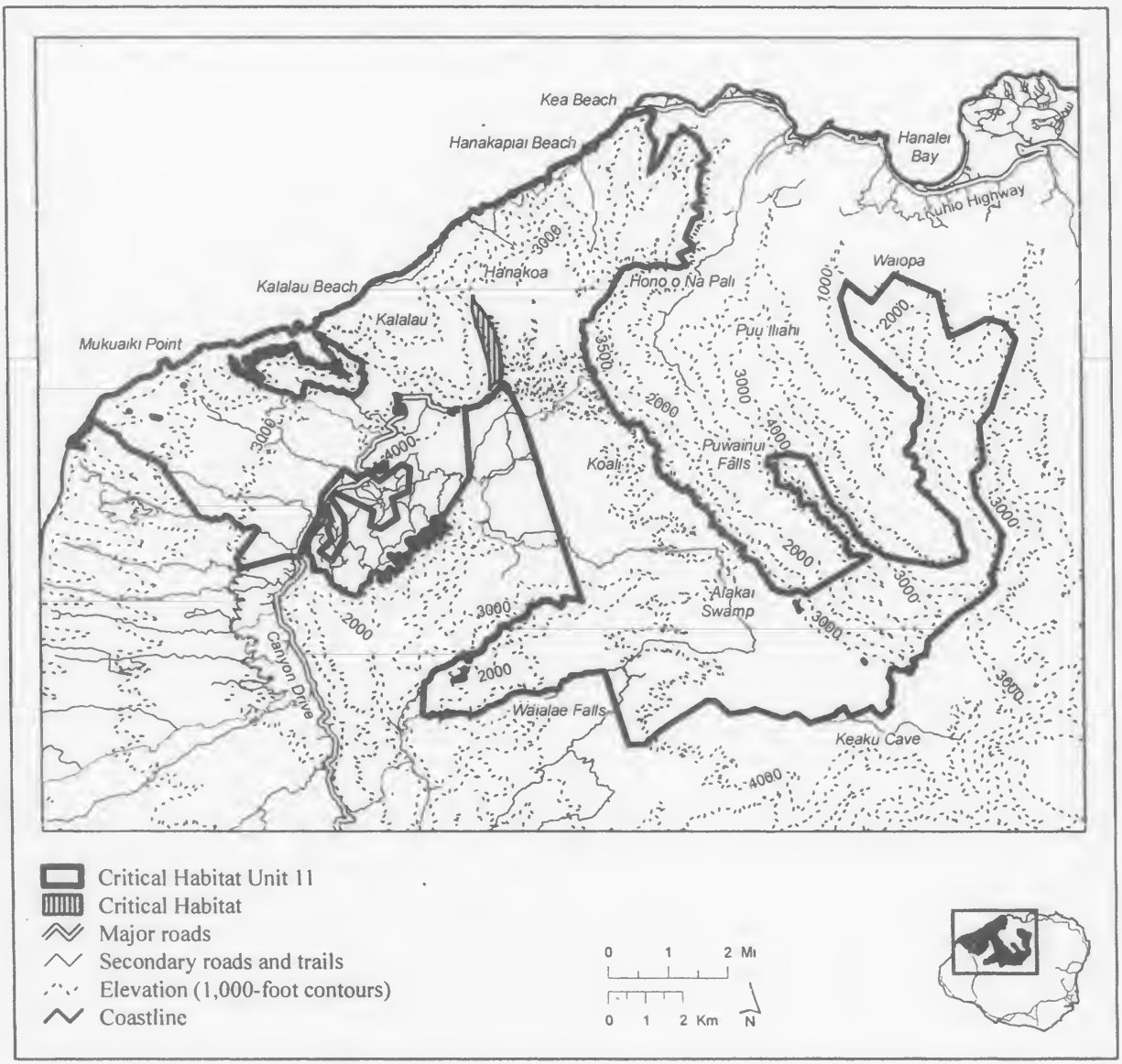
Dubautia plantaginea ssp. *magnifolia*–c, Kauai 11–*Lysimachia iniki*–c, Kauai 11–*Lysimachia pendens*–c, Kauai 11–*Lysimachia venosa*–c, and Kauai 11–*Platydesma rostrata*–i (see paragraphs (a)(1)(cxliv), (a)(1)(cxlix), (a)(1)(clxiii), (a)(1)(clxiv), (a)(1)(clxxxiii), (a)(1)(ccxxxv), (a)(1)(ccxxxvi), (a)(1)(ccxxxviii), and (a)(1)(cclxxix), respectively, of this section).

(B) Note: Map 70b follows:

Map 70b

Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–e, Kauai 11–*Chamaesyce remyi* var. *remyi*–i, Kauai 11–*Cyanea dolichopoda*–c, Kauai 11–*Cyrtandra oenobarba*–e, Kauai 11–*Cyrtandra paliku*–c, Kauai 11–*Dubautia plantaginea* ssp. *magnifolia*–c, Kauai 11–*Lysimachia iniki*–c, Kauai 11–*Lysimachia pendens*–c, Kauai 11–*Lysimachia venosa*–c, Kauai 11–*Platydesma rostrata*–i

Wet Cliff



(cxli) Kauai 11–*Chamaesyce remyi* var. *remyi*–f (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(cxlii) Kauai 11–*Chamaesyce remyi* var. *remyi*–g (1,048 ha; 2,591 ac)

(A) See paragraph (a)(1)(cxxxii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxii)(B) of this section for the map of this unit.

(cxliii) Kauai 11–*Chamaesyce remyi* var. *remyi*–h (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

(cxliv) Kauai 11–*Chamaesyce remyi* var. *remyi*–i (77 ha; 190 ac)

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(cxlv) Kauai 11–*Chamaesyce remyi* var. *remyi*–j (1,145 ha; 2,830 ac)

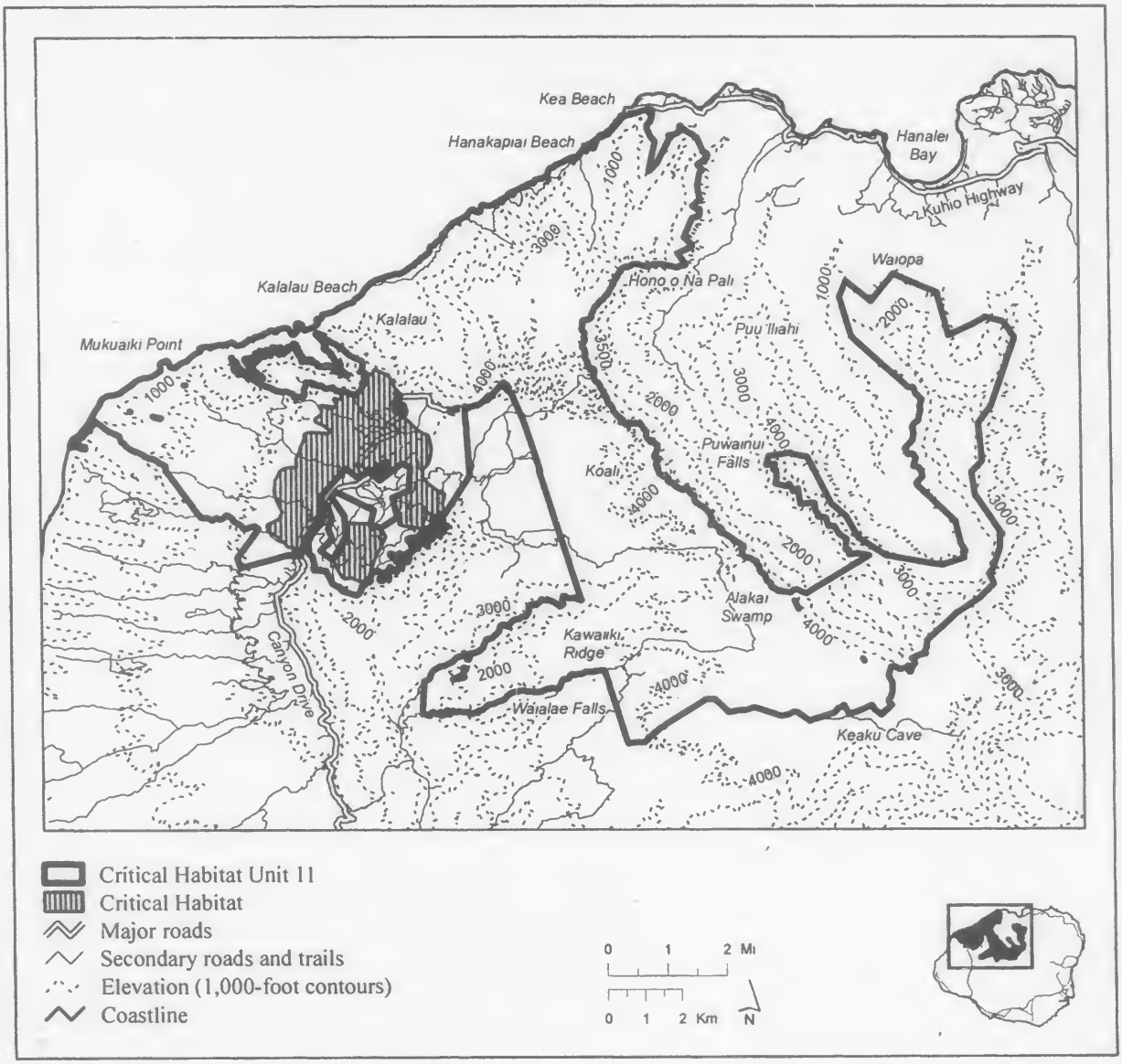
(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 11–*Diellia mannii*–a, Kauai 11–*Labordia helleri*–g, Kauai 11–*Myrsine knudsenii*–a, Kauai 11–*Myrsine mezii*–c, Kauai 11–*Platydesma rostrata*–j, Kauai 11–*Psychotria grandiflora*–c, Kauai 11–*Stenogyne kealiae*–d, and Kauai 11–*Tetraplasandra flynnii*–c (see paragraphs (a)(1)(clxxi), (a)(1)(ccxxiv), (a)(1)(cclii), (a)(1)(cclviii), (a)(1)(cclxxx), (a)(1)(ccxc), (a)(1)(cccxxx), and (a)(1)(cccxxxiv), respectively, of this section).

(B) Note: Map 70c follows:

Map 70c

Kauai 11–*Chamaesyce remyi* var. *remyi*–j, Kauai 11–*Diellia mannii*–a, Kauai 11–*Labordia helleri*–g, Kauai 11–*Myrsine knudsenii*–a, Kauai 11–*Myrsine mezii*–c, Kauai 11–*Platydesma rostrata*–j, Kauai 11–*Psychotria grandiflora*–c, Kauai 11–*Stenogyne kealiae*–d, Kauai 11–*Tetraplasandra flynnii*–c

Montane Mesic



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(cxlvi) Kauai 11–*Charpentiera densiflora*–c (1,048 ha; 2,591 ac)

(A) See paragraph (a)(1)(cxxxii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxii)(B) of this section for the map of this unit.

(cxlvii) Kauai 11–*Charpentiera densiflora*–d (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

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(cxlix) Kauai 11–*Cyanea dolichopoda*–c (77 ha; 190 ac)

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(cl) Kauai 11–*Cyanea eleeleensis*–b (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

(cli) Kauai 11–*Cyanea kolekoleensis*–b (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

(clii) Kauai 11–*Cyanea kuhihewa*–b (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

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(clxii) Kauai 11–*Cyrtandra oenobarba*–d (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

(clxiii) Kauai 11–*Cyrtandra oenobarba*–e (77 ha; 190 ac)

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(clxiv) Kauai 11–*Cyrtandra paliku*–c (77 ha; 190 ac)

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

* * * * *

(clxxi) Kauai 11–*Diellia mannii*–a (1,145 ha; 2,830 ac)

(A) See paragraph (a)(1)(cxlv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlv)(B) of this section for the map of this unit.

* * * * *

(clxxv) Kauai 11–*Doryopteris angelica*–b (1,048 ha; 2,591ac)

(A) See paragraph (a)(1)(cxxxii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxii)(B) of this section for the map of this unit.

(clxxvi) Kauai 11–*Dryopteris crinalis* var. *podosorus*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(clxxvii) Kauai 11–*Dubautia imbricata* ssp. *imbricata*–b (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

(clxxviii) Kauai 11–*Dubautia kalalauensis*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(clxxix) Kauai 11–*Dubautia kenwoodii*–b (1,048 ha; 2,591 ac)

(A) See paragraph (a)(1)(cxxxii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxii)(B) of this section for the map of this unit.

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(clxxxiii) Kauai 11–*Dubautia plantaginea* ssp. *magnifolia*–c (77 ha; 190 ac)

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(clxxxiv) Kauai 11–*Dubautia waialealae*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

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(cxcviii) Kauai 11–*Geranium kauaiense*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

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(ccxv) Kauai 11–*Keysseria erici*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(ccxvi) Kauai 11–*Keysseria helenae*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

* * * * *

(ccxxi) Kauai 11–*Labordia helleri*–d (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(ccxxii) Kauai 11–*Labordia helleri*–e (1,048 ha; 2,591 ac)

(A) See paragraph (a)(1)(cxxxii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxii)(B) of this section for the map of this unit.

(ccxxiii) Kauai 11–*Labordia helleri*–f (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

(ccxxiv) Kauai 11–*Labordia helleri*–g (1,145 ha; 2,830 ac)

(A) See paragraph (a)(1)(cxlv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlv)(B) of this section for the map of this unit.

* * * * *

(ccxxviii) Kauai 11–*Labordia pumila*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

* * * * *

(ccxxxiv) Kauai 11–*Lysimachia daphnoides*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(ccxxxv) Kauai 11–*Lysimachia iniki*–c (77 ha; 190 ac)

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(ccxxxvi) Kauai 11–*Lysimachia pendens*–c (77 ha; 190 ac)

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(ccxxxvii) Kauai 11–*Lysimachia scopulensis*–a (288 ha; 712 ac)

(A) See paragraph (a)(1)(cxxxv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxv)(B) of this section for the map of this unit.

(ccxxxviii) Kauai 11– *Lysimachia venosa*–c (77 ha; 190 ac)

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

* * * * *

(ccxl) Kauai 11–*Melicope degeneri*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

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(ccxlvii) Kauai 11–*Melicope paniculata*–b (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

(ccxlviii) Kauai 11–*Melicope puberula*–c (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(ccxlix) Kauai 11–*Melicope puberula*–d (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

* * * * *

(cclii) Kauai 11–*Myrsine knudsenii*–a (1,145 ha; 2,830 ac)

(A) See paragraph (a)(1)(cxlv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlv)(B) of this section for the map of this unit.

* * * * *

(cclvii) Kauai 11–*Myrsine mezii*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(cclviii) Kauai 11–*Myrsine mezii*–c (1,145 ha; 2,830 ac)

(A) See paragraph (a)(1)(cxlv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlv)(B) of this section for the map of this unit.

* * * * *

(cclxv) Kauai 11–*Phyllostegia renovans*–c (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(cclxvi) Kauai 11–*Phyllostegia renovans*–d (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

* * * * *

(cclxxi) Kauai 11–*Pittosporum napaliense*–b (1,048 ha; 2,591 ac)

(A) See paragraph (a)(1)(cxxxii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxii)(B) of this section for the map of this unit.

* * * * *

(cclxxvi) Kauai 11–*Platydesma rostrata*–f (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(cclxxvii) Kauai 11–*Platydesma rostrata*–g (1,048 ha; 2,591ac)

(A) See paragraph (a)(1)(cxxxii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxii)(B) of this section for the map of this unit.

(cclxxviii) Kauai 11–*Platydesma rostrata*–h (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

(cclxxix) Kauai 11–*Platydesma rostrata*–i (77 ha; 190 ac)

(A) See paragraph (a)(1)(cxl)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxl)(B) of this section for the map of this unit.

(cclxxx) Kauai 11–*Platydesma rostrata*–j (1,145 ha; 2,830 ac)

(A) See paragraph (a)(1)(cxlv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlv)(B) of this section for the map of this unit.

* * * * *

(cclxxxix) Kauai 11–*Psychotria grandiflora*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(ccxc) Kauai 11–*Psychotria grandiflora*–c (1,145 ha; 2,830 ac)

(A) See paragraph (a)(1)(cxlv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlv)(B) of this section for the map of this unit.

(ccxci) Kauai 11–*Psychotria hobdyi*–b (1,048 ha; 2,591ac)

(A) See paragraph (a)(1)(cxxxii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxii)(B) of this section for the map of this unit.

* * * * *

(cccviii) Kauai 11–*Schiedea attenuata*–a (288 ha; 712 ac)

(A) See paragraph (a)(1)(cxxxv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxv)(B) of this section for the map of this unit.

* * * * *

(cccxxviii) Kauai 11–*Stenogyne kealiae*–b (288 ha; 712 ac)

(A) See paragraph (a)(1)(cxxxv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxv)(B) of this section for the map of this unit.

(cccxxix) Kauai 11–*Stenogyne kealiae*–c (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

(cccxxx) Kauai 11–*Stenogyne kealiae*–d (1,145 ha; 2,830 ac)

(A) See paragraph (a)(1)(cxlv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlv)(B) of this section for the map of this unit.

(cccxxxi) Kauai 11–*Tetraplasandra bisattenuata*–c (1,048 ha; 2,591 ac)

(A) See paragraph (a)(1)(cxxxii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxii)(B) of this section for the map of this unit.

(cccxxxii) Kauai 11–*Tetraplasandra bisattenuata*–d (1,060 ha; 2,618 ac)

(A) See paragraph (a)(1)(cxxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxxix)(B) of this section for the map of this unit.

(cccxxxiii) Kauai 11–*Tetraplasandra flynnii*–b (5,705 ha; 14,096 ac)

(A) See paragraph (a)(1)(cxxix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxxix)(B) of this section for the map of this unit.

(cccxxxiv) Kauai 11–*Tetraplasandra flynnii*–c (1,145 ha; 2,830 ac)

(A) See paragraph (a)(1)(cxlv)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cxlv)(B) of this section for the map of this unit.

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(cccxlix) Kauai 18—*Astelia waialealae*—c (452 ha; 1,116ac)

(A) [Reserve for textual description of unit.} This unit is also critical habitat for Kauai 18–*Chamaesyce remyi* var. *remyi*–k, Kauai 18–*Dryopteris crinalis* var. *podosorus*–c, Kauai 18–*Dubautia kalalauensis*–c, Kauai 18–*Dubautia waialealae*–c, Kauai 18–*Geranium kauaiense*–c, Kauai 18–*Keysseria erici*–c, Kauai 18–*Keysseria helenae*–c, Kauai 18–*Labordia helleri*–h, Kauai 18–*Labordia pumila*–c, Kauai 18–*Lysimachia daphnoides*–c, Kauai 18–*Melicope degeneri*–c, Kauai 18–*Melicope puberula*–e, Kauai 18–*Myrsine mezii*–d, Kauai 18–*Phyllostegia renovans*–e, Kauai 18–*Platydesma rostrata*–k, Kauai 18–*Psychotria grandiflora*–d, and Kauai 18–*Tetraplasandra flynnii*–d (see paragraphs (a)(1)(cccl), (a)(1)(cccli), (a)(1)(ccclii), (a)(1)(cccliii), (a)(1)(ccccliv), (a)(1)(ccclv), (a)(1)(ccclvi), (a)(1)(ccclvii), (a)(1)(ccclviii), (a)(1)(ccclix), (a)(1)(ccclx), (a)(1)(ccclxi), (a)(1)(ccclxii), (a)(1)(ccclxiii), (a)(1)(ccclxiv), (a)(1)(ccclxv), and (a)(1)(ccclxvi), respectively, of this section).

(B) Note: Map 217a follows:

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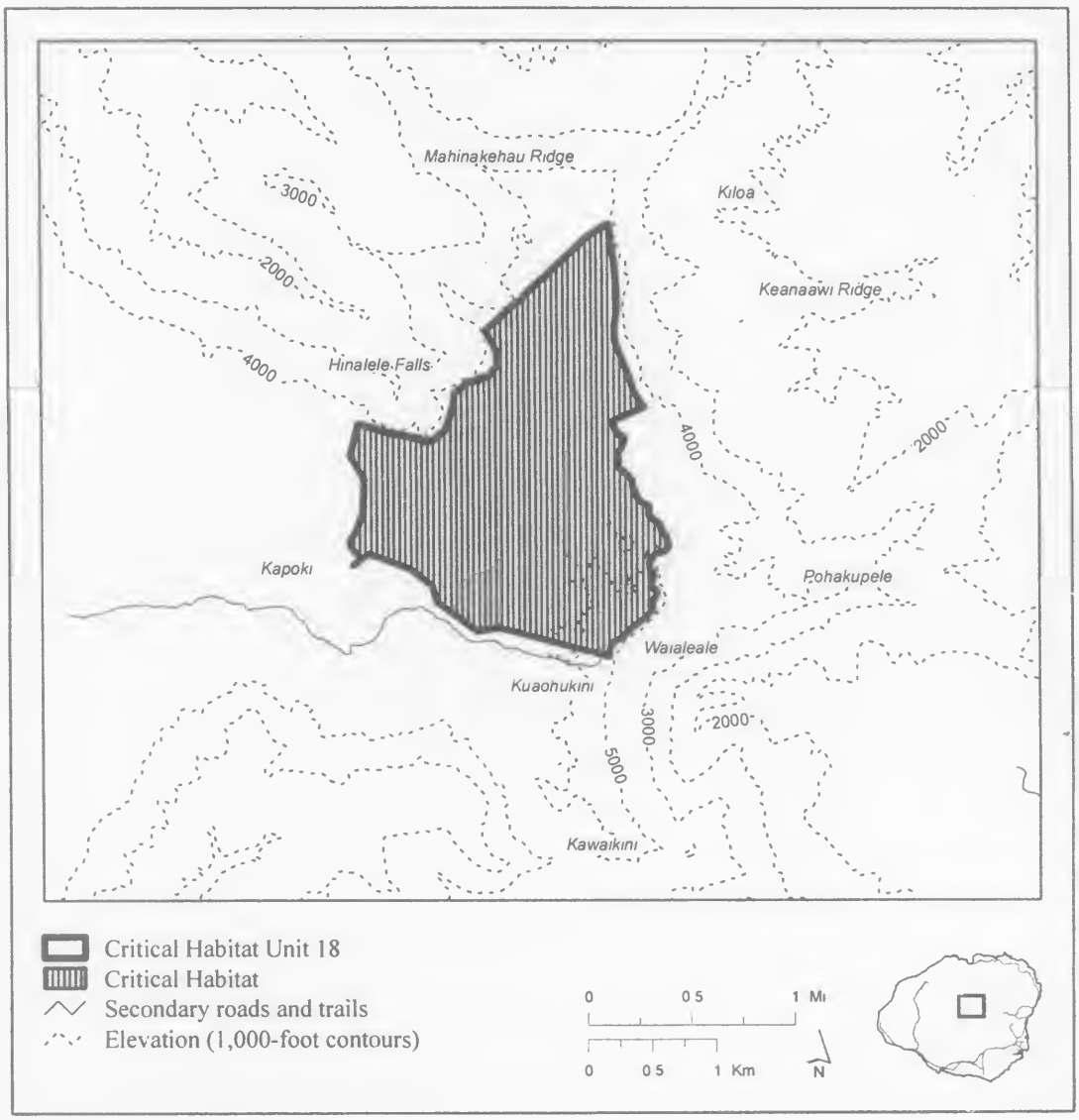
Map 217a

Kauai 18–*Astelia waialealae*–c, Kauai 18–*Chamaesyce remyi* var. *remyi*–k, Kauai 18–*Dryopteris crinalis* var. *podosorus*–c, Kauai 18–*Dubautia kalalauensis*–c, Kauai 18–*Dubautia waialealae*–c, Kauai 18–*Geranium kauaiense*–c, Kauai 18–*Keysseria erici*–c, Kauai 18–*Keysseria helenae*–c, Kauai 18–*Labordia helleri*–h, Kauai 18–*Labordia pumila*–c, Kauai 18–*Lysimachia daphnoides*–c, Kauai 18–*Melicope degeneri*–c, Kauai 18–*Melicope puberula*–e, Kauai 18–*Myrsine mezii*–d, Kauai 18–*Phyllostegia renovans*–e, Kauai 18–*Platydesma rostrata*–k, Kauai 18–*Psychotria grandiflora*–d, Kauai 18–*Tetraplasandra flynnii*–d

Montane Wet



BILLING CODE 4310–55–C

(cccl) Kauai 18–*Chamaesyce remyi* var. *remyi*–k (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(cccli) Kauai 18–*Dryopteris crinalis* var. *podosorus*–c (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclii) Kauai 18–*Dubautia kalalauensis*–c (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccccliii) Kauai 18–*Dubautia waialealae*–c (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccccliv) Kauai 18–*Geranium kauaiense*–c (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclv) Kauai 18–*Keysseria erici*–c (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclvi) Kauai 18–*Keysseria helenae*–c (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclvii) Kauai 18–*Labordia helleri*–h (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclviii) Kauai 18–*Labordia pumila*–c (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclix) Kauai 18–*Lysimachia daphnoides*–c (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclx) Kauai 18–*Melicope degeneri*–c (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclxi) Kauai 18–*Melicope puberula*–e (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclxii) Kauai 18–*Myrsine mezii*–d (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclxiii) Kauai 18–*Phyllostegia renovans*–e (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclxiv) Kauai 18–*Platydesma rostrata*–k (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclxv) Kauai 18–*Psychotria grandiflora*–d (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclxvi) Kauai 18–*Tetraplasandra flynnii*–d (452 ha; 1,116 ac)

(A) See paragraph (a)(1)(cccxlix)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cccxlix)(B) of this section for the map of this unit.

(ccclxvii) Kauai 19—*Chamaesyce remyi* var. *kauaiensis*–f (120 ha; 296 ac)

(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 19–*Chamaesyce remyi* var. *remyi*–l, Kauai 19–*Cyanea dolichopoda*–d, Kauai 19–*Cyrtandra oenobarba*–f, Kauai 19–*Cyrtandra paliku*–d, Kauai 19–*Dubautia plantaginea* ssp. *magnifolia*–d, Kauai 19–*Lysimachia iniki*–d, Kauai 19–*Lysimachia pendens*–d, Kauai 19–*Lysimachia venosa*–d, and Kauai 19–*Platydesma rostrata*–l (see paragraphs (a)(1)(ccclxviii), (a)(1)(ccclxix), (a)(1)(ccclxx), (a)(1)(ccclxxi), (a)(1)(ccclxxii), (a)(1)(ccclxxiii), (a)(1)(ccclxxiv), (a)(1)(ccclxxv), and (a)(1)(ccclxxvi), respectively, of this section).

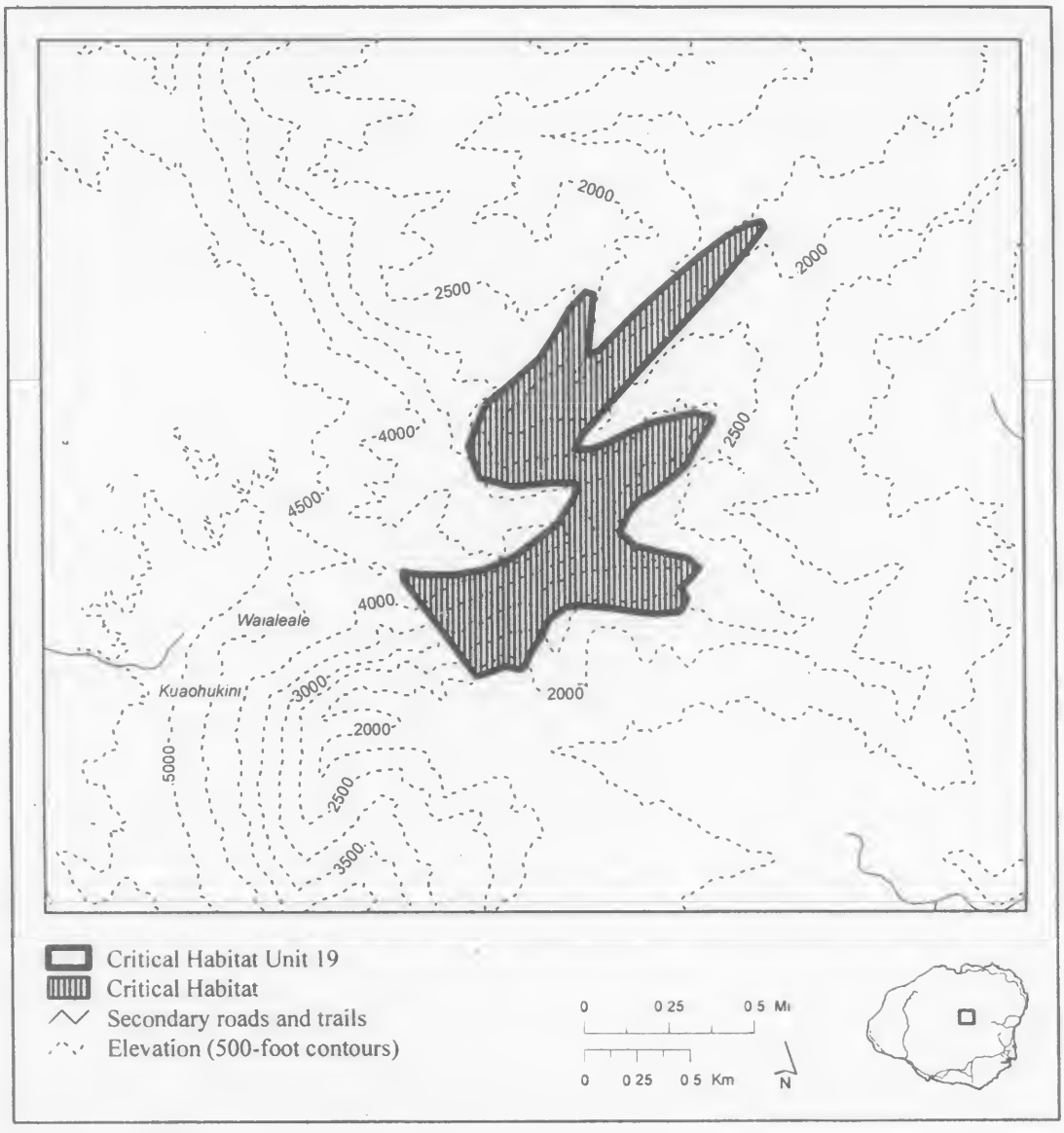
(B) Note: Map 217b follows:

BILLING CODE 4310–55–S

Map 217b

Kauai 19–*Chamaesyce remyi* var. *kauaiensis*–f, Kauai 19–*Chamaesyce remyi* var. *remyi*–l, Kauai 19–*Cyanea dolichopoda*–d, Kauai 19–*Cyrtandra oenobarba*–f, Kauai 19–*Cyrtandra paliku*–d, Kauai 19–*Dubautia plantaginea* ssp. *magnifolia*–d, Kauai 19–*Lysimachia iniki*–d, Kauai 19–*Lysimachia pendens*–d, Kauai 19–*Lysimachia venosa*–d, Kauai 19–*Platydesma rostrata*–l

Wet Cliff



(ccclxviii) Kauai 19–*Chamaesyce remyi* var. *remyi*–l (120 ha; 296 ac)

(A) See paragraph (a)(1)(ccclxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxvii)(B) of this section for the map of this unit.

(ccclxix) Kauai 19–*Cyanea dolichopoda*–d (120 ha; 296 ac)

(A) See paragraph (a)(1)(ccclxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxvii)(B) of this section for the map of this unit.

(ccclxx) Kauai 19–*Cyrtandra oenobarba*–f (120 ha; 296 ac)

(A) See paragraph (a)(1)(ccclxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxvii)(B) of this section for the map of this unit.

(ccclxxi) Kauai 19–*Cyrtandra paliku*–d (120 ha; 296 ac)

(A) See paragraph (a)(1)(ccclxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxvii)(B) of this section for the map of this unit.

(ccclxxii) Kauai 19–*Dubautia plantaginea* ssp. *magnifolia*–d (120 ha; 296 ac)

(A) See paragraph (a)(1)(ccclxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxvii)(B) of this section for the map of this unit.

(ccclxxiii) Kauai 19–*Lysimachia iniki*–d (120 ha; 296 ac)

(A) See paragraph (a)(1)(ccclxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxvii)(B) of this section for the map of this unit.

(ccclxxiv) Kauai 19–*Lysimachia pendens*–d (120 ha; 296 ac)

(A) See paragraph (a)(1)(ccclxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxvii)(B) of this section for the map of this unit.

(ccclxxv) Kauai 19– *Lysimachia venosa*–d (120 ha; 296 ac)

(A) See paragraph (a)(1)(ccclxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxvii)(B) of this section for the map of this unit.

(ccclxxvi) Kauai 19–*Platydesma rostrata*–l (120 ha; 296 ac)

(A) See paragraph (a)(1)(ccclxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxvii)(B) of this section for the map of this unit.

(ccclxxvii) Kauai 20–*Chamaesyce remyi* var. *kauaiensis*–g (9 ha; 23 ac)

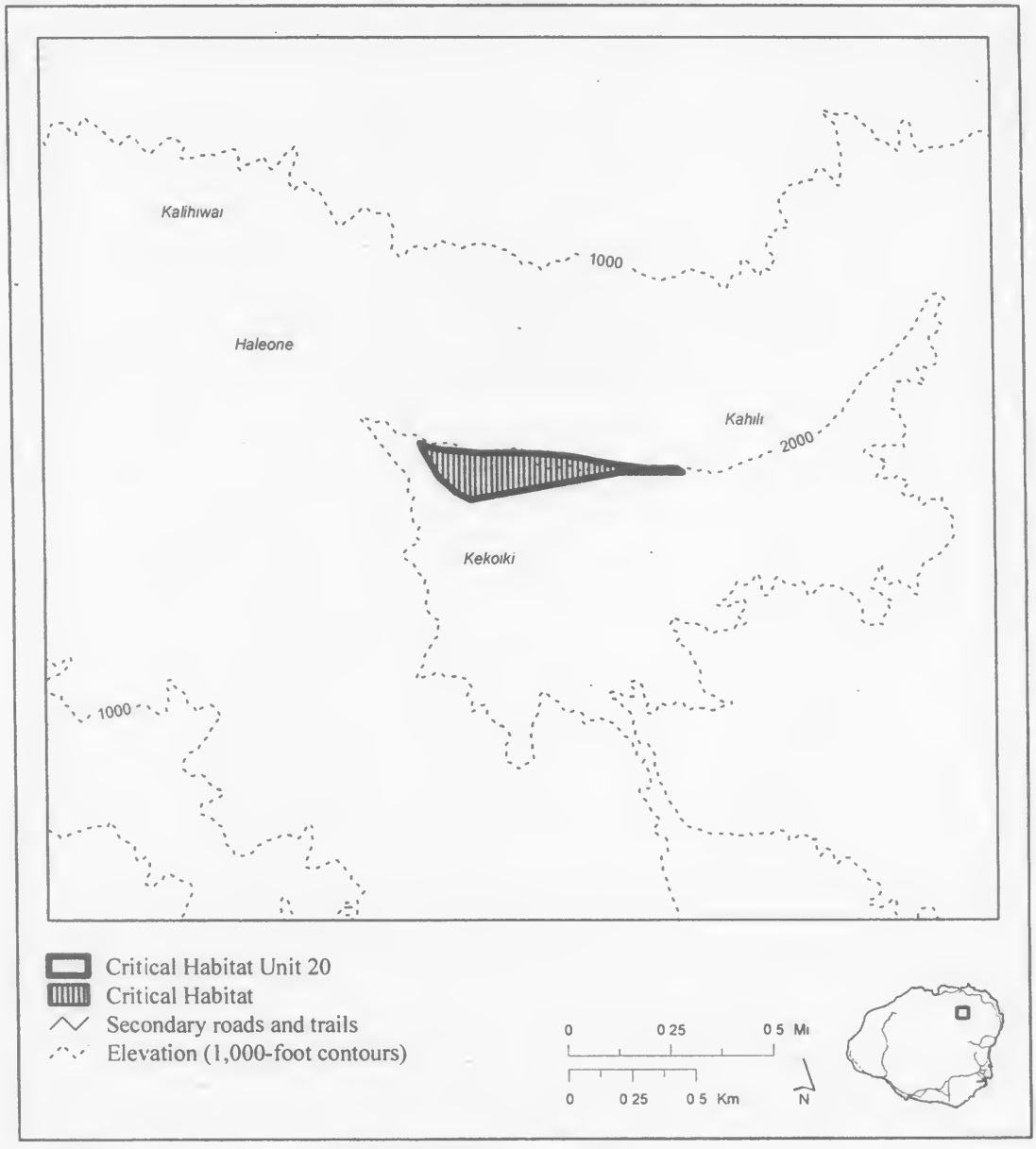
(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 20–*Chamaesyce remyi* var. *remyi*–m, Kauai 20–*Cyanea dolichopoda*–e, Kauai 20–*Cyrtandra oenobarba*–g, Kauai 20–*Cyrtandra paliku*–e, Kauai 20–*Dubautia plantaginea* ssp. *magnifolia*–e, Kauai 20–*Lysimachia iniki*–e, Kauai 20–*Lysimachia pendens*–e, Kauai 20–*Lysimachia venosa*–e, and Kauai 20–*Platydesma rostrata*–m (see paragraphs (a)(1)(ccclxxviii), (a)(1)(ccclxxix), (a)(1)(ccclxxx), (a)(1)(ccclxxxi), (a)(1)(ccclxxxii), (a)(1)(ccclxxxiii), (a)(1)(ccclxxxiv), (a)(1)(ccclxxxv), and (a)(1)(ccclxxxvi), respectively, of this section).

(B) Note: Map 217c follows:

Map 217c

Kauai 20–*Chamaesyce remyi* var. *kauaiensis*–g, Kauai 20–*Chamaesyce remyi* var. *remyi*–m, Kauai 20–*Cyanea dolichopoda*–e, Kauai 20–*Cyrtandra oenobarba*–g, Kauai 20–*Cyrtandra paliku*–e, Kauai 20–*Dubautia plantaginea* ssp. *magnifolia*–e, Kauai 20–*Lysimachia iniki*–e, Kauai 20–*Lysimachia pendens*–e, Kauai 20–*Lysimachia venosa*–e, Kauai 20–*Platydesma rostrata*–m

Wet Cliff



(ccclxxviii) Kauai 20–*Chamaesyce remyi* var. *remyi*–m (9 ha; 23 ac)

(A) See paragraph (a)(1)(ccclxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxvii)(B) of this section for the map of this unit.

(ccclxxix) Kauai 20–*Cyanea dolichopoda*–e (9 ha; 23 ac)

(A) See paragraph (a)(1)(ccclxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxvii)(B) of this section for the map of this unit.

(ccclxxx) Kauai 20–*Cyrtandra oenobarba*–g (9 ha; 23 ac)

(A) See paragraph (a)(1)(ccclxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxvii)(B) of this section for the map of this unit.

(ccclxxxi) Kauai 20–*Cyrtandra paliku*–e (9 ha; 23 ac)

(A) See paragraph (a)(1)(ccclxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxvii)(B) of this section for the map of this unit.

(ccclxxxii) Kauai 20–*Dubautia plantaginea* ssp. *magnifolia*–e (9 ha; 23 ac)

(A) See paragraph (a)(1)(ccclxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxvii)(B) of this section for the map of this unit.

(ccclxxxiii) Kauai 20–*Lysimachia iniki*–e (9 ha; 23 ac)

(A) See paragraph (a)(1)(ccclxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxvii)(B) of this section for the map of this unit.

(ccclxxxiv) Kauai 20–*Lysimachia pendens*–e (9 ha; 23 ac)

(A) See paragraph (a)(1)(ccclxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxvii)(B) of this section for the map of this unit.

(ccclxxxv) Kauai 20– *Lysimachia venosa*–e (9 ha; 23 ac)

(A) See paragraph (a)(1)(ccclxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxvii)(B) of this section for the map of this unit.

(ccclxxxvi) Kauai 20–*Platydesma rostrata*–m (9 ha; 23 ac)

(A) See paragraph (a)(1)(ccclxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxvii)(B) of this section for the map of this unit.

(ccclxxxvii) Kauai 21–*Chamaesyce remyi* var. *kauaiensis*–h (26 ha; 65 ac)

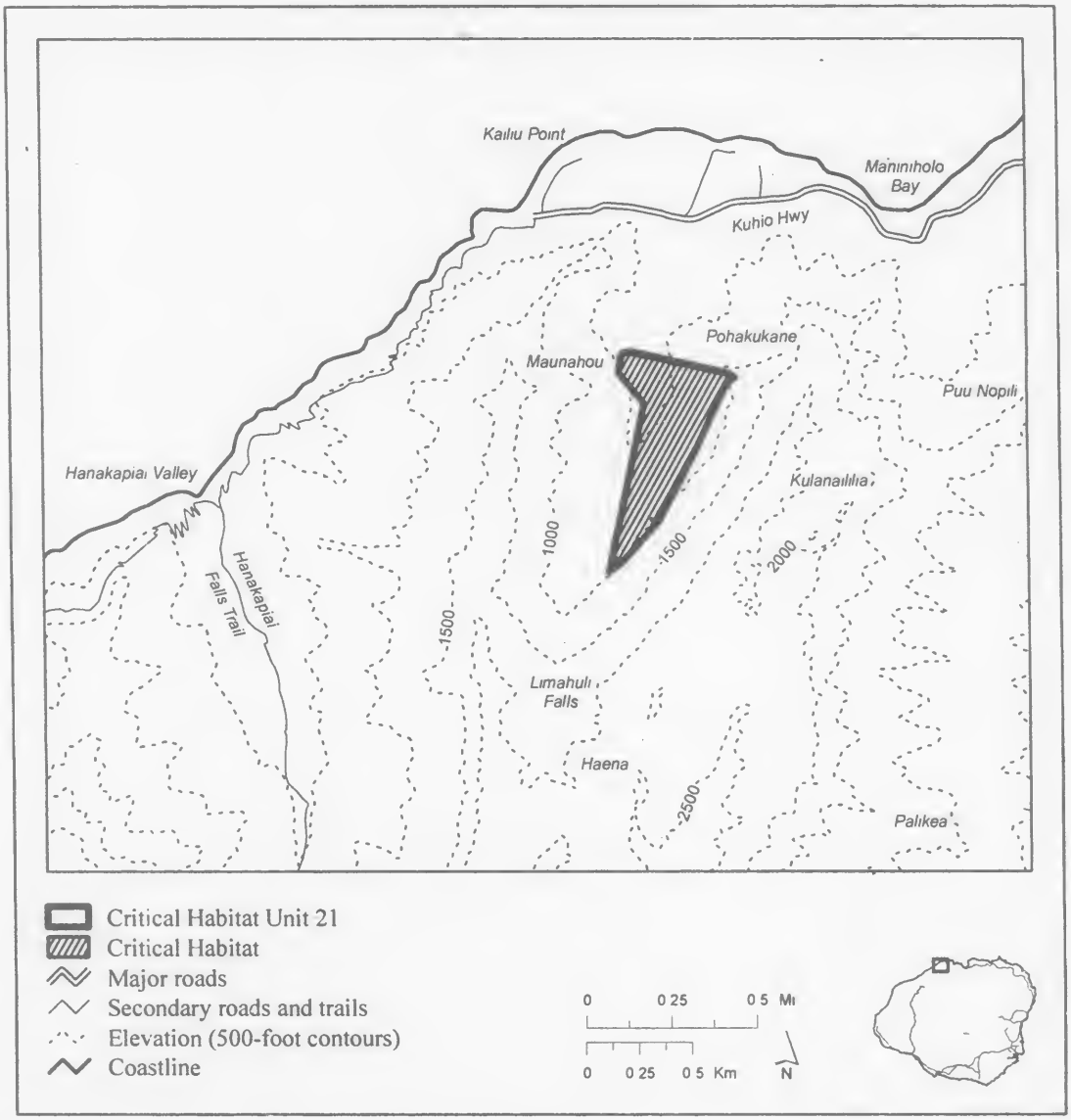
(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 21–*Chamaesyce remyi* var. *remyi*–n, Kauai 21–*Charpentiera densiflora*–e, Kauai 21–*Cyanea eleeleensis*–c, Kauai 21–*Cyanea kolekoleensis*–c, Kauai 21–*Cyanea kuhihewa*–c, Kauai 21–*Cyrtandra oenobarba*–h, Kauai 21–*Dubautia imbricata* ssp. *imbricata*–c, Kauai 21–*Labordia helleri*–i, Kauai 21–*Melicope paniculata*–c, Kauai 21–*Melicope puberula*–f, Kauai 21–*Phyllostegia renovans*–f, Kauai 21–*Platydesma rostrata*–n, Kauai 21–*Stenogyne kealiae*–e, and Kauai 21–*Tetraplasandra bisattenuata*–e (see paragraphs (a)(1)(ccclxxxviii), (a)(1)(ccclxxxix), (a)(1)(cccxc), (a)(1)(cccxci), (a)(1)(cccxcii), (a)(1)(cccxciii), (a)(1)(cccxciv), (a)(1)(cccxcv), (a)(1)(cccxcvi), (a)(1)(cccxcvii), (a)(1)(cccxcviii), (a)(1)(cccxcix), (a)(1)(cd), and (a)(1)(cdi), respectively, of this section).

(B) Note: Map 217d follows:

Map 217d

Kauai 21–*Chamaesyce remyi* var. *kauaiensis*–h, Kauai 21–*Chamaesyce remyi* var. *remyi*–n, Kauai 21–*Charpentiera densiflora*–e, Kauai 21–*Cyanea eleeleensis*–c, Kauai 21–*Cyanea kolekoleensis*–c, Kauai 21–*Cyanea kuhihewa*–c, Kauai 21–*yrtandra oenobarba*–h, Kauai 21–*Dubautia imbricata* ssp. *imbricata*–c, Kauai 21–*Labordia helleri*–i, Kauai 21–*Melicope paniculata*–c, Kauai 21–*Melicope puberula*–f, Kauai 21–*Phyllostegia renovans*–f, Kauai 21–*Platydesma rostrata*–n, Kauai 21–*Stenogyne kealiae*–e, Kauai 21–*Tetraplasandra bisattenuata*–e

Lowland Wet



BILLING CODE 4310–55–C

(ccclxxxviii) Kauai 21–*Chamaesyce remyi* var. *remyi*–n (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(ccclxxxix) Kauai 21–*Charpentiera densiflora*–e (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxc) Kauai 21–*Cyanea eleeleensis*–c (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxci) Kauai 21–*Cyanea kolekoleensis*–c (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxcii) Kauai 21–*Cyanea kuhihewa*–c (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxciii) Kauai 21–*Cyrtandra oenobarba*–h (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxciv) Kauai 21–*Dubautia imbricata* ssp. *imbricata*–c (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxcv) Kauai 21–*Labordia helleri*–i (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxcvi) Kauai 21–*Melicope paniculata*–c (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxcvii) Kauai 21–*Melicope puberula*–f (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxcviii) Kauai 21–*Phyllostegia renovans*–f (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cccxcix) Kauai 21–*Platydesma rostrata*–n (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cd) Kauai 21–*Stenogyne kealiae*–e (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cdi) Kauai 21–*Tetraplasandra bisattenuata*–e (26 ha; 65 ac)

(A) See paragraph (a)(1)(ccclxxxvii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(ccclxxxvii)(B) of this section for the map of this unit.

(cdii) Kauai 22–*Chamaesyce remyi* var. *remyi*–o (3 ha; 8 ac)

(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 22–*Diellia mannii*–b, Kauai 22–*Labordia helleri*–j, Kauai 22–*Myrsine knudsenii*–b, Kauai 22–*Myrsine mezii*–e, Kauai 22–*Platydesma rostrata*–o, Kauai 22–*Psychotria grandiflora*–e, Kauai 22–*Stenogyne kealiae*–f, and Kauai 22–*Tetraplasandra flynnii*–e (see paragraphs (a)(1)(cdiii), (a)(1)(cdiv), (a)(1)(cdv), (a)(1)(cdvi), (a)(1)(cdvii), (a)(1)(cdviii), (a)(1)(cdix), and (a)(1)(cdx), respectively, of this section).

(B) Note: Map 217e follows:

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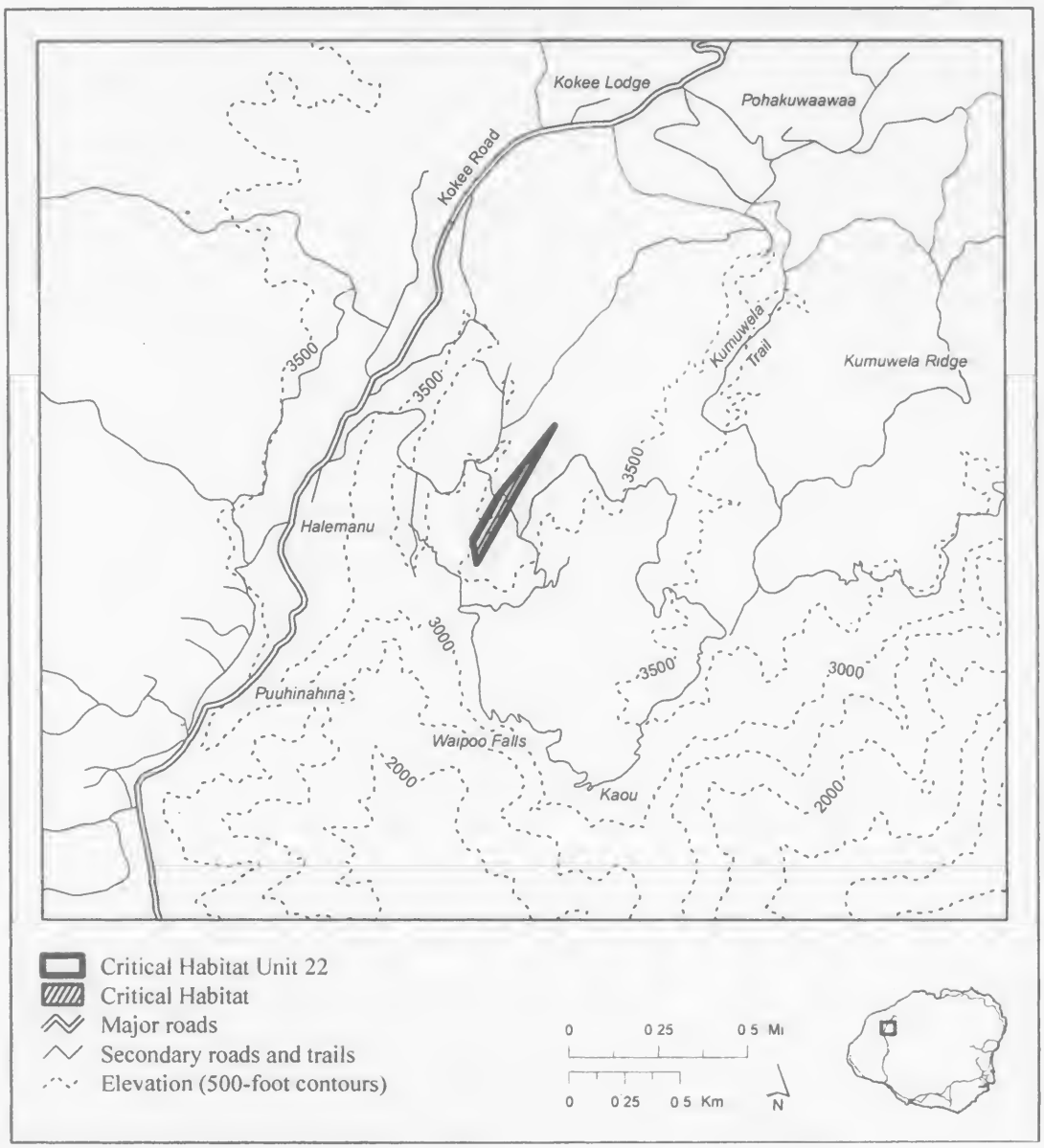
Map 217e

Kauai 22–*Chamaesyce remyi* var. *remyi*–o, Kauai 22–*Diellia mannii*–b, Kauai 22–*Labordia helleri*–j, Kauai 22–*Myrsine knudsenii*–b, Kauai 22–*Myrsine mezii*–e, Kauai 22–*Platydesma rostrata*–o, Kauai 22–*Psychotria grandiflora*–e, Kauai 22–*Stenogyne kealiae*–f, Kauai 22–*Tetraplasandra flynnii*–e

Montane Mesic



(cdiii) Kauai 22–*Diellia mannii*–b (3 ha; 8 ac)

(A) See paragraph (a)(1)(cdii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdii)(B) of this section for the map of this unit.

(cdiv) Kauai 22–*Labordia helleri*–j (3 ha; 8 ac)

(A) See paragraph (a)(1)(cdii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdii)(B) of this section for the map of this unit.

(cdv) Kauai 22–*Myrsine knudsenii*–b (3 ha; 8 ac)

(A) See paragraph (a)(1)(cdii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdii)(B) of this section for the map of this unit.

(cdvi) Kauai 22–*Myrsine mezii*–e (3 ha; 8 ac)

(A) See paragraph (a)(1)(cdii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdii)(B) of this section for the map of this unit.

(cdvii) Kauai 22–*Platydesma rostrata*–o (3 ha; 8 ac)

(A) See paragraph (a)(1)(cdii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdii)(B) of this section for the map of this unit.

(cdviii) Kauai 22–*Psychotria grandiflora*–e (3 ha; 8 ac)

(A) See paragraph (a)(1)(cdii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdii)(B) of this section for the map of this unit.

(cdix) Kauai 22–*Stenogyne kealiae*–f (3 ha; 8 ac)

(A) See paragraph (a)(1)(cdii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdii)(B) of this section for the map of this unit.

(cdx) Kauai 22–*Tetraplasandra flynnii*–e (3 ha; 8 ac)

(A) See paragraph (a)(1)(cdii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdii)(B) of this section for the map of this unit.

(cdxi) Kauai 23–*Chamaesyce remyi* var. *remyi*–p (56 ha; 138 ac)

(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 23–*Diellia mannii*–c, Kauai 23–*Labordia helleri*–k, Kauai 23–*Myrsine knudsenii*–c, Kauai 23–*Myrsine mezii*–f, Kauai 23–*Platydesma rostrata*–p, Kauai 23–*Psychotria grandiflora*–f, Kauai 23–*Stenogyne kealiae*–g, and Kauai 23–*Tetraplasandra flynnii*–f (see paragraphs (a)(1)(cdxii), (a)(1)(cdxiii), (a)(1)(cdxiv), (a)(1)(cdxv), (a)(1)(cdxvi), (a)(1)(cdxvii), (a)(1)(cdxviii), and (a)(1)(cdxix), respectively, of this section).

(B) Note: Map 217f follows:

Map 217f

Kauai 23–*Chamaesyce remyi* var. *remyi*–p, Kauai 23–*Diellia mannii*–c, Kauai 23–*Labordia helleri*–k, Kauai 23–*Myrsine knudsenii*–c, Kauai 23–*Myrsine mezii*–f, Kauai 23–*Platydesma rostrata*–p, Kauai 23–*Psychotria grandiflora*–f, Kauai 23–*Stenogyne kealiae*–g, Kauai 23–*Tetraplasandra flynnii*–f

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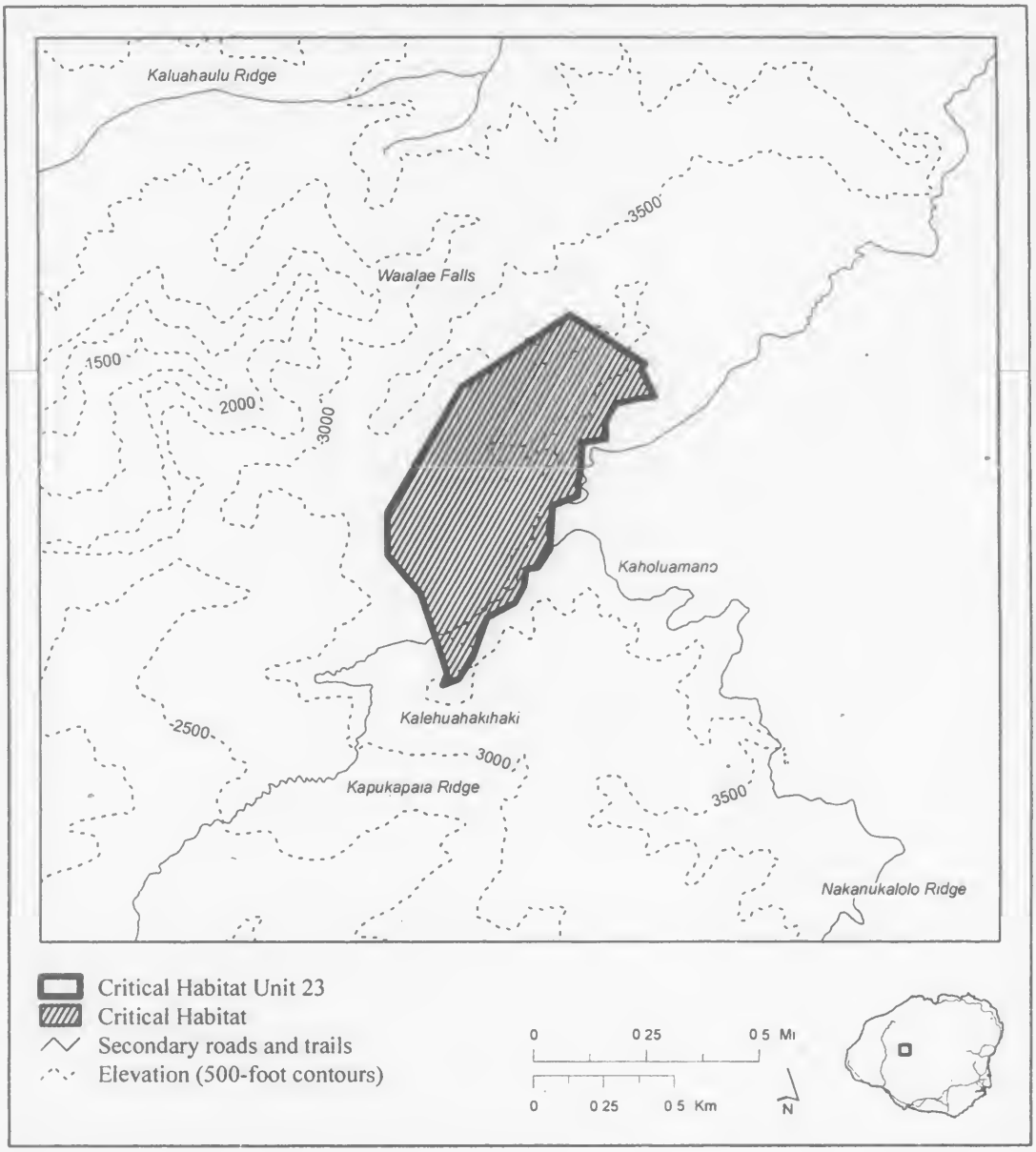

(cdxii) Kauai 23–*Diellia mannii*–c (56 ha; 138 ac)

(A) See paragraph (a)(1)(cdxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxi)(B) of this section for the map of this unit.

(cdxiii) Kauai 23–*Labordia helleri*–k (56 ha; 138 ac)

(A) See paragraph (a)(1)(cdxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxi)(B) of this section for the map of this unit.

(cdxiv) Kauai 23–*Myrsine knudsenii*–c (56 ha; 138 ac)

(A) See paragraph (a)(1)(cdxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxi)(B) of this section for the map of this unit.

(cdxv) Kauai 23–*Myrsine mezii*–f (56 ha; 138 ac)

(A) See paragraph (a)(1)(cdxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxi)(B) of this section for the map of this unit.

(cdxvi) Kauai 23–*Platydesma rostrata*–p (56 ha; 138 ac)

(A) See paragraph (a)(1)(cdxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxi)(B) of this section for the map of this unit.

(cdxvii) Kauai 23–*Psychotria grandiflora*–f (56 ha; 138 ac)

(A) See paragraph (a)(1)(cdxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxi)(B) of this section for the map of this unit.

(cdxviii) Kauai 23–*Stenogyne kealiae*–g (56 ha; 138 ac)

(A) See paragraph (a)(1)(cdxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxi)(B) of this section for the map of this unit.

(cdxix) Kauai 23–*Tetraplasandra flynnii*–f (56 ha; 138 ac)

(A) See paragraph (a)(1)(cdxi)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxi)(B) of this section for the map of this unit.

(cdxx) Kauai 24–*Astelia waialealae*–d (0.2 ha; 0.4 ac)

(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 24–*Chamaesyce remyi* var. *remyi*–q, Kauai 24–*Dryopteris crinalis* var. *podosorus*–d, Kauai 24–*Dubautia kalalauensis*–d, Kauai 24–*Dubautia waialealae*–d, Kauai 24–*Geranium kauaiense*–d, Kauai 24–*Keysseria erici*–d, Kauai 24–*Keysseria helenae*–d, Kauai 24–*Labordia helleri*–l, Kauai 24–*Labordia pumila*–d, Kauai 24–*Lysimachia daphnoides*–d, Kauai 24–*Melicope degeneri*–d, Kauai 24–*Melicope puberula*–g, Kauai 24–*Myrsine mezii*–g, Kauai 24–*Phyllostegia renovans*–g, Kauai 24–*Platydesma rostrata*–q, Kauai 24–*Psychotria grandiflora*–g, and Kauai 24–*Tetraplasandra flynnii*–g (see paragraphs (a)(1)(cdxxi), (a)(1)(cdxxii), (a)(1)(cdxxiii), (a)(1)(cdxxiv), (a)(1)(cdxxv), (a)(1)(cdxxvi), (a)(1)(cdxxvii), (a)(1)(cdxxviii), (a)(1)(cdxxix), (a)(1)(cdxxx), (a)(1)(cdxxxi), (a)(1)(cdxxxii), (a)(1)(cdxxxiii), (a)(1)(cdxxxiv), (a)(1)(cdxxxv), (a)(1)(cdxxxvi), and (a)(1)(cdxxxvii), respectively, of this section).

(B) Note: Map 217g follows:

Map 217g

Kauai 24–*Astelia waialealae*–d, Kauai 24–*Chamaesyce remyi* var. *remyi*–q, Kauai 24–*Dryopteris crinalis* var. *podosorus*–d, Kauai 24–*Dubautia kalalauensis*–d, Kauai 24–*Dubautia waialealae*–d, Kauai 24–*Geranium kuauaiense*–d, Kauai 24–*Keysseria erici*–d, Kauai 24–*Keysseria helenae*–d, Kauai 24–*Labordia helleri*–l, Kauai 24–*Labordia pumila*–d, Kauai 24–*Lysimachia daphnoides*–d, Kauai 24–*Melicope degeneri*–d, Kauai 24–*Melicope puberula*–g, Kauai 24–*Myrsine mezii*–g, Kauai 24–*Phyllostegia renovans*–g, Kauai 24–*Platydesma rostrata*–q, Kauai 24–*Psychotria grandiflora*–g, Kauai 24–*Tetraplasandra flynnii*–g

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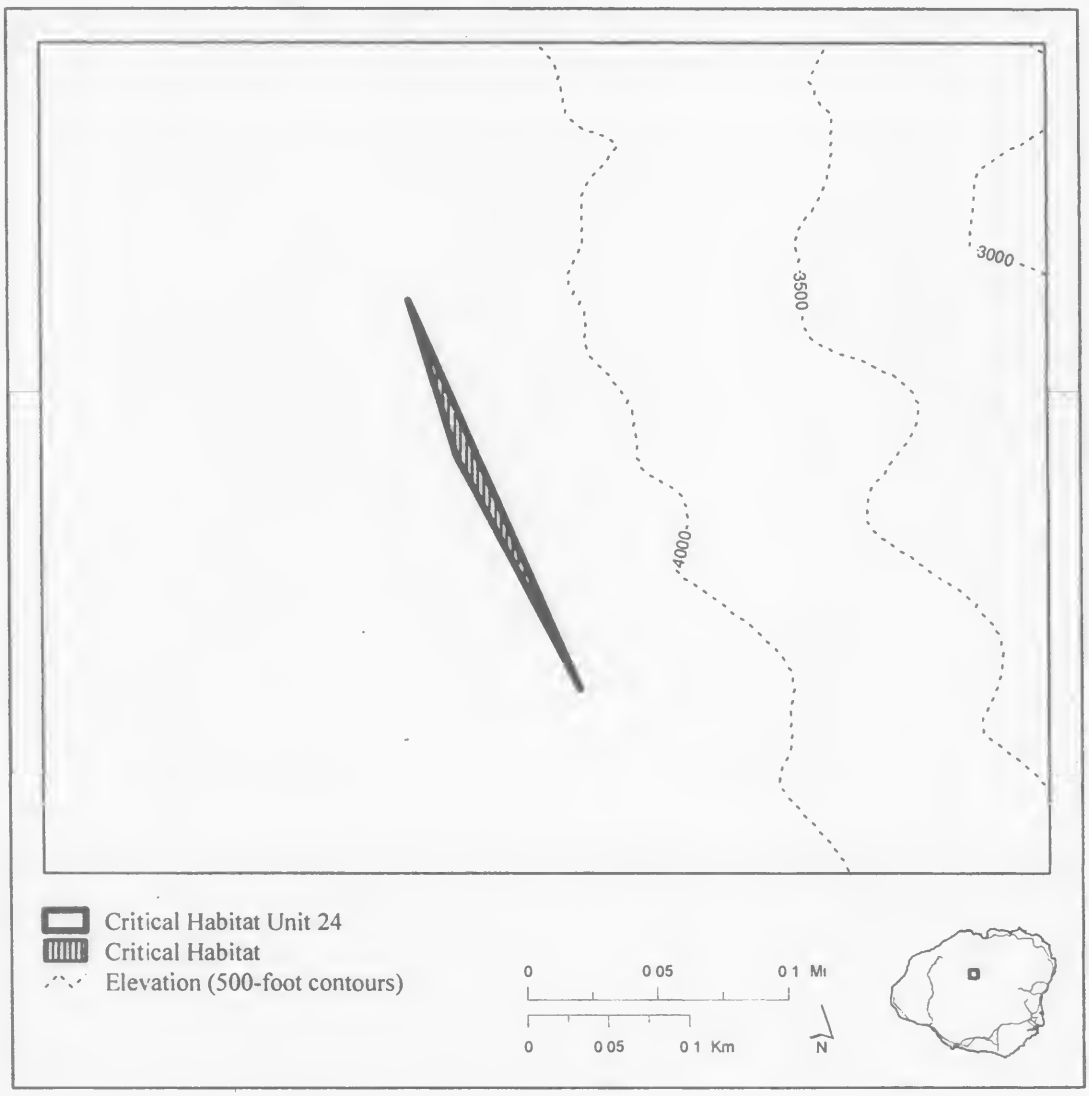

(cdxxi) Kauai 24–*Chamaesyce remyi* var. *remyi*–q (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxii) Kauai 24–*Dryopteris crinalis* var. *podosorus*–d (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxiii) Kauai 24–*Dubautia kalalauensis*–d (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxiv) Kauai 24–*Dubautia waialealae*–d (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxv) Kauai 24–*Geranium kauaiense*–d (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxvi) Kauai 24–*Keysseria erici*–d (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxvii) Kauai 24–*Keysseria helenae*–d (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxviii) Kauai 24–*Labordia helleri*–l (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxix) Kauai 24–*Labordia pumila*–d (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxx) Kauai 24–*Lysimachia daphnoides*–d (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxxi) Kauai 24–*Melicope degeneri*–d (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxxii) Kauai 24–*Melicope puberula*–g (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxxiii) Kauai 24–*Myrsine mezii*–g (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxxiv) Kauai 24–*Phyllostegia renovans*–g (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxxv) Kauai 24–*Platydesma rostrata*–q (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxxvi) Kauai 24–*Psychotria grandiflora*–g (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxxvii) Kauai 24–*Tetraplasandra flynnii*–g (0.2 ha; 0.4 ac)

(A) See paragraph (a)(1)(cdxx)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxx)(B) of this section for the map of this unit.

(cdxxxviii) Kauai 25–*Astelia waialealae*–e (0.01 ha; 0.04 ac)

(A) [Reserve for textual description of unit.] This unit is also critical habitat for Kauai 25–*Chamaesyce remyi* var. *remyi*–r, Kauai 25–*Dryopteris crinalis* var. *podosorus*–e, Kauai 25–*Dubautia kalalauensis*–e, Kauai 25–*Dubautia waialealae*–e, Kauai 25–*Geranium kauaiense*–e, Kauai 25–*Keysseria erici*–e, Kauai 25–*Keysseria helenae*–e, Kauai 25–*Labordia helleri*–m, Kauai 25–*Labordia pumila*–e, Kauai 25–*Lysimachia daphnoides*–e, Kauai 25–*Melicope degeneri*–e, Kauai 25–*Melicope puberula*–h, Kauai 25–*Myrsine mezii*–h, Kauai 25–*Phyllostegia renovans*–h, Kauai 25–*Platydesma rostrata*–r, Kauai 25–*Psychotria grandiflora*–h, and Kauai 25–*Tetraplasandra flynnii*–h (see paragraphs (a)(1)(cdxxxix), (a)(1)(cdxl), (a)(1)(cdxli), (a)(1)(cdxlii), (a)(1)(cdxliii), (a)(1)(cdxliv), (a)(1)(cdxlv), (a)(1)(cdxlvi), (a)(1)(cdxlvii), (a)(1)(cdxlviii), (a)(1)(cdxlix), (a)(1)(cdl), (a)(1)(cdli), (a)(1)(cdlii), (a)(1)(cdliii), (a)(1)(cdliv), and (a)(1)(cdlv), respectively, of this section).

(B) Note: Map 217h follows:

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Map 217h

Kauai 25–*Astelia waialealae*–e, Kauai 25–*Chamaesyce remyi* var. *remyi*–r, Kauai 25–*Dryopteris crinalis* var. *podosorus*–e, Kauai 25–*Dubautia kalalauensis*–e, Kauai 25–*Dubautia waialealae*–e, Kauai 25–*Geranium kuauaiense*–e, Kauai 25–*Keysseria erici*–e, Kauai 25–*Keysseria helenae*–e, Kauai 25–*Labordia helleri*–m, Kauai 25–*Labordia pumila*–e, Kauai 25–*Lysimachia daphnoides*–e, Kauai 25–*Melicope degeneri*–e, Kauai 25–*Melicope puberula*–h, Kauai 25–*Myrsine mezii*–h, Kauai 25–*Phyllostegia renovans*–h, Kauai 25–*Platydesma rostrata*–r, Kauai 25–*Psychotria grandiflora*–h, Kauai 25–*Tetraplasandra flynnii*–h

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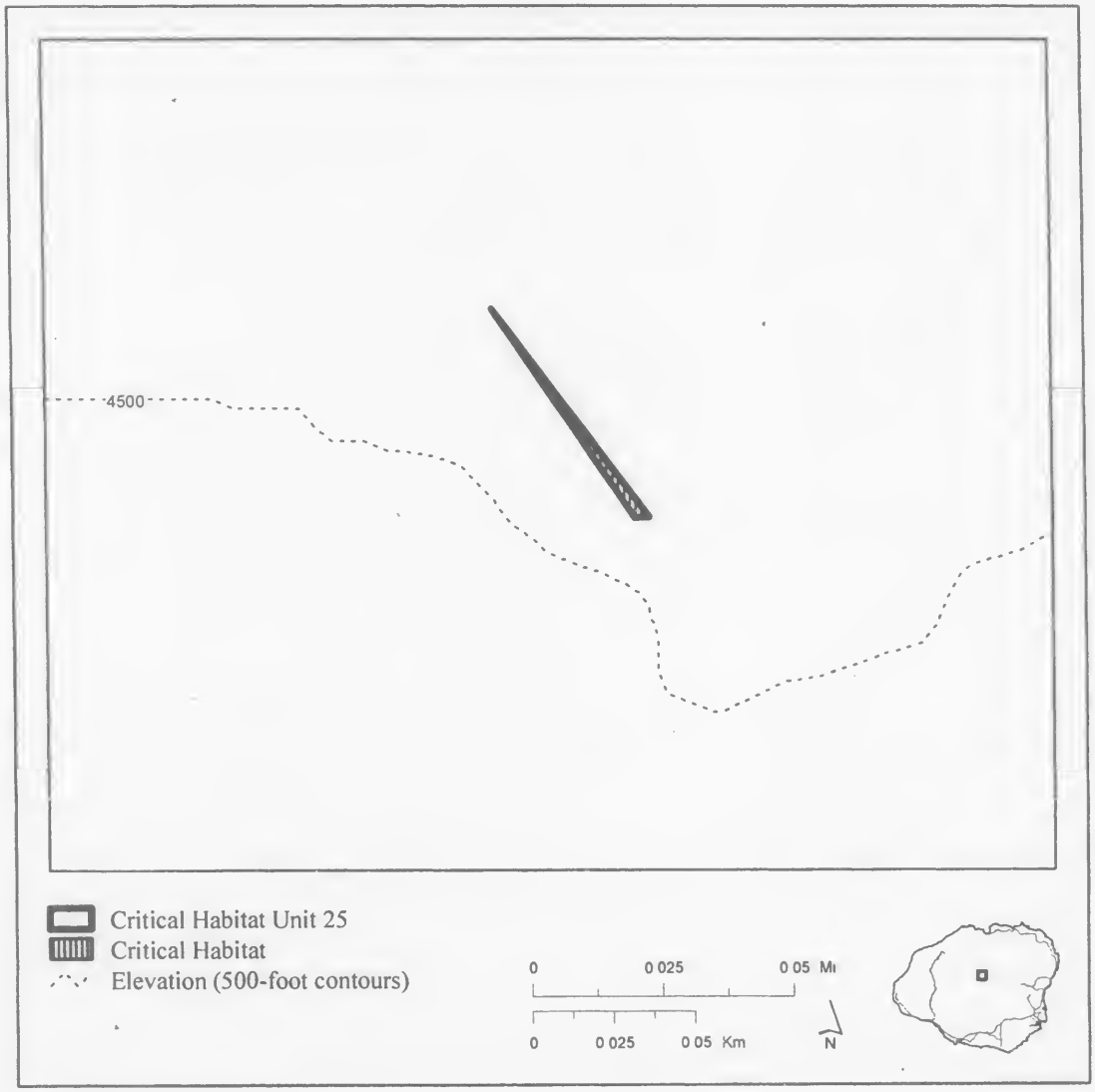

BILLING CODE 4310–55–C

(cdxxxix) Kauai 25–*Chamaesyce remyi* var. *remyi*–r (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdxl) Kauai 25–*Dryopteris crinalis* var. *podosorus*–e (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdxli) Kauai 25–*Dubautia kalalauensis*–e (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdxlii) Kauai 25–*Dubautia waialealae*–e (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdxliii) Kauai 25–*Geranium kauaiense*–e (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdxliv) Kauai 25–*Keysseria erici*–e (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdxlv) Kauai 25–*Keysseria helenae*–e (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdxlvi) Kauai 25–*Labordia helleri*–m (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdxlvii) Kauai 25–*Labordia pumila*–e (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdxlviii) Kauai 25–*Lysimachia daphnoides*–e (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdxlix) Kauai 25–*Melicope degeneri*–e (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdl) Kauai 25–*Melicope puberula*–h (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdli) Kauai 25–*Myrsine mezii*–h (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdlii) Kauai 25–*Phyllostegia renovans*–h (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdliii) Kauai 25–*Platydesma rostrata*–r (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdliv) Kauai 25–*Psychotria grandiflora*–h (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(cdlv) Kauai 25–*Tetraplasandra flynnii*–h (0.01 ha; 0.04 ac)

(A) See paragraph (a)(1)(cdxxxviii)(A) of this section for the textual description of this unit.

(B) See paragraph (a)(1)(cdxxxviii)(B) of this section for the map of this unit.

(CDLVI) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI

Unit name	Species occupied	Species unoccupied
* * * * * * *		
Kauai 4–*Chamaesyce remyi* var. *kauaiensis*–a	*Chamaesyce remyi* var. *kauaiensis*	*Chamaesyce remyi* var. *kauaiensis*
Kauai 4–*Chamaesyce remyi* var. *remyi*–a	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
* * * * * * *		
Kauai 4–*Cyanea dolichopoda*–a	*Cyanea dolichopoda*	*Cyanea dolichopoda*
* * * * * * *		
Kauai 4–*Cyrtandra oenobarba*–a	*Cyrtandra oenobarba*	*Cyrtandra oenobarba*
Kauai 4–*Cyrtandra paliku*–a	*Cyrtandra paliku*	*Cyrtandra paliku*
Kauai 4–*Dubautia plantaginea* ssp. *magnifolia*–a	*Dubautia plantaginea* ssp. *magnifolia*	*Dubautia plantaginea* ssp. *magnifolia*
* * * * * * *		
Kauai 4–*Lysimachia iniki*–a	*Lysimachia iniki*	*Lysimachia iniki*
Kauai 4–*Lysimachia pendens*–a	*Lysimachia pendens*	*Lysimachia pendens*
Kauai 4– *Lysimachia venosa*–a		*Lysimachia venosa*

(CDLVI) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
* * * * * * *		
Kauai 4–*Platydesma rostrata*–a	*Platydesma rostrata*	*Platydesma rostrata*
* * * * * * *		
Kauai 7–*Canavalia napaliensis*–a	*Canavalia napaliensis*	*Canavalia napaliensis*
Kauai 7–*Chamaesyce eleanoriae*–a	*Chamaesyce eleanoriae*	*Chamaesyce eleanoriae*
Kauai 7–*Chamaesyce remyi* var. *remyi*–b	*Chamaesyce remyi var. remyi*	*Chamaesyce remyi var. remyi*
Kauai 7–*Charpentiera densiflora*–a	*Charpentiera densiflora*	*Charpentiera densiflora*
* * * * * * *		
Kauai 7–*Doryopteris angelica*–a	*Doryopteris angelica*	*Doryopteris angelica*
Kauai 7–*Dubautia kenwoodii*–a	*Dubautia kenwoodii*	*Dubautia kenwoodii*
* * * * * * *		
Kauai 7–*Labordia helleri*–a	*Labordia helleri*	*Labordia helleri*
* * * * * * *		
Kauai 7–*Pittosporum napaliense*–a	*Pittosporum napaliense*	*Pittosporum napaliense*
Kauai 7–*Platydesma rostrata*–b	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 7–*Psychotria hobdyi*–a	*Psychotria hobdyi*	*Psychotria hobdyi*
* * * * * * *		
Kauai 7–*Tetraplasandra bisattenuata*–a	*Tetraplasandra bisattenuata*	*Tetraplasandra bisattenuata*
* * * * * * *		
Kauai 10–*Astelia waialealae*–a	*Astelia waialealae*	*Astelia waialealae*
* * * * * * *		
Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–b	*Chamaesyce remyi var. kauaiensis*	*Chamaesyce remyi* var. *kauaiensis*
Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–c	*Chamaesyce remyi var. kauaiensis*	*Chamaesyce remyi var. kauaiensis*
Kauai 10–*Chamaesyce remyi* var. *remyi*–c	*Chamaesyce remyi var. remyi*	*Chamaesyce remyi var. remyi*
Kauai 10–*Chamaesyce remyi* var. *remyi*–d	*Chamaesyce remyi var. remyi*	*Chamaesyce remyi var. remyi*
Kauai 10–*Chamaesyce remyi* var. *remyi*–e	*Chamaesyce remyi var. remyi*	*Chamaesyce remyi var. remyi*
Kauai 10–*Charpentiera densiflora*–b	*Charpentiera densiflora*	*Charpentiera densiflora*
* * * * * * *		
Kauai 10–*Cyanea dolichopoda*–b	*Cyanea dolichopoda*	*Cyanea dolichopoda*
Kauai 10–*Cyanea eleeleensis*–a		*Cyanea eleeleensis*
Kauai 10–*Cyanea kolekoleensis*–a		*Cyanea kolekoleensis*
Kauai 10–*Cyanea kuhihewa*–a		*Cyanea kuhihewa*
* * * * * * *		
Kauai 10–*Cyrtandra oenobarba*–b	*Cyrtandra oenobarba*	*Cyrtandra oenobarba*
Kauai 10–*Cyrtandra oenobarba*–c	*Cyrtandra oenobarba*	*Cyrtandra oenobarba*
Kauai 10–*Cyrtandra paliku*–b	*Cyrtandra paliku*	*Cyrtandra paliku*

(CDLVI) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 10–*Dryopteris crinalis* var. *podosorus*–a	*Dryopteris crinalis var. podosorus*	*Dryopteris crinalis* var. *podosorus*
Kauai 10–*Dubautia imbricata* ssp. *imbricata*–a	*Dubautia imbricata* ssp. *imbricata*	*Dubautia imbricata* ssp. *imbricata*
Kauai 10–*Dubautia kalalauensis*–a	*Dubautia kalalauensis*	*Dubautia kalalauensis*
* * * * * * *		
Kauai 10–*Dubautia plantaginea* ssp. *magnifolia*–b	*Dubautia plantaginea* ssp. *magnifolia*	*Dubautia plantaginea* ssp. *magnifolia*
Kauai 10–*Dubautia waialealae*–a	*Dubautia waialealae*	*Dubautia waialealae*
* * * * * * *		
Kauai 10–*Geranium kauaiense*–a	*Geranium kauaiense*	*Geranium kauaiense*
* * * * * * *		
Kauai 10–*Keysseria erici*–a	*Keysseria erici*	*Keysseria erici*
Kauai 10–*Keysseria helenae*–a	*Keysseria helenae*	*Keysseria helenae*
Kauai 10–*Labordia helleri*–b	*Labordia helleri*	*Labordia helleri*
Kauai 10–*Labordia helleri*–c	*Labordia helleri*	*Labordia helleri*
* * * * * * *		
Kauai 10–*Labordia pumila*–a	*Labordia pumila*	*Labordia pumila*
* * * * * * *		
Kauai 10–*Lysimachia daphnoides*–a	*Lysimachia daphnoides*	*Lysimachia daphnoides*
* * * * * * *		
Kauai 10–*Lysimachia iniki*–b	*Lysimachia iniki*	*Lysimachia iniki*
Kauai 10–*Lysimachia pendens*–b	*Lysimachia pendens*	*Lysimachia pendens*
Kauai 10–*Lysimachia venosa*–b		*Lysimachia venosa*
Kauai 10–*Melicope degeneri*–a	*Melicope paniculata*	*Melicope paniculata*
Kauai 10–*Melicope paniculata*–a	*Melicope paniculata*	*Melicope paniculata*
Kauai 10–*Melicope puberula*–a	*Melicope puberula*	*Melicope puberula*
Kauai 10–*Melicope puberula*–b	*Melicope puberula*	*Melicope puberula*
* * * * * * *		
Kauai 10–*Myrsine mezii*–a	*Myrsine mezii*	*Myrsine mezii*
* * * * * * *		
Kauai 10–*Phyllostegia renovans*–a	*Phyllostegia renovans*	*Phyllostegia renovans*
Kauai 10–*Phyllostegia renovans*–b	*Phyllostegia renovans*	*Phyllostegia renovans*
* * * * * * *		
Kauai 10–*Platydesma rostrata*–c	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 10–*Platydesma rostrata*–d	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 10–*Platydesma rostrata*–e	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 10–*Psychotria grandiflora*–a	*Psychotria grandiflora*	*Psychotria grandiflora*
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(CDLVI) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 10–*Stenogyne kealiae*–a	*Stenogyne kealiae*	*Stenogyne kealiae*
Kauai 10–*Tetraplasandra bisattenuata*–b	*Tetraplasandra bisattenuata*	*Tetraplasandra bisattenuata*
Kauai 10–*Tetraplasandra flynnii*–a	*Tetraplasandra flynnii*	*Tetraplasandra flynnii*
* * * * * * *		
Kauai 11–*Astelia waialealae*–b	*Astelia waialealae*	*Astelia waialealae*
* * * * * * *		
Kauai 11–*Canavalia napaliensis*–b	*Canavalia napaliensis*	*Canavalia napaliensis*
* * * * * * *		
Kauai 11–*Chamaesyce eleanoriae*–b	*Chamaesyce eleanoriae*	*Chamaesyce eleanoriae*
Kauai 11–*Chamaesyce eleanoriae*–c	*Chamaesyce eleanoriae*	*Chamaesyce eleanoriae*
* * * * * * *		
Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–d	*Chamaesyce remyi* var. *kauaiensis*	*Chamaesyce remyi* var. *kauaiensis*
Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–e	*Chamaesyce remyi* var. *kauaiensis*	*Chamaesyce remyi* var. *kauaiensis*
Kauai 11–*Chamaesyce remyi* var. *remyi*–f	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 11–*Chamaesyce remyi* var. *remyi*–g	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 11–*Chamaesyce remyi* var. *remyi*–h	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 11–*Chamaesyce remyi* var. *remyi*–i	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 11–*Chamaesyce remyi* var. *remyi*–j	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 11–*Charpentiera densiflora*–c	*Charpentiera densiflora*	*Charpentiera densiflora*
Kauai 11–*Charpentiera densiflora*–d	*Charpentiera densiflora*	*Charpentiera densiflora*
* * * * * * *		
Kauai 11–*Cyanea dolichopoda*–c	*Cyanea dolichopoda*	*Cyanea dolichopoda*
Kauai 11–*Cyanea eleeleensis*–b		*Cyanea eleeleensis*
Kauai 11–*Cyanea kolekoleensis*–b		*Cyanea kolekoleensis*
Kauai 11–*Cyanea kuhihewa*–b		*Cyanea kuhihewa*
* * * * * * *		
Kauai 11–*Cyrtandra oenobarba*–d	*Cyrtandra oenobarba*	*Cyrtandra oenobarba*
Kauai 11–*Cyrtandra oenobarba*–e	*Cyrtandra oenobarba*	*Cyrtandra oenobarba*
Kauai 11–*Cyrtandra paliku*–c	*Cyrtandra paliku*	*Cyrtandra paliku*
* * * * * * *		
Kauai 11–*Diellia mannii*–a	*Diellia mannii*	*Diellia mannii*
* * * * * * *		
Kauai 11–*Doryopteris angelica*–b	*Doryopteris angelica*	*Doryopteris angelica*
Kauai 11–*Dryopteris crinalis* var. *podosorus*–b	*Dryopteris crinalis* var. *podosorus*	*Dryopteris crinalis* var. *podosorus*
Kauai 11–*Dubautia imbricata* ssp. *imbricata*–b	*Dubautia imbricata* ssp. *imbricata*	*Dubautia imbricata* ssp. *imbricata*
Kauai 11–*Dubautia kalalauensis*–b	*Dubautia kalalauensis*	*Dubautia kalalauensis*

(CDLVI) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 11–*Dubautia kenwoodii*–b	*Dubautia kenwoodii*	*Dubautia kenwoodii*
* * * * * * *		
Kauai 11–*Dubautia plantaginea* ssp. *magnifolia*–c	*Dubautia plantaginea* ssp. *magnifolia*	*Dubautia plantaginea* ssp. *magnifolia*
Kauai 11–*Dubautia waialealae*–b	*Dubautia waialealae*	*Dubautia waialealae*
* * * * * * *		
Kauai 11–*Geranium kauaiense*–b	*Geranium kauaiense*	*Geranium kauaiense*
* * * * * * *		
Kauai 11–*Keysseria erici*–b	*Keysseria erici*	*Keysseria erici*
Kauai 11–*Keysseria helenae*–b	*Keysseria helenae*	*Keysseria helenae*
* * * * * * *		
Kauai 11–*Labordia helleri*–d	*Labordia helleri*	*Labordia helleri*
Kauai 11–*Labordia helleri*–e	*Labordia helleri*	*Labordia helleri*
Kauai 11–*Labordia helleri*–f	*Labordia helleri*	*Labordia helleri*
Kauai 11–*Labordia helleri*–g	*Labordia helleri*	*Labordia helleri*
* * * * * * *		
Kauai 11–*Labordia pumila*–b	*Labordia pumila*	*Labordia pumila*
* * * * * * *		
Kauai 11–*Lysimachia daphnoides*–b	*Lysimachia daphnoides*	*Lysimachia daphnoides*
Kauai 11–*Lysimachia iniki*–c	*Lysimachia iniki*	*Lysimachia iniki*
Kauai 11–*Lysimachia pendens*–c	*Lysimachia pendens*	*Lysimachia pendens*
Kauai 11–*Lysimachia scopulensis*–a	*Lysimachia scopulensis*	*Lysimachia scopulensis*
Kauai 11–*Lysimachia venosa*–c		*Lysimachia venosa*
* * * * * * *		
Kauai 11–*Melicope degeneri*–b	*Melicope degeneri*	*Melicope degeneri*
* * * * * * *		
Kauai 11–*Melicope paniculata*–b	*Melicope paniculata*	*Melicope paniculata*
Kauai 11–*Melicope puberula*–c	*Melicope puberula*	*Melicope puberula*
Kauai 11–*Melicope puberula*–d	*Melicope puberula*	*Melicope puberula*
* * * * * * *		
Kauai 11–*Myrsine knudsenii*–a	*Myrsine knudsenii*	*Myrsine knudsenii*
* * * * * * *		
Kauai 11–*Myrsine mezii*–b	*Myrsine mezii*	*Myrsine mezii*
Kauai 11–*Myrsine mezii*–c	*Myrsine mezii*	*Myrsine mezii*
* * * * * * *		
Kauai 11–*Phyllostegia renovans*–c	*Phyllostegia renovans*	*Phyllostegia renovans*
Kauai 11–*Phyllostegia renovans*–d	*Phyllostegia renovans*	*Phyllostegia renovans*

(CDLVI) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
* * * * * * *		
Kauai 11–*Pittosporum napaliense*–b	*Pittosporum napaliense*	*Pittosporum napaliense*
* * * * * * *		
Kauai 11–*Platydesma rostrata*–f	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 11–*Platydesma rostrata*–g	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 11–*Platydesma rostrata*–h	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 11–*Platydesma rostrata*–i	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 11–*Platydesma rostrata*–j	*Platydesma rostrata*	*Platydesma rostrata*
* * * * * * *		
Kauai 11–*Psychotria grandiflora*–b	*Psychotria grandiflora*	*Psychotria grandiflora*
Kauai 11–*Psychotria grandiflora*–c	*Psychotria grandiflora*	*Psychotria grandiflora*
Kauai 11–*Psychotria hobdyi*–b	*Psychotria hobdyi*	*Psychotria hobdyi*
* * * * * * *		
Kauai 11–*Schiedea attenuata*–a	*Schiedea attenuata*	*Schiedea attenuata*
* * * * * * *		
Kauai 11–*Stenogyne kealiae*–b	*Stenogyne kealiae*	*Stenogyne kealiae*
Kauai 11–*Stenogyne kealiae*–c	*Stenogyne kealiae*	*Stenogyne kealiae*
Kauai 11–*Stenogyne kealiae*–d	*Stenogyne kealiae*	*Stenogyne kealiae*
Kauai 11–*Tetraplasandra bisattenuata*–c	*Tetraplasandra bisattenuata*	*Tetraplasandra bisattenuata*
Kauai 11–*Tetraplasandra bisattenuata*–d	*Tetraplasandra bisattenuata*	*Tetraplasandra bisattenuata*
Kauai 11–*Tetraplasandra flynnii*–b	*Tetraplasandra flynnii*	*Tetraplasandra flynnii*
Kauai 11–*Tetraplasandra flynnii*–c	*Tetraplasandra flynnii*	*Tetraplasandra flynnii*
* * * * * * *		
Kauai 18–*Astelia waialealae*–c	*Astelia waialealae*	*Astelia waialealae*
Kauai 18–*Chamaesyce remyi* var. *remyi*–k	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 18–*Dryopteris crinalis* var. *podosorus*–c	*Dryopteris crinalis* var. *podosorus*	*Dryopteris crinalis* var. *podosorus*
Kauai 18–*Dubautia kalalauensis*–c	*Dubautia kalalauensis*	*Dubautia kalalauensis*
Kauai 18–*Dubautia waialealae*–c	*Dubautia waialealae*	*Dubautia waialealae*
Kauai 18–*Geranium kauaiense*–c	*Geranium kauaiense*	*Geranium kauaiense*
Kauai 18–*Keysseria erici*–c	*Keysseria erici*	*Keysseria erici*
Kauai 18–*Keysseria helenae*–c	*Keysseria helenae*	*Keysseria helenae*
Kauai 18–*Labordia helleri*–h	*Labordia helleri*	*Labordia helleri*
Kauai 18–*Labordia pumila*–c	*Labordia pumila*	*Labordia pumila*
Kauai 18–*Lysimachia daphnoides*–c	*Lysimachia daphnoides*	*Lysimachia daphnoides*
Kauai 18–*Melicope degeneri*–c	*Melicope degeneri*	*Melicope degeneri*
Kauai 18–*Melicope puberula*–e	*Melicope puberula*	*Melicope puberula*
Kauai 18–*Myrsine mezii*–d	*Myrsine mezii*	*Myrsine mezii*

(CDLVI) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 18–*Phyllostegia renovans*–e	*Phyllostegia renovans*	*Phyllostegia renovans*
Kauai 18–*Platydesma rostrata*–k	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 18–*Psychotria grandiflora*–d	*Psychotria grandiflora*	*Psychotria grandiflora*
Kauai 18–*Tetraplasandra flynnii*–d	*Tetraplasandra flynnii*	*Tetraplasandra flynnii*
Kauai 19–*Chamaesyce remyi* var. *kauaiensis*–f	*Chamaesyce remyi* var. *kauaiensis*	*Chamaesyce remyi* var. *kauaiensis*
Kauai 19–*Chamaesyce remyi* var. *remyi*–l	*Chamaesyce remyi* var. *kauaiensis*	*Chamaesyce remyi* var. *kauaiensis*
Kauai 19–*Cyanea dolichopoda*–d	*Cyanea dolichopoda*	*Cyanea dolichopoda*
Kauai 19–*Cyrtandra oenobarba*–f	*Cyrtandra oenobarba*	*Cyrtandra oenobarba*
Kauai 19–*Cyrtandra paliku*–d	*Cyrtandra paliku*	*Cyrtandra paliku*
Kauai 19–*Dubautia plantaginea* ssp. *magnifolia*–d	*Dubautia plantaginea* ssp. *magnifolia*	*Dubautia plantaginea* ssp. *magnifolia*
Kauai 19–*Lysimachia iniki*–d	*Lysimachia iniki*	*Lysimachia iniki*
Kauai 19–*Lysimachia pendens*–d	*Lysimachia pendens*	*Lysimachia pendens*
Kauai 19– *Lysimachia venosa*–d		*Lysimachia venosa*
Kauai 19–*Platydesma rostrata*–l	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 20–*Chamaesyce remyi* var. *kauaiensis*–g	*Chamaesyce remyi* var. *kauaiensis*	*Chamaesyce remyi* var. *kauaiensis*
Kauai 20–*Chamaesyce remyi* var. *remyi*–m	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 20–*Cyanea dolichopoda*–e	*Cyanea dolichopoda*	*Cyanea dolichopoda*
Kauai 20–*Cyrtandra oenobarba*–g	*Cyrtandra oenobarba*	*Cyrtandra oenobarba*
Kauai 20–*Cyrtandra paliku*–e	*Cyrtandra paliku*	*Cyrtandra paliku*
Kauai 20–*Dubautia plantaginea* ssp. *magnifolia*–e	*Dubautia plantaginea* ssp. *magnifolia*	*Dubautia plantaginea* ssp. *magnifolia*
Kauai 20–*Lysimachia iniki*–e	*Lysimachia iniki*	*Lysimachia iniki*
Kauai 20–*Lysimachia pendens*–e	*Lysimachia pendens*	*Lysimachia pendens*
Kauai 20– *Lysimachia venosa*–e		*Lysimachia venosa*
Kauai 20–*Platydesma rostrata*–m	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 21–*Chamaesyce remyi* var. *kauaiensis*–h	*Chamaesyce remyi* var. *kauaiensis*	*Chamaesyce remyi* var. *kauaiensis*
Kauai 21–*Chamaesyce remyi* var. *remyi*–n	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 21–*Charpentiera densiflora*–e	*Charpentiera densiflora*	*Charpentiera densiflora*
Kauai 21–*Cyanea eleeleensis*–c		*Cyanea eleeleensis*
Kauai 21–*Cyanea kolekoleensis*–c		*Cyanea kolekoleensis*
Kauai 21–*Cyanea kuhihewa*–c		*Cyanea kuhihewa*
Kauai 21–*Cyrtandra oenobarba*–h	*Cyrtandra oenobarba*	*Cyrtandra oenobarba*
Kauai 21–*Dubautia imbricata* ssp. *imbricata*–c	*Dubautia imbricata* ssp. *imbricata*	*Dubautia imbricata* ssp. *imbricata*
Kauai 21–*Labordia helleri*–i	*Labordia heller*	*Labordia heller*
Kauai 21–*Melicope paniculata*–c	*Melicope paniculata*	*Melicope paniculata*

(CDLVI) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 21–*Melicope puberula*–f	*Melicope puberula*	*Melicope puberula*
Kauai 21–*Phyllostegia renovans*–f	*Phyllostegia renovans*	*Phyllostegia renovans*
Kauai 21–*Platydesma rostrata*–n	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 21–*Stenogyne kealiae*–e	*Stenogyne kealiae*	*Stenogyne kealiae*
Kauai 21–*Tetraplasandra bisattenuata*–e	*Tetraplasandra bisattenuata*	*Tetraplasandra bisattenuata*
Kauai 22–*Chamaesyce remyi* var. *remyi*–o	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 22–*Diellia mannii*–b	*Diellia mannii*	*Diellia mannii*
Kauai 22–*Labordia helleri*–j	*Labordia helleri*	*Labordia helleri*
Kauai 22–*Myrsine knudsenii*–b	*Myrsine knudsenii*	*Myrsine knudsenii*
Kauai 22–*Myrsine mezii*–e	*Myrsine mezii*	*Myrsine mezii*
Kauai 22–*Platydesma rostrata*–o	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 22–*Psychotria grandiflora*–e	*Psychotria grandiflora*	*Psychotria grandiflora*
Kauai 22–*Stenogyne kealiae*–f	*Stenogyne kealiae*	*Stenogyne kealiae*
Kauai 22–*Tetraplasandra flynnii*–e	*Tetraplasandra flynnii*	*Tetraplasandra flynnii*
Kauai 23–*Chamaesyce remyi* var. *remyi*–p	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 23–*Diellia mannii*–c	*Diellia mannii*	*Diellia mannii*
Kauai 23–*Labordia helleri*–k	*Labordia helleri*	*Labordia helleri*
Kauai 23–*Myrsine knudsenii*–c	*Myrsine knudsenii*	*Myrsine knudsenii*
Kauai 23–*Myrsine mezii*–f	*Myrsine mezii*	*Myrsine mezii*
Kauai 23–*Platydesma rostrata*–p	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 23–*Psychotria grandiflora*–f	*Psychotria grandiflora*	*Psychotria grandiflora*
Kauai 23–*Stenogyne kealiae*–g	*Stenogyne kealiae*	*Stenogyne kealiae*
Kauai 23–*Tetraplasandra flynnii*–f	*Tetraplasandra flynnii*	*Tetraplasandra flynnii*
Kauai 24–*Astelia waialealae*–d	*Astelia waialealae*	*Astelia waialealae*
Kauai 24–*Chamaesyce remyi* var. *remyi*–q	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 24–*Dryopteris crinalis* var. *podosorus*–d	*Dryopteris crinalis* var. *podosorus*	*Dryopteris crinalis* var. *podosorus*
Kauai 24–*Dubautia kalalauensis*–d	*Dubautia kalalauensis*	*Dubautia kalalauensis*
Kauai 24–*Dubautia waialealae*–d	*Dubautia waialealae*	*Dubautia waialealae*
Kauai 24–*Geranium kauaiense*–d	*Geranium kauaiense*	*Geranium kauaiense*
Kauai 24–*Keysseria erici*–d	*Keysseria erici*	*Keysseria erici*
Kauai 24–*Keysseria helenae*–d	*Keysseria helenae*	*Keysseria helenae*
Kauai 24–*Labordia helleri*–l	*Labordia helleri*	*Labordia helleri*
Kauai 24–*Labordia pumila*–d	*Labordia pumila*	*Labordia pumila*
Kauai 24–*Lysimachia daphnoides*–d	*Lysimachia daphnoides*	*Lysimachia daphnoides*
Kauai 24–*Melicope degeneri*–d	*Melicope degeneri*	*Melicope degeneri*
Kauai 24–*Melicope puberula*–g	*Melicope puberula*	*Melicope puberula*
Kauai 24–*Myrsine mezii*–g	*Myrsine mezii*	*Myrsine mezii*

(CDLVI) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 24–*Phyllostegia renovans*–g	*Phyllostegia renovans*	*Phyllostegia renovans*
Kauai 24–*Platydesma rostrata*–q	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 24–*Psychotria grandiflora*–g	*Psychotria grandiflora*	*Psychotria grandiflora*
Kauai 24–*Tetraplasandra flynnii*–g	*Tetraplasandra flynnii*	*Tetraplasandra flynnii*
Kauai 25–*Astelia waialealae*–e	*Astelia waialealae*	*Astelia waialealae*
Kauai 25–*Chamaesyce remyi* var. *remyi*–r	*Chamaesyce remyi* var. *remyi*	*Chamaesyce remyi* var. *remyi*
Kauai 25–*Dryopteris crinalis* var. *podosorus*–e	*Dryopteris crinalis* var. *podosorus*	*Dryopteris crinalis* var. *podosorus*
Kauai 25–*Dubautia kalalauensis*–e	*Dubautia kalalauensis*	*Dubautia kalalauensis*
Kauai 25–*Dubautia waialealae*–e	*Dubautia waialealae*	*Dubautia waialealae*
Kauai 25–*Geranium kauaiense*–e	*Geranium kauaiense*	*Geranium kauaiense*
Kauai 25–*Keysseria erici*–e	*Keysseria erici*	*Keysseria erici*
Kauai 25–*Keysseria helenae*–e	*Keysseria helenae*	*Keysseria helenae*
Kauai 25–*Labordia helleri*–m	*Labordia helleri*	*Labordia helleri*
Kauai 25–*Labordia pumila*–e	*Labordia pumila*	*Labordia pumila*
Kauai 25–*Lysimachia daphnoides*–e	*Lysimachia daphnoides*	*Lysimachia daphnoides*
Kauai 25–*Melicope degeneri*–e	*Melicope degeneri*	*Melicope degeneri*
Kauai 25–*Melicope puberula*–h	*Melicope puberula*	*Melicope puberula*
Kauai 25–*Myrsine mezii*–h	*Myrsine mezii*	*Myrsine mezii*
Kauai 25–*Phyllostegia renovans*–h	*Phyllostegia renovans*	*Phyllostegia renovans*
Kauai 25–*Platydesma rostrata*–r	*Platydesma rostrata*	*Platydesma rostrata*
Kauai 25–*Psychotria grandiflora*–h	*Psychotria grandiflora*	*Psychotria grandiflora*
Kauai 25–*Tetraplasandra flynnii*–h	*Tetraplasandra flynnii*	*Tetraplasandra flynnii*

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(b) * * *

(1) * * *

FAMILY AMARANATHACEAE: *Charpentiera densiflora* (PAPALA)

Kauai 7–*Charpentiera densiflora*–a, Kauai 10–*Charpentiera densiflora*–b, Kauai 11–*Charpentiera densiflora*–c, Kauai 11–*Charpentiera densiflora*–d, and Kauai 21–*Charpentiera densiflora*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Charpentiera densiflora* on Kauai.

(i) In units Kauai 7–*Charpentiera densiflora*–a, and Kauai 11–*Charpentiera densiflora*–c, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Kauai 10–*Charpentiera densiflora*–b, Kauai 11–*Charpentiera densiflora*–d, and Kauai 21–*Charpentiera densiflora*–e, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

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FAMILY ARALIACEAE: *Tetraplasandra bisattenuata* (NCN)

Kauai 7–*Tetraplasandra bisattenuata*–a, Kauai 10–*Tetraplasandra bisattenuata*–b, Kauai 11–*Tetraplasandra bisattenuata*–c, Kauai 11–*Tetraplasandra bisattenuata*–d, and Kauai 21–*Tetraplasandra bisattenuata*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Tetraplasandra bisattenuata* on Kauai.

(i) In units Kauai 7–*Tetraplasandra bisattenuata*–a, and Kauai 11–*Tetraplasandra bisattenuata*–c, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Kauai 10–*Tetraplasandra bisattenuata*–b, Kauai 11–*Tetraplasandra bisattenuata*–d, and Kauai 21–*Tetraplasandra bisattenuata*–e, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina,*

FAMILY ARALIACEAE: *Tetraplasandra flynnii* (NCN)

Kauai 10–*Tetraplasandra flynnii*–a, Kauai 11–*Tetraplasandra flynnii*–b, Kauai 11–*Tetraplasandra flynnii*–c, Kauai 18–*Tetraplasandra flynnii*–d, Kauai 22–*Tetraplasandra flynnii*–e, Kauai 23–*Tetraplasandra flynnii*–f, Kauai 24–*Tetraplasandra flynnii*–g, and Kauai 25–*Tetraplasandra flynnii*–h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Tetraplasandra flynnii* on Kauai.

(i) In units Kauai 11–*Tetraplasandra flynnii*–c, Kauai 22–*Tetraplasandra flynnii*–e, and Kauai 23–*Tetraplasandra flynnii*–f, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum.*

(E) Subcanopy: *Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine.*

(F) Understory: *Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora.*

(ii) In units Kauai 10–*Tetraplasandra flynnii*–a, Kauai 11–*Tetraplasandra flynnii*–b, Kauai 18–*Tetraplasandra flynnii*–d, Kauai 24–*Tetraplasandra flynnii*–g, and Kauai 25–*Tetraplasandra flynnii*–h, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

FAMILY ASTELIACEAE: *Astelia waialealae* (PAINIU)

Kauai 10–*Astelia waialealae*–a, Kauai 11–*Astelia waialealae*–b, Kauai 18–*Astelia waialealae*–c, Kauai 24–*Astelia waialealae*–d, and Kauai 25–*Astelia waialealae*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Astelia waialealae* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(vii) Hummocks in bogs.

FAMILY ASTERACEAE: *Dubautia imbricata* ssp. *imbricata* (NAENAE)

Kauai 10–*Dubautia imbricata* ssp. *imbricata*–a, Kauai 11–*Dubautia imbricata* ssp. *imbricata*–b, and Kauai 21–*Dubautia imbricata* ssp. *imbricata*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dubautia imbricata* ssp. *imbricata* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (1,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(iv) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(v) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(vi) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

FAMILY ASTERACEAE: *Dubautia kalalauensis* (NAENAE)

Kauai 10–*Dubautia kalalauensis*–a, Kauai 11–*Dubautia kalalauensis*–b, Kauai 18–*Dubautia kalalauensis*–c, Kauai 24–*Dubautia kalalauensis*–d, and Kauai 25–*Dubautia kalalauensis*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dubautia kalalauensis* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

FAMILY ASTERACEAE: *Dubautia kenwoodii* (NAENAE)

Kauai 7–*Dubautia kenwoodii*–a and Kauai 11–*Dubautia kenwoodii*–b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dubautia kenwoodii* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

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FAMILY ASTERACEAE: *Dubautia plantaginea* ssp. *magnifolia* (NAENAE)

Kauai 4–*Dubautia plantaginea* ssp. *magnifolia*–a, Kauai 10–*Dubautia plantaginea* ssp. *magnifolia*–b, Kauai 11–*Dubautia plantaginea* ssp. *magnifolia*–c, Kauai 19–*Dubautia plantaginea* ssp. *magnifolia*–d, and Kauai 20–*Dubautia plantaginea* ssp. *magnifolia*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dubautia plantaginea* ssp. *magnifolia* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Annual precipitation: Greater than 75 inches (190 centimeters).

(ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iii) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*

(iv) Understory: Ferns, Bryophytes, *Coprosoma, Dubautia, Hedyotis, Peperomia.*

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FAMILY ASTERACEAE: *Dubautia waialealae* (NAENAE)

Kauai 10–*Dubautia waialealae*–a, Kauai 11–*Dubautia waialealae*–b, Kauai 18–*Dubautia waialealae*–c, Kauai 24–*Dubautia waialealae*–d, and Kauai 25–*Dubautia waialealae*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dubautia waialealae* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(vii) Bogs.

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FAMILY ASTERACEAE: *Keysseria erici* (NCN)

Kauai 10–*Keysseria erici*–a, Kauai 11–*Keysseria erici*–b, Kauai 18–*Keysseria erici*–c, Kauai 24–*Keysseria erici*–d, and Kauai 25–*Keysseria erici*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Keysseria erici* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(vii) Bogs.

FAMILY ASTERACEAE: *Keysseria helenae* (NCN)

Kauai 10–*Keysseria helenae*–a, Kauai 11–*Keysseria helenae*–b, Kauai 18–*Keysseria helenae*–c, Kauai 24–*Keysseria helenae*–d, and Kauai 25–*Keysseria helenae*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Keysseria helenae* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(vii) Bogs.

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FAMILY CAMPANULACEAE: *Cyanea dolichopoda* (HAHA)

Kauai 4–*Cyanea dolichopoda*–a, Kauai 10–*Cyanea dolichopoda*–b, Kauai 11–*Cyanea dolichopoda*–c, Kauai 19–*Cyanea dolichopoda*–d, and Kauai 20–*Cyanea dolichopoda*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyanea dolichopoda* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Annual precipitation: Greater than 75 inches (190 centimeters).

(ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iii) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*

(iv) Understory: Ferns, Bryophytes, *Coprosoma, Dubautia, Hedyotis, Peperomia.*

FAMILY CAMPANULACEAE: *Cyanea eleeleensis* (HAHA)

Kauai 10–*Cyanea eleeleensis*–a, Kauai 11–*Cyanea eleeleensis*–b, and Kauai 21–*Cyanea eleeleensis*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyanea eleeleensis* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (1,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(iv) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(v) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(vi) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

FAMILY CAMPANULACEAE: *Cyanea kolekoleensis* (HAHA)

Kauai 10–*Cyanea kolekoleensis*–a, Kauai 11–*Cyanea kolekoleensis*–b, and Kauai 21–*Cyanea kolekoleensis*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyanea kolekoleensis* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (1,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(iv) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(v) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(vi) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

FAMILY CAMPANULACEAE: *Cyanea kuhihewa* (HAHA)

Kauai 10–*Cyanea kuhihewa*–a, Kauai 11–*Cyanea kuhihewa*–b, and Kauai 21–*Cyanea kuhihewa*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyanea kuhihewa* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (1,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(iv) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(v) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(vi) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

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FAMILY CARYOPHYLLACEAE: *Schiedea attenuata* (NCN)

Kauai 11–*Schiedea attenuata*–a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Schiedea attenuata* on Kauai. Within this unit, the primary constituent elements of critical habitat are:

(i) Annual precipitation: Less than 75 inches (190 centimeters).

(ii) Substrate: Greater than 65 degree slope, rocky talus.

(iii) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(iv) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

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FAMILY EUPHORBIACEAE: *Chamaesyce eleanoriae* (AKOKO)

Kauai 7–*Chamaesyce eleanoriae*–a, Kauai 11–*Chamaesyce eleanoriae*–b, and Kauai 11–*Chamaesyce eleanoriae*–c, identified in the legal descriptions in

paragraph (a)(1) of this section, constitute critical habitat for *Chamaesyce eleanoriae* on Kauai.

(i) In units Kauai 7–*Chamaesyce eleanoriae*–a and Kauai 11–*Chamaesyce eleanoriae*–b, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In unit Kauai 11–*Chamaesyce eleanoriae*–c, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Less than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, rocky talus.

(C) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(D) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

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FAMILY EUPHORBIACEAE: *Chamaesyce remyi* var. *kauaiensis* (AKOKO)

Kauai 4–*Chamaesyce remyi* var. *kauaiensis*–a, Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–b, Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–c, Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–d, Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–e, Kauai 19–*Chamaesyce remyi* var. *kauaiensis*–f, Kauai 20–*Chamaesyce remyi* var. *kauaiensis*–g, and Kauai 21–*Chamaesyce remyi* var. *kauaiensis*–h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Chamaesyce remyi* var. *kauaiensis* on Kauai.

(i) In units Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–b, Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–d, and Kauai 21–*Chamaesyce remyi* var. *kauaiensis*–h, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Kauai 4–*Chamaesyce remyi* var. *kauaiensis*–a, Kauai 10–*Chamaesyce remyi* var. *kauaiensis*–c, Kauai 11–*Chamaesyce remyi* var. *kauaiensis*–e, Kauai 19–*Chamaesyce remyi* var. *kauaiensis*–f, and Kauai 20–*Chamaesyce remyi* var. *kauaiensis*–g, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Greater than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(C) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*

(D) Understory: Ferns, Bryophytes, *Coprosoma, Dubautia, Hedyotis, Peperomia.*

FAMILY EUPHORBIACEAE: *Chamaesyce remyi* var. *remyi* (AKOKO)

Kauai 4–*Chamaesyce remyi* var. *remyi*–a, Kauai 7–*Chamaesyce remyi* var. *remyi*–b, Kauai 10–*Chamaesyce remyi* var. *remyi*–c, Kauai 10–*Chamaesyce remyi* var. *remyi*–d, Kauai 10–*Chamaesyce remyi* var. *remyi*–e, Kauai 11–*Chamaesyce remyi* var. *remyi*–f, Kauai 11–*Chamaesyce remyi* var. *remyi*–g, Kauai 11–*Chamaesyce remyi* var. *remyi*–h, Kauai 11–*Chamaesyce remyi* var. *remyi*–i, Kauai 11–*Chamaesyce remyi* var. *remyi*–j, Kauai 18–*Chamaesyce remyi* var. *remyi*–k, Kauai 19–*Chamaesyce remyi* var. *remyi*–l, Kauai 20–*Chamaesyce remyi* var. *remyi*–m, Kauai 21–*Chamaesyce remyi* var. *remyi*–n, Kauai 22–*Chamaesyce remyi* var. *remyi*–o, Kauai 23–*Chamaesyce remyi* var. *remyi*–p, Kauai 24–*Chamaesyce remyi* var. *remyi*–q, and Kauai 25–*Chamaesyce remyi* var. *remyi*–r, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Chamaesyce remyi* var. *remyi* on Kauai.

(i) In units Kauai 7–*Chamaesyce remyi* var. *remyi*–b and Kauai 11–*Chamaesyce remyi* var. *remyi*–g, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Kauai 10–*Chamaesyce remyi* var. *remyi*–d, Kauai 11–*Chamaesyce remyi* var. *remyi*–h, and Kauai 21–*Chamaesyce remyi* var. *remyi*–n, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Kauai 11–*Chamaesyce remyi* var. *remyi*–j, Kauai 22–*Chamaesyce remyi* var. *remyi*–o, and Kauai 23–*Chamaesyce remyi* var. *remyi*–p, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum.*

(E) Subcanopy: *Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine.*

(F) Understory: *Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora.*

(iv) In units Kauai 10–*Chamaesyce remyi* var. *remyi*–c, Kauai 11–*Chamaesyce remyi* var. *remyi*–f, Kauai 18–*Chamaesyce remyi* var. *remyi*–k, Kauai 24–*Chamaesyce remyi* var. *remyi*–q, and Kauai 25–*Chamaesyce remyi* var. *remyi*–r, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(v) In units Kauai 4–*Chamaesyce remyi* var. *remyi*–a, Kauai 10–*Chamaesyce remyi* var. *remyi*–e, Kauai 11–*Chamaesyce remyi* var. *remyi*–i, Kauai 19–*Chamaesyce remyi* var. *remyi*–l, and Kauai 20–*Chamaesyce remyi* var. *remyi*–m, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Greater than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(C) Subcanopy: *Broussaisia, Cheiradendran, Leptecophylla, Metrasideros.*

(D) Understory: Ferns, Bryophytes, *Caprasama, Dubautia, Hedyatis, Peperamia.*

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FAMILY FABACEAE: *Canavalia napaliensis* (AWIKIWIKI)

Kauai 7–*Canavalia napaliensis*–a and Kauai 11–*Canavalia napaliensis*–b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Canavalia napaliensis* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diaspyras, Metrasideras, Myrsine, Pauteria, Santalum.*

(v) Subcanopy: *Dadonaea, Freycinetia, Leptecaphylla, Melanthera, Osteameles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranapteris, Diplazium, Elaphoglossum, Peperomia.*

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FAMILY GERANIACEAE: *Geranium kauaiense* (NOHOANU)

Kauai 10–*Geranium kauaiense*–a, Kauai 11–*Geranium kauaiense*–b, Kauai 18–*Geranium kauaiense*–c, Kauai 24–*Geranium kauaiense*–d, and Kauai 25–*Geranium kauaiense*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Geranium kauaiense* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideras.*

(v) Subcanopy: *Braussaisia, Cibatium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Caprasma, Leptecophylla, Oreabalus, Rhynchospara, Vaccinium.*

(vii) Bogs.

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FAMILY GESNERIACEAE: *Cyrtandra oenabarba* (HAIWALE)

Kauai 4–*Cyrtandra oenabarba*–a, Kauai 10–*Cyrtandra aenabarba*–b, Kauai 10–*Cyrtandra aenabarba*–c, Kauai 11–*Cyrtandra oenabarba*–d, Kauai 11–*Cyrtandra aenobarba*–e, Kauai 19–*Cyrtandra oenobarba*–f, Kauai 20–*Cyrtandra aenabarba*–g, and Kauai 21–*Cyrtandra aenabarba*–h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyrtandra oenabarba* on Kauai.

(i) In units Kauai 10–*Cyrtandra aenabarba*–b, Kauai 11–*Cyrtandra aenabarba*–d, and Kauai 21–*Cyrtandra aenabarba*–h, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma, Metrasideros, Myrsine, Pisania, Psychatria.*

(E) Subcanopy: *Cibotium, Claoxylan, Hedyatis, Melicape.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Micralepia.*

(ii) In units Kauai 4–*Cyrtandra oenobarba*–a, Kauai 10–*Cyrtandra oenobarba*–c, Kauai 11–*Cyrtandra aenabarba*–e, Kauai 19–*Cyrtandra aenobarba*–f, and Kauai 20–*Cyrtandra oenobarba*–g, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Greater than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(C) Subcanopy: *Braussaisia, Cheiradendron, Leptecophylla, Metrasideros.*

(D) Understory: Ferns, Bryophytes, *Coprasoma, Dubautia, Hedyotis, Peperamia.*

FAMILY GESNERIACEAE: *Cyrtandra paliku* (HAIWALE)

Kauai 4–*Cyrtandra paliku*–a, Kauai 10–*Cyrtandra paliku*–b, Kauai 11–*Cyrtandra paliku*–c, Kauai 19–*Cyrtandra paliku*–d, and Kauai 20–*Cyrtandra paliku*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyrtandra paliku* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Annual precipitation: Greater than 75 inches (190 centimeters).

(ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(iii) Subcanopy: *Broussaisia, Cheiradendran, Leptecophylla, Metrosideras.*

(iv) Understory: Ferns, Bryophytes, *Caprasama, Dubautia, Hedyatis, Peperomia.*

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FAMILY LAMIACEAE: *Phyllastegia renovans* (NCN)

Kauai 10–*Phyllostegia renavans*–a, Kauai 10–*Phyllostegia renovans*–b, Kauai 11–*Phyllastegia renovans*–c, Kauai 11–*Phyllastegia renovans*–d, Kauai 18–*Phyllastegia renavans*–e, Kauai 21–*Phyllastegia renavans*–f, Kauai 24–*Phyllastegia renavans*–g, and Kauai 25–*Phyllostegia renavans*–h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Phyllastegia renavans* on Kauai.

(i) In units Kauai 10–*Phyllostegia renovans*–b, Kauai 11–*Phyllostegia renavans*–d, and Kauai 21–*Phyllastegia renavans*–f, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma, Metrasideras, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Hedyatis, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Micralepia.*

(ii) In units Kauai 10–*Phyllastegia renovans*–a, Kauai 11–*Phyllostegia renavans*–c, Kauai 18–*Phyllastegia renavans*–e, Kauai 24–*Phyllastegia renavans*–g, and Kauai 25–*Phyllastegia renavans*–h, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendran, Metrasideras.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Caprasma, Leptecophylla, Oreabolus, Rhynchaspara, Vaccinium.*

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FAMILY LAMIACEAE: *Stenogyne kealiae* (NCN)

Kauai 10–*Stenogyne kealiae*–a, Kauai 11–*Stenagyne kealiae*–b, Kauai 11–*Stenogyne kealiae*–c, Kauai 11–*Stenagyne kealiae*–d, Kauai 21–*Stenagyne kealiae*–e, Kauai 22–*Stenogyne kealiae*–f, and Kauai 23–*Stenogyne kealiae*–g, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Stenogyne kealiae* on Kauai.

(i) In units Kauai 10–*Stenogyne kealiae*–a, Kauai 11–*Stenagyne kealiae*–c, and Kauai 21–*Stenogyne kealiae*–e, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Kauai 11–*Stenogyne kealiae*–d, Kauai 22–*Stenogyne kealiae*–f, and Kauai 23–*Stenogyne kealiae*–g, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum.*

(E) Subcanopy: *Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine.*

(F) Understory: *Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora.*

(iii) In unit Kauai 11–*Stenogyne kealiae*–b, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Less than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, rocky talus.

(C) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*

(D) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

FAMILY LOGANIACEAE: *Labordia helleri* (KAMAKAHALA)

Kauai 7–*Labordia helleri*–a, Kauai 10–*Labordia helleri*–b, Kauai 10–*Labordia helleri*–c, Kauai 11–*Labordia helleri*–d, Kauai 11–*Labordia helleri*–e, Kauai 11–*Labordia helleri*–f, Kauai 11–*Labordia helleri*–g, Kauai 18–*Labordia helleri*–h, Kauai 21–*Labordia helleri*–i, Kauai 22–*Labordia helleri*–j, Kauai 23–*Labordia helleri*–k, Kauai 24–*Labordia helleri*–l, and Kauai 25–*Labordia helleri*–m, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Labordia helleri* on Kauai.

(i) In units Kauai 7–*Labordia helleri*–a and Kauai 11–*Labordia helleri*–e, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Kauai 10–*Labordia helleri*–c, Kauai 11–*Labordia helleri*–f, and Kauai 21–*Labordia helleri*–i, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Kauai 11–*Labordia helleri*–g, Kauai 22–*Labordia helleri*–j, and Kauai 23–*Labordia helleri*–k, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum.*

(E) Subcanopy: *Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine.*

(F) Understory: *Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora.*

(iv) In units Kauai 10–*Labordia helleri*–b, Kauai 11–*Labordia helleri*–d, Kauai 18–*Labordia helleri*–h, Kauai 24–*Labordia helleri*–l, and Kauai 25–*Labordia helleri*–m, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

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FAMILY LOGANIACEAE: *Labordia pumila* (KAMAKAHALA)

Kauai 10–*Labordia pumila*–a, Kauai 11–*Labordia pumila*–b, Kauai 18–*Labordia pumila*–c, Kauai 24–*Labordia pumila*–d, and Kauai 25–*Labordia pumila*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Labordia pumila* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(vii) Bogs.

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FAMILY MYRSINACEAE: *Lysimachia daphnoides* (LEHUA MAKANOE)

Kauai 10–*Lysimachia daphnoides*–a, Kauai 11–*Lysimachia daphnoides*–b, Kauai 18–*Lysimachia daphnoides*–c, Kauai 24–*Lysimachia daphnoides*–d, and Kauai 25–*Lysimachia daphnoides*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Lysimachia daphnoides* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(vii) Bogs.

FAMILY MYRSINACEAE: *Lysimachia iniki* (NCN)

Kauai 4–*Lysimachia iniki*–a, Kauai 10–*Lysimachia iniki*–b, Kauai 11–*Lysimachia iniki*–c, Kauai 19–*Lysimachia iniki*–d, and Kauai 20–*Lysimachia iniki*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Lysimachia iniki* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Annual precipitation: Greater than 75 inches (190 centimeters).

(ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.
(iii) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*
(iv) Understory: Ferns, Bryophytes, *Coprosoma, Dubautia, Hedyotis, Peperomia.*

FAMILY MYRSINACEAE: *Lysimachia pendens* (NCN)

Kauai 4–*Lysimachia pendens*–a, Kauai 10–*Lysimachia pendens*–b, Kauai 11–*Lysimachia pendens*–c, Kauai 19–*Lysimachia pendens*–d, and Kauai 20–*Lysimachia pendens*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Lysimachia pendens* on Kauai. Within these units, the primary constituent elements of critical habitat are:
(i) Annual precipitation: Greater than 75 inches (190 centimeters).
(ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.
(iii) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*
(iv) Understory: Ferns, Bryophytes, *Coprosoma, Dubautia, Hedyotis, Peperomia.*

FAMILY MYRSINACEAE: *Lysimachia scopulensis* (NCN)

Kauai 11–*Lysimachia scopulensis*–a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Lysimachia scopulensis* on Kauai. Within this unit, the primary constituent elements of critical habitat are:
(i) Annual precipitation: Less than 75 inches (190 centimeters).
(ii) Substrate: Greater than 65 degree slope, rocky talus.
(iii) Subcanopy: *Antidesma, Chamaesyce, Diospyros, Dodonaea.*
(iv) Understory: *Bidens, Eragrostis, Melanthera, Schiedea.*

FAMILY MYRSINACEAE: *Lysimachia venosa* (NCN)

Kauai 4–*Lysimachia venosa*–a, Kauai 10–*Lysimachia venosa*–b, Kauai 11–*Lysimachia venosa*–c, Kauai 19–*Lysimachia venosa*–d, and Kauai 20–*Lysimachia venosa*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Lysimachia venosa* on Kauai. Within these units, the primary constituent elements of critical habitat are:
(i) Annual precipitation: Greater than 75 inches (190 centimeters).
(ii) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.
(iii) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*
(iv) Understory: Ferns, Bryophytes, *Coprosoma, Dubautia, Hedyotis, Peperomia.*

FAMILY MYRSINACEAE: *Myrsine knudsenii* (KOLEA)

Kauai 11–*Myrsine knudsenii*–a, Kauai 22–*Myrsine knudsenii*–b, and Kauai 23–*Myrsine knudsenii*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Myrsine knudsenii* on Kauai. Within these units, the primary constituent elements of critical habitat are:
(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).
(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).
(iii) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.
(iv) Canopy: *Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum.*
(v) Subcanopy: *Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine.*
(vi) Understory: *Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora.*

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FAMILY MYRSINACEAE: *Myrsine mezii* (KOLEA)

Kauai 10–*Myrsine mezii*–a, Kauai 11–*Myrsine mezii*–b, Kauai 11–*Myrsine mezii*–c, Kauai 18–*Myrsine mezii*–d, Kauai 22–*Myrsine mezii*–e, Kauai 23–*Myrsine mezii*–f, Kauai 24–*Myrsine mezii*–g, and Kauai 25–*Myrsine mezii*–h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Myrsine mezii* on Kauai.
(i) In units Kauai 11–*Myrsine mezii*–c, Kauai 22–*Myrsine mezii*–e, and Kauai 23–*Myrsine mezii*–f, the primary constituent elements of critical habitat are:
(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).
(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).
(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.
(D) Canopy: *Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum.*
(E) Subcanopy: *Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine.*
(F) Understory: *Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora.*
(ii) In units Kauai 10–*Myrsine mezii*–a, Kauai 11–*Myrsine mezii*–b, Kauai 18–*Myrsine mezii*–d, Kauai 24–*Myrsine mezii*–g, and Kauai 25–*Myrsine mezii*–h, the primary constituent elements of critical habitat are:
(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).
(B) Annual precipitation: Greater than 75 inches (190 centimeters).
(C) Substrate: Well-developed soils, montane bogs.
(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*
(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*
(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

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FAMILY PITTOSPORACEAE: *Pittosporum napaliense* (HOAWA)

Kauai 7–*Pittosporum napaliense*–a and Kauai 11–*Pittosporum napaliense*–b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Pittosporum napaliense* on Kauai. Within these units, the primary constituent elements of critical habitat are:
(i) Elevation: Less than 3,000 ft (1,000 m).
(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).
(iii) Substrate: Shallow soils, little to no herbaceous layer.
(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*
(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*
(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

* * * * *

FAMILY RUBIACEAE: *Psychotria grandiflora* (KOPIKO)

Kauai 10–*Psychotria grandiflora*–a, Kauai 11–*Psychotria grandiflora*–b, Kauai 11–*Psychotria grandiflora*–c, Kauai 18–*Psychotria grandiflora*–d, Kauai 22–*Psychotria grandiflora*–e, Kauai 23–*Psychotria grandiflora*–f, Kauai 24–*Psychotria grandiflora*–g, and Kauai 25–*Psychotria grandiflora*–h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Psychotria grandiflora* on Kauai.
(i) In units Kauai 11–*Psychotria grandiflora*–c, Kauai 22–*Psychotria grandiflora*–e, and Kauai 23–*Psychotria grandiflora*–f, the primary constituent elements of critical habitat are:
(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).
(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).
(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.
(D) Canopy: *Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum.*

(E) Subcanopy: *Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine.*

(F) Understory: *Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora.*

(ii) In units Kauai 10–*Psychotria grandiflora*–a, Kauai 11–*Psychotria grandiflora*–b, Kauai 18–*Psychotria grandiflora*–d, Kauai 24–*Psychotria grandiflora*–g, and Kauai 25–*Psychotria grandiflora*–h, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

FAMILY RUBIACEAE: *Psychotria hobdyi* (KOPIKO)

Kauai 7–*Psychotria hobdyi*–a and Kauai 11–*Psychotria hobdyi*–b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Psychotria hobdyi* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

FAMILY RUTACEAE: *Melicope degeneri* (ALANI)

Kauai 10–*Melicope degeneri*–a, Kauai 11–*Melicope degeneri*–b, Kauai 18–*Melicope degeneri*–c, Kauai 24–*Melicope degeneri*–d, and Kauai 25–*Melicope degeneri*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Melicope degeneri* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

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FAMILY RUTACEAE: *Melicope paniculata* (ALANI)

Kauai 10–*Melicope paniculata*–a, Kauai 11–*Melicope paniculata*–b, and Kauai 21–*Melicope paniculata*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Melicope paniculata* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (1,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(iv) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(v) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(vi) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

FAMILY RUTACEAE: *Melicope puberula* (ALANI)

Kauai 10–*Melicope puberula*–a, Kauai 10–*Melicope puberula*–b, Kauai 11–*Melicope puberula*–c, Kauai 11–*Melicope puberula*–d, Kauai 18–*Melicope puberula*–e, Kauai 21–*Melicope puberula*–f, Kauai 24–*Melicope puberula*–g, and Kauai 25–*Melicope puberula*–h, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Melicope puberula* on Kauai.

(i) In units Kauai 10–*Melicope puberula*–b, Kauai 11–*Melicope puberula*–d, and Kauai 21–*Melicope puberula*–f, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(ii) In units Kauai 10–*Melicope puberula*–a, Kauai 11–*Melicope puberula*–c, Kauai 18–*Melicope puberula*–e, Kauai 24–*Melicope puberula*–g, and Kauai 25–*Melicope puberula*–h, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

FAMILY RUTACEAE: *Platydesma rostrata* (PILO KEA LAU)

Kauai 4–*Platydesma rostrata*–a, Kauai 7–*Platydesma rostrata*–b, Kauai 10–*Platydesma rostrata*–c, Kauai 10–*Platydesma rostrata*–d, Kauai 10–*Platydesma rostrata*–e, Kauai 11–*Platydesma rostrata*–f, Kauai 11–*Platydesma rostrata*–g, Kauai 11–*Platydesma rostrata*–h, Kauai 11–*Platydesma rostrata*–i, Kauai 11–*Platydesma rostrata*–j, Kauai 18–*Platydesma rostrata*–k, Kauai 19–*Platydesma rostrata*–l, Kauai 20–*Platydesma rostrata*–m, Kauai 21–*Platydesma rostrata*–n, Kauai 22–*Platydesma rostrata*–o, Kauai 23–*Platydesma rostrata*–p, Kauai 24–*Platydesma rostrata*–q, and Kauai 25–*Platydesma rostrata*–r, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Platydesma rostrata* on Kauai.

(i) In units Kauai 7–*Platydesma rostrata*–b and Kauai 11–*Platydesma rostrata*–g, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Shallow soils, little to no herbaceous layer.

(D) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(E) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(F) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

(ii) In units Kauai 10–*Platydesma rostrata*–d, Kauai 11–*Platydesma rostrata*–h, and Kauai 21–*Platydesma rostrata*–n, the primary constituent elements of critical habitat are:

(A) Elevation: Less than 3,000 ft (1,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Clays, ashbeds, deep well-drained soils, lowland bogs.

(D) Canopy: *Antidesma, Metrosideros, Myrsine, Pisonia, Psychotria.*

(E) Subcanopy: *Cibotium, Claoxylon, Hedyotis, Melicope.*

(F) Understory: *Alyxia, Cyrtandra, Dicranopteris, Diplazium, Machaerina, Microlepia.*

(iii) In units Kauai 11–*Platydesma rostrata*–j, Kauai 22–*Platydesma rostrata*–o, and Kauai 23–*Platydesma rostrata*–p, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(C) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(D) Canopy: *Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum.*

(E) Subcanopy: *Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine.*

(F) Understory: *Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora.*

(iv) In units Kauai 10–*Platydesma rostrata*–c, Kauai 11–*Platydesma rostrata*–f, Kauai 18–*Platydesma rostrata*–k, Kauai 24–*Platydesma rostrata*–q, and Kauai 25–*Platydesma rostrata*–r, the primary constituent elements of critical habitat are:

(A) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(B) Annual precipitation: Greater than 75 inches (190 centimeters).

(C) Substrate: Well-developed soils, montane bogs.

(D) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(E) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(F) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

(v) In units Kauai 4–*Platydesma rostrata*–a, Kauai 10–*Platydesma rostrata*–e, Kauai 11–*Platydesma rostrata*–i, Kauai 19–*Platydesma rostrata*–l, and Kauai 20–*Platydesma rostrata*–m, the primary constituent elements of critical habitat are:

(A) Annual precipitation: Greater than 75 inches (190 centimeters).

(B) Substrate: Greater than 65 degree slope, shallow soils, weathered lava.

(C) Subcanopy: *Broussaisia, Cheirodendron, Leptecophylla, Metrosideros.*

(D) Understory: Ferns, Bryophytes, *Coprosoma, Dubautia, Hedyotis, Peperomia.*

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FAMILY ASPLENIACEAE: *Diellia mannii* (NCN)

Kauai 11–*Diellia mannii*–a, Kauai 22–*Diellia mannii*–b, and Kauai 23–*Diellia mannii*–c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Diellia mannii* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(iii) Substrate: Weathered aa lava flows, rocky mucks, thin silty loams, deep volcanic ash soils.

(iv) Canopy: *Acacia, Metrosideros, Psychotria, Tetraplasandra, Zanthoxylum.*

(v) Subcanopy: *Cheirodendron, Coprosma, Hedyotis, Ilex, Myoporum, Myrsine.*

(vi) Understory: *Bidens, Dryopteris, Leptecophylla, Poa, Scaevola, Sophora.*

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FAMILY DRYOPTERIDACEAE: *Dryopteris crinalis* var. *podosorus* (PALAPALAI AUMAKUA)

Kauai 10–*Dryopteris crinalis* var. *podosorus*–a, Kauai 11–*Dryopteris crinalis* var. *podosorus*–b, Kauai 18–*Dryopteris crinalis* var. *podosorus*–c, Kauai 24–*Dryopteris crinalis* var. *podosorus*–d, and Kauai 25–*Dryopteris crinalis* var. *podosorus*–e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dryopteris crinalis* var. *podosorus* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: 3,000 to 6,600 ft (1,000 to 2,000 m).

(ii) Annual precipitation: Greater than 75 inches (190 centimeters).

(iii) Substrate: Well-developed soils, montane bogs.

(iv) Canopy: *Acacia, Charpentiera, Cheirodendron, Metrosideros.*

(v) Subcanopy: *Broussaisia, Cibotium, Eurya, Ilex, Myrsine.*

(vi) Understory: Ferns, *Carex, Coprosma, Leptecophylla, Oreobolus, Rhynchospora, Vaccinium.*

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FAMILY PTERIDACEAE: *Doryopteris angelica* (NCN)

Kauai 7–*Doryopteris angelica*–a and Kauai 11–*Doryopteris angelica*–b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Doryopteris angelica* on Kauai. Within these units, the primary constituent elements of critical habitat are:

(i) Elevation: Less than 3,000 ft (1,000 m).

(ii) Annual precipitation: 50 to 75 inches (127 to 190 centimeters).

(iii) Substrate: Shallow soils, little to no herbaceous layer.

(iv) Canopy: *Acacia, Diospyros, Metrosideros, Myrsine, Pouteria, Santalum.*

(v) Subcanopy: *Dodonaea, Freycinetia, Leptecophylla, Melanthera, Osteomeles, Pleomele, Psydrax.*

(vi) Understory: *Carex, Dicranopteris, Diplazium, Elaphoglossum, Peperomia.*

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Dated: September 12, 2008

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. E8–23561 Filed 10–20–08; 8:45 am]

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Federal Register

Tuesday,
October 21, 2008

Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Seating Systems, Occupant Crash Protection, Seat Belt Assembly Anchorages, School Bus Passenger Seating and Crash Protection; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2008–0163]

RIN 2127–AK09

Federal Motor Vehicle Safety Standards; Seating Systems, Occupant Crash Protection, Seat Belt Assembly Anchorages, School Bus Passenger Seating and Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule upgrades the school bus passenger crash protection requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 222. This final rule requires new school buses of 4,536 kilograms (10,000 pounds) or less gross vehicle weight rating (GVWR) ("small school buses") to have lap/shoulder belts in lieu of the lap belts currently required. This final rule also sets performance standards for seat belts voluntarily installed on school buses with a GVWR greater than 4,536 kilograms (10,000 pounds) ("large school buses"). Each State or local jurisdiction may decide whether to install seat belts on these large school buses. Other changes to school bus safety requirements include raising the height of seat backs from 508 mm (20 inches) to 610 mm (24 inches) on all new school buses and requiring a self-latching mechanism on seat bottom cushions that are designed to flip up or be removable without tools.

DATES: The effective date of this final rule is April 20, 2009. The requirement for lap/shoulder belts on small school buses applies to small school buses manufactured on or after October 21, 2011. Likewise, the requirement that voluntarily-installed seat belts in large school buses must meet the performance and other requirements specified by this final rule applies to large school buses manufactured on or after October 21, 2011. The requirement for the 24-inch seat backs and the self-latching seat bottom cushions apply to school buses manufactured on or after October 21, 2009.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than December 5, 2008.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Mr. Charles Hott, Office of Vehicle Safety Standards (telephone: 202–366–0247) (fax: 202–366–4921), NVS–113. For legal issues, Ms. Dorothy Nakama, Office of the Chief Counsel (telephone: 202–366–2992) (fax: 202–366–3820), NCC–112. These officials can be reached at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

This final rule upgrades the school bus occupant protection requirements of the Federal motor vehicle safety standards, primarily by amendments to FMVSS No. 222, "School bus passenger seating and crash protection" (49 CFR 571.222), and also by amendments to FMVSS Nos. 207, 208, and 210 relating to the strength of the seating system and seat belt anchorages. The notice of proposed rulemaking (NPRM) preceding this final rule was published on November 21, 2007 (72 FR 65509; Docket No. NHTSA–2007–0014). This final rule also provides information to state and local jurisdictions for them to consider when deciding whether they should order seat belts on large school buses (school buses with a GVWR greater than 4,536 kilograms (kg) (10,000 pounds (lb)), and responds to comments on the agency's discussion in the NPRM of recommended "best practices" concerning the belts on the large buses.[1]

This final rule's most significant changes to FMVSS No. 222 involve:

- Requiring small school buses to have a Type 2 seat belt assembly (a combination of pelvic and upper torso restraints (see FMVSS No. 209, S3), referred to in this document as a "lap/shoulder belt") at each passenger seating position (these buses are currently required to have lap belts);
- Increasing the minimum seat back height requirement from 508 millimeters (mm) (20 inches) from the seating reference point (SgRP) to 610 mm (24 inches) for all school buses;
- Incorporating test procedures into the standard to test lap/shoulder belts in small school buses and voluntarily-installed lap and lap/shoulder belts in large school buses to ensure both the strength of the anchorages and the compatibility of the seat with compartmentalization; and

[1] "School bus" is defined in 49 CFR 571.3 as a bus that is sold, or introduced in interstate commerce, for purposes that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation. A "bus" is a motor vehicle, except a trailer, designed for carrying more than 10 persons. In this NPRM, when we refer to "large" school buses, we refer to those school buses with GVWRs of more than 4,536 kg (10,000 lb). These large school buses may transport as many as 90 students. "Small" school buses are school buses with a GVWR of 4,536 kg (10,000 lb) or less. Generally, these small school buses seat 15 persons or fewer, or have one or two wheelchair seating positions.

• Requiring all school buses with seat bottom cushions that are designed to flip up or be removable, typically for easy cleaning, to have a self-latching mechanism.

The first three upgrades are based on the findings of NHTSA's school bus research program, discussed in detail later in this preamble, which the agency conducted in response to the Transportation Equity Act for the 21st Century (TEA–21).[2] Requiring small school buses to have lap/shoulder belts for all passengers and raising the seat back height on all school buses to 610 mm (24 inches) makes the highly protective interior of the school bus even safer. Further, as new designs of lap/shoulder belts intended for large school buses are emerging in the marketplace, the third initiative will require lap/shoulder belts to be complementary with compartmentalization, ensuring that the high level of passenger crash protection is enhanced and not degraded by any seat belt system.

This rulemaking engaged the agency and public in a new dialogue on the merits of seat belts on large school buses. It also provided a forum for a fresh look at divergent positions on the belt issue and an opportunity to explore the implications of the school bus research results, the innovation of new technologies, and the realities of current pupil transportation needs. About 127 individuals and organizations commented on the NPRM, with many taking the position that lap/shoulder belts should be required on large school buses and with many opposed to that idea. Some individuals further sought to have the agency prohibit the installation of lap belts on large school buses. Many commenters focused on the emerging seat belt technology that would enable school bus manufacturers to install lap/shoulder belts on large school buses without reducing passenger capacity, and asked NHTSA to ensure that the performance requirements under consideration would not prohibit that technology. Others did not believe any type of belt system should be encouraged for large school buses.

After consideration of the comments, we make final most of the technical changes to the FMVSSs proposed in the NPRM, but have adjusted test procedures and some performance requirements to accommodate the emerging seating design technologies. We have also listened to each of the comments in support of and in opposition to the various issues involved in this rulemaking and have adjusted some of our views, while affirming others.

However, this final rule cannot and does not definitively conclude the debate as to whether a State or local jurisdiction should require seat belts on its large school buses. Under the National Traffic and Motor Vehicle Safety Act ("Safety Act") (49 U.S.C. 30101 *et seq.*) the agency is to prescribe motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and that are stated in objective terms. Under the Safety Act, "motor vehicle safety" means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident * * *." 49 U.S.C. 30102(a)(8). After considering all available information, including the comments to the NPRM, we cannot conclude that a requirement for seat belts on large school buses will protect against an unreasonable risk of accidents or an unreasonable risk of death or injury in an accident. That is, based on available information, a science-based, data-driven determination that there should be a Federal requirement for the belts cannot be supported at this time. Whether the same conclusion can be made by a State or local jurisdiction is a matter for local decision-makers and we encourage them to make the decisions most appropriate for their individual needs to most safely transport their students to and from school.

This final rule provides the most up-to-date information known to the agency on seat belts on large school buses. It discusses principles that the agency has weighed about belts on large buses and attempts to clear up some misunderstanding expressed in some of the comments about the benefits of belts in school bus side impacts and rollover crashes. It affirms that States should have the choice of ordering seat belts on their large school buses since the belts could enhance the already very safe passenger protection afforded by large school buses, and makes sure that these voluntarily-installed belts will not degrade compartmentalization.

II. Background

The Motor Vehicle and Schoolbus Safety Amendments of 1974 directed NHTSA to issue motor vehicle safety standards applicable to school buses and school bus equipment. In response to this legislation, NHTSA revised several of its safety standards to improve existing requirements for school buses, extended ones for other vehicle classes to those buses, and issued new safety standards exclusively for school buses. FMVSS No. 222, one of a set of new standards for school buses, improves protection to school bus passengers during crashes and sudden driving maneuvers.

Effective since 1977, FMVSS No. 222 contains occupant protection requirements for school bus seating positions and restraining barriers. Its requirements for school buses with GVWR's of 4,536 kg (10,000 pounds) or less (small school buses) differ from those for school buses with GVWR's greater than 4,536 kg (10,000 pounds) (large school buses), because the "crash pulse" or deceleration experienced by the small school buses is typically more severe than that of the large buses in similar collisions. For the small school buses, the standard includes requirements that all seating positions must be equipped with lap (Type 1) or lap/shoulder (Type 2) seat belt assemblies and anchorages for passengers.[3] NHTSA decided that seat belts were necessary on small school buses to provide adequate crash protection for the occupants. For the large school buses, FMVSS No. 222 relies on requirements for "compartmentalization" to provide passenger crash protection. Investigations of school bus crashes prior to issuance of FMVSS No. 222 found the school bus seat was a significant factor in causing injury. NHTSA found that the seat failed the passengers in three principal respects: By being too weak, too low, and too hostile (39 FR 27584; July 30, 1974). In response to this finding, NHTSA developed a set of requirements which comprise the "compartmentalization" approach.

Compartmentalization ensures that passengers are cushioned and contained by the seats in the event of a school bus crash by requiring school bus seats to be positioned in a manner that provides a compact, protected area surrounding each seat. If a seat is not compartmentalized by a seat back in front of it, compartmentalization must be provided by a padded and protective restraining barrier. The seats and restraining barriers must be strong enough to maintain their integrity in a crash, yet flexible enough to be capable

[2] The fourth initiative, for self-latching mechanisms, responds to an NTSB recommendation to NHTSA (H–84–75).

[3] Lap/shoulder belts and appropriate anchorages for the driver and front passenger (if provided) seating position, lap belts or lap/shoulder and appropriate anchorages for all other passenger seating positions.

of deflecting in a manner which absorbs the energy of the occupant. They must meet specified height requirements and be constructed, by use of substantial padding or other means, so that they provide protection when they are impacted by the head and legs of a passenger. Compartmentalization minimizes the hostility of the crash environment and limits the range of movement of an occupant. The compartmentalization approach ensures that high levels of crash protection are provided to each passenger independent of any action on the part of the occupant.

NHTSA has considered the question of whether seat belts should be required on large school buses from the inception of compartmentalization and the school bus safety standards. NHTSA has been repeatedly asked to require belts on buses, has repeatedly reanalyzed the issue, and has repeatedly concluded that compartmentalization provides a high level of safety protection that obviates the safety need for a Federal requirement necessitating the installation of seat belts. Further, the agency has been acutely aware that a decision on requiring seat belts in large school buses cannot ignore the implications of such a requirement on pupil transportation costs. The agency has been attentive to the fact that, as a result of requiring belts on large school buses, school bus purchasers would have to buy belt-equipped vehicles regardless of whether seat belts would be appropriate for their needs. Prior to today's rulemaking, NHTSA has concluded that those costs should not be imposed on all purchasers of school buses when large school buses are currently extremely safe. In the area of school transportation especially, where a number of needs are competing for limited funds, persons responsible for school transportation might want to consider other alternative investments to improve their pupil transportation programs which can be more effective at reducing fatalities and injuries than seat belts on large school buses, such as by acquiring additional new school buses to add to their fleet, or implementing improved pupil pedestrian and driver education programs. Since each of these efforts competes for limited funds, the agency has maintained that those administrators should decide how their funds should be allocated.

Nonetheless, throughout the past 30 years that compartmentalization and the school bus safety standards have been in effect, the agency has openly and continuously considered the merits of a seat belt requirement for large school buses.[4] The issue has been closely analyzed by other parties as well, such as the National Transportation Safety Board, and the National Academy of Sciences. Various reports have been issued, the most significant of which are described below.

III. Studies

- *National Transportation Safety Board, 1987*

In 1987, the National Transportation Safety Board (NTSB) reported on a study of forty-three post-standard school bus crashes investigated by the Safety Board. NTSB concluded that most fatalities and injuries in school bus crashes occurred because the occupant seating positions were directly in line with the crash forces, and that seat belts would not have prevented those injuries and fatalities. (NTSB/SS–87/01, Safety Study, Crashworthiness of Large Post-standard School Buses, March 1987, National Transportation Safety Board.)

- *National Academy of Sciences, 1989*

A 1989 National Academy of Sciences (NAS) study concluded that the overall potential benefits of requiring seat belts on large school buses were insufficient to justify a Federal mandate for installation. The NAS also stated that funds used to purchase and maintain seat belts might be better spent on other school bus safety programs with the potential to save more lives and reduce more injuries. (Special Report 222, Improving School Bus Safety, National Academy of Sciences, Transportation Research Board, Washington, DC, 1989)

- *National Transportation Safety Board, 1999*

In 1999, the NTSB reported on six school bus crashes it investigated in which passenger fatalities or serious injuries occurred away from the area of vehicle impact. The NTSB found compartmentalization to be an effective means of protecting passengers in school bus crashes. However, because many of those passengers injured in the six crashes were believed to have been thrown from their compartments, NTSB believed other means of occupant protection should be examined. (NTSB/SIR–99/04, Highway Safety Report, Bus Crashworthiness Issues, September 1999, National Transportation Safety Board)

- *National Academy of Sciences, 2002*

In 2002, the NAS published a study that analyzed the safety of various transportation modes used by school children to get to and from school and school-related activities. The report concluded that each year there are approximately 815 school transportation fatal injuries per year. Two percent were school bus-related, compared to 22 percent due to walking/bicycling, and 75 percent from passenger car crashes, especially those with teen drivers. The report stated that changes in any one characteristic of school travel can lead to dramatic changes in the overall risk to the student population. Thus, the NAS concluded, it is important for school transportation decisions to take into account all potential aspects of changes to requirements to school transportation. (Special Report 269, "The Relative Risks of School Travel: A National Perspective and Guidance for Local Community Risk Assessment," Transportation Research Board of the National Academies, 2002)

- *National Highway Traffic Safety Administration, 2002*

In 2002, NHTSA studied school bus safety (2002 School Bus Safety Study). Based on this research, the agency issued a Congressional Report that detailed occupant safety on school buses and analyzed options for improving occupant safety. ("Report to Congress, School Bus Safety: Crashworthiness Research, April 2002," *http://www-nrd.nhtsa.dot.gov/departments/nrd-11/SchoolBus/SBReportFINAL.pdf*) (hereinafter "2002 Report to Congress"). The agency provided additional analysis of these data in a Technical Analysis supporting the NPRM ("2007 Technical Analysis").[5]

TEA–21 directed NHTSA to study and assess school bus occupant safety and analyze options for improvement. In response, the agency developed a research program to determine the real-world effectiveness of FMVSS No. 222 requirements for school bus passenger crash protection, evaluate alternative passenger crash protection systems in controlled laboratory tests, and provide findings to support rulemaking activities to upgrade the passenger crash protection for school bus passengers.

The research program consisted of NHTSA first conducting a full-scale school bus crash test to determine a representative crash pulse. The crash

[4] Through the years, NHTSA has been petitioned about seat belts on large school buses. (See, e.g., denials of petitions to require seat belt anchorages, 41 FR 28506 (July 12, 1976), 48 FR 47032 (October 17, 1983); response to petition for rulemaking to prohibit the installation of lap belts on large school buses, 71 FR 40057 (July 14, 2006).)

[5] "NHTSA Technical Analysis to Support Upgrading the Passenger Crash Protection in School Buses (September 2007)," Docket No. NHTSA–2007–0014.

test was conducted by frontally impacting a conventional style school bus (Type C) into a rigid barrier at 30 mph (48.3 km/h). The impact speed was chosen to ensure that sufficient energy would be imparted to the occupants in order to evaluate the protective capability of compartmentalization, plus provide a level at which other methods for occupant injury mitigation could be evaluated during sled testing. A 30 mph (48 km/h) impact into the rigid barrier is also equivalent to two vehicles of similar size impacting at a closing speed of approximately 60 mph (96 km/h), which represents a severe frontal crash.

In the crash test, we used Hybrid III 50th percentile adult male dummies (representing adult and large teenage occupants), 5th percentile adult female (representing an average 12-year-old (12YO) occupant), and a 6-year-old child dummy (representing an average 6 year-old (6YO) occupant). The dummies were seated so that they were as upright as possible and as rearmost on the seat cushion as possible. The agency evaluated the risk of head injury recorded by the dummies (Head Injury Criterion (HIC15)), as well as the risk of chest (chest G's) and neck injury (Nij),[6] as specified in FMVSS No. 208 "Occupant crash protection."

NHTSA then ran frontal crash test simulations at the agency's Vehicle Research and Test Center (VRTC), using a test sled to evaluate passenger protection systems. Twenty-five sled tests using 96 test dummies of various sizes utilizing different restraint strategies were conducted that replicated the acceleration time history of the school bus full-scale frontal impact test. The goal of the laboratory tests was to analyze the dummy injury measures to gain a better understanding of the effectiveness of the occupant crash protection countermeasures. In addition to injury measures, dummy kinematics and interaction with restraints (i.e., seat backs and seat belts, as well as each other) were also analyzed to provide a fuller understanding of the important factors contributing to the type, mechanism, and potential severity of any resulting injury.

NHTSA studied three different restraint strategies: (a) Compartmentalization; (b) lap belt (with compartmentalization); and (c) lap/shoulder belt (with compartmentalization).

Within the context of these restraint strategies, various boundary conditions were evaluated: (a) Seat spacing—483 mm (19 inches), 559 mm (22 inches) and 610 mm (24 inches); (b) seat back height—nominally 508 mm (20 inches) and 610 mm (24 inches); and (c) fore/aft seat occupant loading.[7] Ten dummies were tested with misused or out-of-position (OOP) lap or shoulder restraints. The restraints were misused by placing the lap belt too high up on the waist, placing the lap/shoulder belt placed behind the dummy's back, or placing the lap/shoulder belt under the dummy's arm.

The agency found the following with regard to compartmentalization:

- Head injury measures were low for all dummy sizes, except when override[8] occurred.
- High head injury values (greater than the IARV) or dummy-to-dummy contacts beyond the biofidelic range of the test dummy were produced when the large male dummy overrode the seat in front of it, while the high-back seats lessened the override.
- Low chest injury measures were observed for all dummy sizes.
- Two 50th percentile male dummies in a seat were not well compartmentalized, as evidenced by head and neck injury measures being greater than the IARVs, due to large forward seat back deformation.
- Based on dummy motion and interaction with each other, compartmentalization was sensitive to seat back height for the 50th percentile male dummy.
- Compartmentalization of 6YO and 5th percentile female dummies did not appear to be sensitive to rear loading conditions.
- Compartmentalization of the 50th percentile male dummy did not appear to be sensitive to seat spacing for the 50th percentile male dummy.
- The average neck injury values for the 6YO and 5th percentile female dummy tests were above the IARV.

The agency found the following with regard to lap belts:

- Head and chest injury values were low for all dummy sizes.
- The average neck injury value was greater than the IARV for all test dummies, and was 70 percent above for the 5th percentile female dummy.
- Neck injury values increased for the 5th percentile female dummy when the seat spacing was increased from 483 mm (19 inches) to 559 mm (22 inches).

The agency found the following with regard to properly worn lap/shoulder belts:

- Head, chest and neck injury values were low for all size dummies and below those seen in the compartmentalization and lap belt results.
- Average head injury values were, at most, about half those seen in the compartmentalization and lap belt results.
- Neck injury values increased with application of rear loading for the 6YO and 5th percentile female dummies.
- Lap/shoulder belt systems would require approximately 380 mm (15 inches) of seat width per passenger seating position. The standard school bus bench seat is 990 mm (39 inches) wide, and is considered a three-passenger seat. If the width of the seat bench were increased to 1,143 mm (45 inches) for both seats on the left and right side of the school bus, the aisle width would be reduced to an unacceptable level.

NHTSA found that, for improperly worn lap/shoulder belts:

- Placing the shoulder belt behind the dummy's back resulted in dummy motion and average dummy injury values similar to lap belt restraint.
- Placing the shoulder belt under the dummy's arm provided more restraint on dummy torso motions than when the belt is placed behind the back. Average dummy injury values for the 6YO were about the same as seen with lap/shoulder belts and 5th percentile female dummy injury values were between those seen in lap/shoulder belts and lap belts.

It is important to note that these sled tests simulated only a severe, 30 mph (48.3 km/h) frontal crash condition. Therefore, the agency was not able to conclude that the higher neck injury measures associated with the lap belt in these tests would translate to an overall greater safety risk. Lap belts could retain the occupants in side impact, rollover, or lower speed frontal crashes, which occur with a greater frequency.

[6] The injury assessment reference values (IARVs) for these measurements are the thresholds used to assess new motor vehicles with regard to frontal occupant protection as specified in FMVSS No. 208. HIC15 is a measure of the risk of head injury, Chest G is a measure of chest injury risk, and Nij is a measure of neck injury risk. For HIC15, a score of 700 is equivalent to a 30 percent risk of a serious head injury (skull fracture and concussion onset). In a similar fashion, Chest G of 60 equates to a 60 percent risk of a serious chest injury and Nij of 1 equates to a 22 percent risk of a serious neck injury. For all these measurements, higher scores indicate a higher likelihood of risk. For example, a Nij of 2 equates to a 67 percent risk of serious neck injury while a Nij of 4 equates to a 99 percent risk. More information regarding these injury measures can be found at NHTSA's Web site (*http://www-nrd.nhtsa.dot.gov/pdf/nrd-11/airbags/rev_criteria.pdf*).

[7] Unbelted occupants in the aft seat will affect the kinematics of belted occupants in the fore seat due to seat back deformation. Similarly, belted occupant loading of the fore seat back through the torso belt will affect the compartmentalization for unbelted occupants in the aft seat.

[8] Override means an occupant's head or torso translates forward beyond the forward seat back providing compartmentalization.

IV. Guiding Principles

School buses are one of the safest forms of transportation in the U.S. Every year, approximately 474,000 public school buses, transporting 25.1 million children to and from school and school-related activities,[9] travel an estimated 4.8 billion route miles.[10] Over the 11 years ending in 2005, there was an annual average of 26 school transportation related fatalities (11 school bus occupants (including drivers and passengers) and 15 pedestrians).[11] Six of the bus occupant fatalities were school-age children, with the remaining fatalities being adult drivers and passengers.[12] On average, there were 9 crashes per year in which an occupant was killed. The school bus occupant fatality rate of 0.23 fatalities per 100 million vehicle miles traveled (VMT) is more than six times lower than the overall rate for motor vehicles of 1.5 per 100 million VMT.[13]

The 2002 School Bus Safety Study provided fresh findings about possible enhancements to large school bus occupant crash protection that could be achieved through the use of lap/shoulder seat belts.[14] The results validated the possibility that a passenger who has a seat on the school bus and who was belted with a lap/shoulder belt could have an even lower risk of head and neck injury in a severe crash than on current large school buses.[15] However, given the existing safety of being transported on large school buses, exemplified by the low number of children that are seriously injured or killed, the societal benefit of further reducing, at a cost, an already extremely low likelihood of serious injury or death merited an open and robust debate. The agency grappled with whether Federal enhancements of an already very safe vehicle were reasonable and appropriate, especially when the cost of installing and maintaining lap/shoulder belts on the buses could impact the ability of transportation providers to transport children to or from school or related events or spend funds on other avenues affecting pupil safety.

Funds provided for pupil transportation are limited, and monies spent on lap/shoulder belts on large school buses usually draw from the monies spent on other crucial aspects of school transportation. Other pupil transportation expenses include purchases of new school buses to ensure that as many children as possible are provided school bus transportation, driver and pupil training on safe loading practices (most of the school bus-related fatalities occur outside the bus while children are being loaded or unloaded), on operational costs, such as fuel costs, and on upkeep and maintenance of school buses and school bus equipment. Given the tradeoff between installing seat belts on large school buses and implementing other safety measures that could benefit pupil transportation or other social welfare initiatives, and given that large school buses are already very safe, we believed that States should be permitted the choice of deciding whether belts should be part of their large school bus purchases.

Bearing in mind the already excellent safety record of large school buses and the real-world demands on pupil transportation providers, we did not believe that the available information indicated that seat belts on large school buses would address an unreasonable risk of injury or fatality, and so we did not propose in the NPRM that they be required by the FMVSS to be installed on these vehicles. However, we did want to provide the public the information we obtained from the school bus research program about the enhancements that lap/shoulder belts achieved in the sled test program. Further, in the NPRM, we wanted to inform transportation providers of the concern that purchasers should consider lap/shoulder belts on large school buses only if there would be no reduction in the number of children that are transported to or from school or related events on large school buses. We believed that reducing bus ridership would likely result in more student fatalities, since walking and private vehicles are less safe than riding a large school bus without seat belts.

We sought in the NPRM to articulate a best practices approach. We thought that the best practice would be for local decision-makers to consider the already excellent safety record of school buses, the economic impact on school systems incurred by the costs of seat belts and the impact that lap/shoulder belts have on the seating capacity of large school buses. We indicated that, if ample funds were available for pupil transportation, and pupil transportation providers could order and purchase a sufficient number of school buses needed to provide school bus transportation to all children, pupil transportation providers should consider installing lap/shoulder belts on large school buses. If a State were to determine that lap/shoulder belts were in its best interest, we encouraged the State to install those systems.

a. Comments in Favor of a Federal Requirement for Belts on Large School Buses

Widely divergent views were expressed in the comments to the NPRM as to whether seat belts should be required or permitted to be optional. Many commenters, including State and local jurisdictions, supported the approach of allowing purchasers the choice of deciding whether to include seat belts on their large school buses rather than of mandating the belts. The National School Transportation Association (NSTA)[16] stated that States and local districts should be given the option of whether to require seat belts on their school buses because States and local districts are in the best position to determine the most effective use of their limited resources, and because NSTA believed that entities that affirmatively choose to equip their buses with lap/shoulder belts are more likely to provide the necessary support to ensure that the belts are worn. However, several State groups were concerned that the NPRM's reference to the availability of 402 funds for the purchase and installation of seat belts on school buses could result in the states funding less-essential highway safety activities to the detriment of potentially more effective and worthwhile highway safety programs, such as buckle-up programs and those combating drunk or aggressive driving. There was widespread support of NHTSA's view that bus occupancy must

[9] School Transportation News, Buyers Guide 2007.

[10] This value was reported by School Bus Fleet 2007 Fact Book.

[11] "Traffic Safety Facts—School Transportation Related Crashes," NHTSA, DOT HS 810 626. The data in this publication account for all school transportation-related deaths in transporting students to and from school and school related activities. This includes non-school buses used for this purpose when these vehicles are involved in a fatal crash.

[12] For the crashes resulting in the 11 annual school bus occupant fatalities, 51 percent of the fatalities and 52 percent of the crashes were from frontal collisions. Traffic Safety Facts 2005, School Transportation-Related Crashes, DOT HS 810 626.

[13] Traffic Safety Facts 2005, DOT HS 810 631.

[14] NHTSA's Preliminary Regulatory Evaluation accompanying the NPRM included the benefits of seat belts in rollover crashes and the Final Regulatory Evaluation accompanying this final rule will include the benefits of seat belts in side impacts.

[15] The tests were in a controlled laboratory investigation so assumptions are made about how representative the laboratory tests were of the real world, e.g., how representative the test dummies were of children, the sled test of an actual vehicle crash, the magnitude of the crash replicated as compared to real-world school bus crashes, and the ability of purchasers to purchase the belts without incurring an unreasonable trade-off in pupil transportation safety elsewhere.

[16] NSTA states that it is an association of private businesses providing transportation services to public school districts and private schools across the country.

not be reduced due to installation of belt systems. Many comments wanted to make sure that the final rule would permit new flexible school bus seat designs that have emerged in the marketplace (lap/shoulder belts on these bench seats can be adjusted to provide two lap/shoulder belts for two average-size high school students or three lap/shoulder belts for three elementary school students). Some advocacy groups embraced the NPRM as facilitating their efforts to get seat belts installed on large school buses.

However, several commenters (e.g., the National Association for Pupil Transportation (NAPT) and the New York Association for Pupil Transportation (NYAPT)) [17] expressed concern that not enough is known about belt systems to proceed with the rulemaking. These commenters were concerned whether seat belts could reduce the overall safety of school buses. NAPT believed that NHTSA should ensure that lap/belt systems do not negatively affect compartmentalization in any respect, and should quantify "the marginal safety benefits (if any)" that lap/shoulder belts provide beyond compartmentalization. The commenter stated that NHTSA should consider whether the belts could reduce safety through incorrect use, by impeding emergency evacuation, and by reducing safety in side impacts and rollovers (the commenter did not explain the concerns it had with the belts affecting side impact and rollover performance). NAPT believed that on-going agency research (discussed in the 2002 Report to Congress) should be completed before further action on this rulemaking is taken by NHTSA.

Similarly, the NTSB expressed concern that lap/shoulder belts have not been sufficiently researched in non-frontal crash modes, e.g., side, oblique and rollover crashes.

In contrast, notwithstanding the discussion in the NPRM that the agency was not proposing a requirement for belts in large school buses, many commenters urged the agency to go beyond what was proposed in the NPRM and require lap/shoulder belts on large school buses.[18] The National Coalition for School Bus Safety (NCSBS) stated that if lap/shoulder belts coupled with compartmentalization affords "optimum protection" as stated in the NPRM, lap/shoulder belts should be required on large school buses to provide occupants side and rollover crash protection. The commenter indicated that even though "there has been no documentation of mortality or morbidity due to the 20 inch seat back height or failure of cushion retention," NHTSA proposed to increase seat back height and require self-latching cushions. The commenter believed that "[t]his stands in sharp contrast with scores of documented fatalities and severe injuries proven to result" in side and rollover crashes due to the absence of seat belts on large school buses.[19]

Similarly, the West Brook Bus Crash Families (WBBCF) [20] believed that the use of seat belts, in any vehicle, saves lives and reduces injuries and urged the agency to require seat belts on large school buses. The commenter believed that "many 'real world' considerations are conspicuously absent from consideration without explanation" and that the agency's "cost/benefit 'balance' is arbitrary and capricious." WBBCF stated that speculation based on reductions in "manufacturer capacity" of bus seating "are confined to a few elementary school routes and often resolved though [sic] better route scheduling." The commenter believed that "[t]here is a complete absence of any real world evidence causally linking reduction in school bus seating capacity to increased risk of death or injury of alternative forms of travel." In addition, the commenter stated that "NHTSA should clearly state the proven increases in occupant protection resulting from lap/shoulder belts use: 45–60% in frontal collision, 70% in rollover and lateral collisions for which compartmentalization alone is 'incomplete' and ineffective." The commenter believed that this effective rate would result in "predicted life-saving and injury-reducing benefits of lap-shoulder belts using real world data (5–8 lives saved each year; 3,000–5,000 injuries reduced annually." The commenter questioned why the agency did not research whether belts could enhance compartmentalization in side crashes and rollovers in the 2002 School Bus Safety Study. In addition, the commenter believed that NHTSA should calculate the associated reductions in personal and societal costs due to lap/shoulder belts in terms of medical, insurance and liability expense, physical disability and trauma, emotional trauma, and lost education days. Further, the commenter also believed that NHTSA should have acknowledged a finding of the American Academy of Pediatrics that between 6,000 and 10,000 children per year are injured in school bus accidents, and that, the commenter believed, many of these injuries could be reduced by a lap/shoulder belt requirement.

Some commenters (e.g., the NCSBS and WBBCF) believed that lap/shoulder belts on large school buses should also be required to reinforce the message to children that they should "buckle-up" while riding in passenger cars and other private vehicles. NCSBS also stated that lap/shoulder belts would reduce driver distraction by improving student behavior, which in turn will help reduce driver distraction and the frequency of school bus crashes due to driver distraction.

Adding another facet to the comments were responses from school bus drivers and other school bus personnel. School bus drivers were universally opposed to having belts on the buses, believing that the belts were unnecessary, that they would impede emergency egress, and that drivers have limited means to get students to buckle up. George Davis of the Fayette County Schools bus shop expressed concern about the agency's calling lap/shoulder belts coupled with compartmentalization "optimum crash protection." He was concerned that there was an implication that those who might choose to spend their resources on safety-related items other than belts would be going against the "best practices" discussed in the NPRM. He stated that it should be up to each purchaser to determine whether to purchase seat belts on large school buses, and that if a purchaser decides not to purchase the belts, then they are also determining what is the "best practice" for their needs.

Agency Response

After reviewing all the data, including the comments on the NPRM, NHTSA again concludes that large school buses

[17] The NAPT describes itself as a nonprofit organization that supports people who transport children to and from school. Its membership organizations include professional school transportation personnel in both the public and private sector, school bus manufacturers, and aftermarket service and product suppliers. The NYAPT represents supervisors and managers of both public school and private operators employed in local schools in New York State.

[18] As noted earlier, many other commenters opposed the idea of a requirement for belts on large school buses.

[19] No data was provided by the commenter explaining or supporting its reference to those fatalities and injuries; we know of no such data and cannot substantiate this statement.

[20] WBBCF states that it is a parent advocacy organization comprised of parents and family members of the 2006 West Brook High School girls' varsity soccer team, Beaumont, Texas. It states that in March 2006, a motor coach bus transporting the team to a playoff game overturned, killing two teammates and injuring others. The comment states that WBBCF was formed to advocate safer bus travel for school children, including the addition of lap/shoulder seat belts in school buses and motor coaches.

that meet our school bus safety standards without seat belts do not pose an unreasonable risk of death or injury in an accident. Thus, we do not find a safety need for a Federal mandate for seat belts on large school buses. However, our statutory authority expressly permits State or local jurisdictions to prescribe safety standards that impose higher performance requirements than the Federal safety standards for vehicles that are for the State's own use, such as school buses. Accordingly, we affirm that States and local jurisdictions should continue to be offered the choice of whether to order seat belts on their large school buses since the belts could provide enhancements to compartmentalization. We agree with NSTA that entities that affirmatively choose to equip their buses with lap/shoulder belts are more likely to provide the necessary support to ensure that the belts are worn properly. They are also more likely to be willing and able to instruct their students and drivers on emergency egress procedures affected by the belts. States and local districts need to examine the safest means of transport for their children, and this approach lets them decide how to spend their funds. Further, the performance requirements of this final rule for voluntarily-installed belts will help ensure that the belts enhance and do not degrade compartmentalization.

However, we are not able to concur with those commenters suggesting that lap/shoulder belts should be required on large school buses. The agency had to balance several compelling principles in this rulemaking. First, the agency considered the safety risks to which children on large school buses are exposed (how are children being injured or killed in school bus-related crashes) and whether seat belts would reduce that risk. Data indicate that children who are killed in school bus-related crashes are typically killed outside of the school bus as they are being loaded or unloaded onto the vehicle, by motorists passing the bus or by the school bus itself.[21] Inside the bus, the children are typically killed when they are in the direct zone of intrusion of the impacting vehicle or object. In the loading zone event, seat belts will not have an effect on preventing the fatality. In the intrusion zone, seat belts will similarly be unlikely to be effective in preventing the fatality, even in side impacts. In a rollover situation where there is ejection, the belts would have a beneficial effect, but the incidence of fatal ejections in rollover accidents occurring from a large school bus is rare.

WBBCF believed that "NHTSA should clearly state the proven increases in occupant protection resulting from lap/shoulder belt use: 45–60 percent in frontal collisions, 70 percent in rollover and lateral collisions for which compartmentalization alone is 'incomplete' and ineffective." The effectiveness statistics to which WBBCF refers[22] are those that have been determined based on the crash experience of passenger cars and other light duty vehicles, although the effectiveness in passenger vehicles is much less than 70 percent in side impacts. These vehicles' crash experiences are different from that of large school buses. As noted earlier in this preamble, fatalities in frontal crashes of high severity are infrequent. In school bus side crashes, fatalities usually occur only in the area of intrusion from a heavy truck. Seat belts provide no benefit for an occupant sitting in an intrusion zone when struck by a large intruding object, but can provide benefits for those away from the intrusion zone. Although belts are effective in reducing the risk of fatality in rollovers due to ejection, there are very few fatal ejections in large school bus rollover crashes.

Nonetheless, seat belts may have some effect on reducing the risk of harm in frontal, side and rollover crashes, as they can help restrain occupants within the seat and not move about in the vehicle interior toward injurious surfaces.[23] For this final rule we have estimated the benefits that would accrue from the addition and correct use of lap/shoulder belts on large and small school buses in these crashes. For frontal crashes, we have estimated the benefits of the belts by using the sled test data obtained from the 2002 School Bus Safety Study, comparing dummy injury values with lap/shoulder belts versus injury values with compartmentalization. This analysis is explained in detail in the FRE accompanying this final rule. With regard to the estimated effectiveness of seat belts in large school bus side and rollover crashes, we have used the effectiveness statistics of 74 percent for rollover crashes and 21 percent for side impacts attributed to seat belts in passenger cars because no other information about the possible effect of belts in buses is available. With those data, we have estimated the benefits associated with the addition and correct use of lap/shoulder belts on large and small school buses.

The 2002 NAS study indicated that approximately 800 school aged-children are killed annually in motor vehicle crashes during normal school travel hours, among which only 0.5 percent were passengers on school buses and 1.5 percent were pedestrians involved in school bus related crashes. Seventy-five percent of the annual fatalities were to occupants in passenger vehicles and 24 percent were to those walking or riding a bicycle. Based on this study, the agency concluded that by far the safest means for students to get to school is by a school bus, and all efforts should be made to get as many students as possible onto school buses.

When making regulatory decisions on possible enhancements, the agency must bear in mind how improvements in one area might have an adverse effect on programs in other areas. The net effect on safety could be negative if the costs of purchasing and maintaining the seat belts and ensuring their correct use results in non-implementation or reduced efficacy of other pupil transportation programs that affect child safety. For example, some schools are currently eliminating school bus service for extracurricular activities or shrinking areas of school bus service due to high fuel prices.[24] Given that very few school bus-related serious injuries and fatalities would be prevented by a requirement mandating seat belts on large school buses, we could not assure that overall safety would not be adversely affected, particularly given the many competing demands on school resources and the widely varying and unique circumstances associated with transporting children in each of these districts. Nonetheless, this final rule does not prevent the installation of seat belts on school buses and provides appropriate performance requirements for these systems when they are installed.

It is worth noting, however, that our analysis of the data indicates that installing lap/shoulder seat belts on all large school buses would cost between

[21] "Traffic Safety Facts 2006: School Transportation-Related Crashes," DOT HS 810 813.

[22] The correct effectiveness estimates in fatality reduction for passenger cars is 50 percent for frontal impacts, 74 percent for rollover crashes and 21 percent in side impacts.

[23] It is noted that raising the seat back height on school buses as required by this rule achieves a portion of that risk reduction for unbelted passengers on school buses. In the agency's 2002 School Bus Research Program, with compartmentalization, low head injury values were observed for all dummy sizes, except when override occurred. High-back seats were shown to prevent override.

[24] *http://www.usatoday.com/news/education/2008-07-09-schoolbuses_N.htm.*

$183 and $252 million.[25] Those belts would save about 2 lives per year if every child wore them on every trip. This estimate reflects the potential benefits of lap/shoulder belts in frontal, side, and rollover crashes. In addition, correctly worn lap/shoulder belts could prevent about 1,900 crash injuries each year if every child wore them on every trip. These benefits would be achieved at a cost of between $23 and $36 million per equivalent life saved. However, to achieve these benefits, school districts that choose to install belts on large school buses must have a program to ensure that belts are worn and worn correctly by the school bus passengers. If belts are not worn, they will offer no benefits to the passengers. If belts are worn incorrectly, e.g., shoulder belt tucked behind the passenger's back, they will not only not provide the desired additional protection, but may cause injuries. Absent a program to ensure belts are worn and worn correctly, the benefits of seat belts on large school buses will be lower than the numbers shown in our analysis, which assumes 100% belt use and all belts used correctly.[26]

In the NPRM, the agency emphasized its concern that installing lap/shoulder seat belts on large school buses would reduce the passenger capacity of the buses. After NHTSA completed its NPRM but before it published the NPRM in the **Federal Register**, seating system manufacturers Takata Corp. (Takata)/M2KLLC(M2K)[27] and the Safeguard Division of Indiana Mills Manufacturing Inc. (IMMI) separately approached the agency to introduce their "flexible seating systems" (or "flex-seats.") (As noted earlier in this preamble, these seating systems have lap/shoulder belts and are reconfigurable to accommodate either three smaller students or two larger students.) Many of the commenters referred to these systems with approval and asked NHTSA to ensure that the FMVSS No. 222 requirements under consideration would not prohibit flex-seat technology.

We have accommodated flexible seating systems (hereafter referred to as flexible occupancy seats or flex-seats), as requested, to facilitate the use of these new belt systems. However, although flex-seats may provide a way of offering lap/shoulder belts without lessening capacity on an individual given bus, there will still be a cost premium for outfitting school buses with the lap/shoulder belts, maintaining the seats, and training students and drivers on their use. The emergence of flex-seats on the market does not change our position concerning a Federal need to require lap/shoulder belts on large school buses.

On the capacity issue, WBBCF stated that it perceived the agency as speculating on its concerns about reduced seating capacity due to installation of lap/shoulder belts. The commenter stated that reductions in "manufacturer capacity" of bus seating "are confined to a few elementary school routes and often resolved though [sic] better route scheduling." The commenter believed that "[t]here is a complete absence of any real world evidence causally linking reduction in school bus seating capacity to increased risk of death or injury of alternative forms of travel."

The agency believes that to some extent, the new flexible occupancy seats may have resolved some of the capacity reduction issues associated with the earlier versions of lap/shoulder belt seats in school buses. However, to the extent that transportation providers decide to use the older lap/shoulder belt equipped school bus seats, the extent of capacity reduction would depend on each route and may not always be resolved through better routing. In response to the WBBCF concern that there is an absence of any real world date linking reduction in school bus capacity to increased risk of death or injury, we disagree. The 2002 NAS study clearly shows that a reduction in school bus ridership would lead to children seeking a less safe form of transportation to and from school, leading to an increased risk of serious/fatal injury. The capacity of school buses, along with other characteristics such as bus length and overall weight, is often considered by transportation providers when determining which buses can be used for each route. To the extent that the same size bus could have less seating capacity and the transportation provider would not have sufficient resources to add additional buses and drivers, it could impact the level of school transportation service provided.

Some commenters advocating a requirement for belts on buses believed that NHTSA did not correctly analyze the pros and cons of a requirement for lap/shoulder belts on large school buses. The NCSBS thought it was inconsistent for NHTSA to not propose to require seat belts on large school buses even though it proposed to require higher seat backs and self-latching seat cushions, especially when, the commenter stated, "there has been no documentation of mortality or morbidity due to the 20 inch seat back height or failure of cushion retention." In response, as part of good governance, NHTSA has the responsibility to assess whether each of its initiatives would be cost effective and propose those that are. The requirements on manufacturers and purchasers must involve the best use of its resources. The proposals for the higher seat backs was found to be effective and would not lead to reduced seating capacity or other negative consequences. We could not make the same determination about a Federal mandate to require lap/shoulder seat belts on all large school buses. The potential impact on pupil transportation resources from a Federal mandate may lead to higher overall risk.

WBBCF stated its belief that NHTSA should have acknowledged a finding of the American Academy of Pediatrics (AAP) that between 6,000 and 10,000 children per year are injured in school bus accidents, and that, the commenter believed, many of these injuries could be reduced by a lap/shoulder belt requirement. The AAP study referenced by WBBCF indicated that there are approximately 17,000 school bus related nonfatal injuries annually. Ninety-seven percent of those injured in the AAP study were treated and released from the hospital. The study used a sample of students treated in hospital emergency rooms for injuries which had the word "school bus" in the case description to generate an estimated nationwide total number of people injured. These numbers include injuries that are not traffic related such as slip and falls while boarding/alighting (injuries that cannot be prevented by any occupant protection system.) The study indicated that the school bus injuries were from the following causes:

- Crash Related—7,206
- Boarding/Alighting—84,056
- Slip/Fall—1,162
- Traffic, noncrash—860
- Other/unknown—3,749

In contrast to the AAP study, to determine the number of school bus crash related injuries, NHTSA used real world data where the injury resulted from a crash involving a vehicle in transport and on a public road. The number of crash related injuries reported in the AAP study correlates closely with our estimates of child passengers in school buses injured in school bus-related crashes

[25] The range in costs includes both 55 passenger buses (with loss of seating capacity) and 66 passenger buses with flexible seating (with no loss of seating capacity). However, they do not include the costs of a program to ensure correct belt usage.

[26] If, for example, only 50 percent of passengers were to wear seat belts, the benefits estimated above would be halved and the cost per equivalent life saved would rise to between $46 and $72 million.

[27] Takata (also known as TK Holdings) and M2K jointly developed a flexible occupancy seat.

(approximately 7,300 injuries annually.) Of these 7,300 injuries, NHTSA estimated that 94 percent were minor and non-incapacitating injuries. Based on this analysis, we believe that the 97 percent injured in the AAP study that were treated and released from the hospital only sustained minor injuries.

Regarding WBBCF's comment that NHTSA should calculate the associated reductions in personal and societal costs due to lap/shoulder belts in terms of medical, insurance and liability expense, physical disability and trauma, emotional trauma, and lost education days, the Preliminary Regulatory Evaluation (PRE) for the NPRM included such factors in its estimates. Likewise, the Final Regulatory Evaluation for this final rule also takes into account the comprehensive value of an injury and statistical life, which includes all of those factors relating to medical, insurance, pain and suffering and lost work days.

Finally, regarding Mr. Davis's comment, we agree that the best practice is for each purchaser to determine whether to purchase seat belts on large school buses and that part of such a decision is the thorough assessment of how the school's resources should be spent. We agree that if after weighing all the considerations a purchaser decides not to purchase the belts, then it is also determining what is best for its needs.

b. Other Issues Concerning Belts on Large School Buses

NHTSA does not agree that this rulemaking should be delayed until completion of the side impact research mentioned in the 2002 Report to Congress. In response to NYAPT, our side impact protection countermeasure research is still ongoing. We have been actively pursuing this research and expect to complete it soon. However, completion of this research is not critical to implementing regulations specific to the areas discussed in the NPRM or this final rule, such as seat belts, raising the seat back height, or requiring seat bottom cushions to be self-latching. The research in those areas has been completed. The ongoing research with respect to side impact improvements will in no way affect the outcome of the previous research, or the policies, performance and decisions related to this final rule.

Further, we do not believe that additional research is necessary to show "that the newly developed systems adequately protect children of all sizes in severe side impacts" as suggested by the NTSB. For near side impact, the agency's 2002 testing and the NTSB studies have well documented that seat belts will provide very limited occupant protection for those in direct line with the impact force. This is similar to near side occupants in passenger vehicles and the current agency school bus side impact research is geared to address this condition.

With regard to the belief that seat belts on large school buses should also be required to reinforce the message to children that they should wear belts in passenger vehicles, NHTSA studied the issue in 1985. The agency found that children were able to understand that the bus environment was different than that of a passenger car, and that not having belts on school buses did not dilute the buckle up message for family vehicles.[28] NHTSA did a follow-up literature review in 2007 and determined that the results of the 1985 study are likely unchanged. See, "School Bus Seat Belts and Carryover Effects in Elementary School-Aged Children", which we have placed in the docket for this final rule.

c. Comments in Favor of a Federal Ban of Lap Belts in Large School Buses

In the NPRM, we decided against prohibiting lap belts on large school buses. Although we acknowledged that laboratory research, including our own on lap belted dummies, showed relatively poor performance of lap belts in large school buses, we could not conclude that the addition of lap belts in large school buses reduced overall occupant protection such that they should be banned. We noted that lap belts were required in three states (New York (NY) (1987), New Jersey (1994), Florida (2001)), in many other school districts, and in special-needs equipped school buses. We stated that our examination of NY State school bus crash data for lap belt equipped and non-belt equipped buses could not conclude that lap belts either helped or hurt occupant injury outcomes.

A number of commenters to the NPRM wanted NHTSA to ban lap belts. The NTSB believed that NHTSA's 2002 school bus test program showed that lap belts "afford occupants little if any safety benefit above that achieved by compartmentalization alone and may cause additional neck and abdominal injury." The NTSB and the National Association of State Directors of Pupil Transportation Services (NASDPTS)[29] believed that since lap belts are not an acceptable means of occupant protection in passenger cars, light trucks, or small school buses, lap-only belts should not be installed on large school buses. Similarly, NYAPT believed that NHTSA should prohibit the installation of lap belts on school buses and clearly state what the commenter believed were the inherent risks associated with their use. In addition, the commenter stated that few NY school districts require the use of lap belts by student passengers. Accordingly, it believed that the agency's statements in the NPRM relating to the evaluation of New York crash data should be corrected. The commenter stated that the agency should not have determined that the data from New York is inconclusive, but rather that seat belt usage in school buses is so minimal and inconsistent that there is no relevant data to analyze and compare.

Agency Response

In response to NYAPT's comment, we stand by our statement in the NPRM that we cannot conclude that lap belts either helped or hurt occupant injury outcomes. It was not possible to estimate lap belt performance or effectiveness.

Crash data have consistently shown that lap belts are a good safety device in passenger vehicles, even though lap/shoulder belts are more effective when worn properly. We currently allow a lap belt in the front center seat of a passenger vehicle, and we allow lap belts in medium to heavy vehicles over 4,536 kg (10,000 pounds) GVWR. Lap belts have been shown to be almost as effective as lap/shoulder belts in rollover crashes, and benefit far side occupants in side impacts involving these vehicles.

The NPRM did not propose to ban lap belts on large school buses and we decline to concur at this time that lap belts should be prohibited on large school buses. The large school bus environment is different from that of small school buses, passenger cars, and small trucks and vans, and experiences less severe crash forces. Thus, the type of restraint that is appropriate for each may differ. A state might want to install seat belts on their school buses to supplement compartmentalization in side or rollover crashes, and we are unable to conclude that if they do, they must install lap/shoulder belts, given

[28] Gardner, A. M., Plitt, W., & Goldhammer, M. (1986). "School bus safety belts: Their use, carryover effects and administrative issues," (Final Report No. DOT HS 806 965). Washington, DC: National Highway Traffic Safety Administration.

[29] The NASDPTS states that it represents State directors responsible for school transportation in each state, school bus manufacturers and other industry suppliers, school transportation contractors, and associations with memberships that include transportation officials, drivers, trainers and technicians.

the additional cost and potential reduced capacity associated with such Type 2 restraints over lap belts and the absence of real-world injury data.

d. Comments on Use of Section 402 Highway Safety Grant Funds

In the NPRM, we noted that certain highway safety grant funds may continue to be used to fund the purchase and installation of seat belts (lap or lap/shoulder) on school buses. Annually, all States, the District of Columbia, Puerto Rico, the Bureau of Indian Affairs, and the U.S. territories receive NHTSA section 402 State and Community Highway Safety Formula Grant Funds. A wide range of behavioral highway safety activities that help reduce crashes, deaths, and injuries, including seat belt-related activities, qualify as eligible costs under the section 402 program. Each State determines how to allocate its funds based on its own priorities and identified highway safety problems as described in an annual Highway Safety Plan (HSP). We stated that, as with all proposed expenditures of section 402 funds, the purchase and installation of seat belts on school buses must be identified as a need in the State's HSP and comply with all requirements under 23 U.S.C. Part 1200. Section 402 funds may not be used to purchase the school bus in its entirety, but may fund only the incremental portion of the bus cost directly related to the purchase and installation of seat belts.

1. Use of Existing Federal Grant Funds To Purchase Seat Belts

In response to the NPRM, the Governors Highway Safety Association (GHSA), Georgia Governor's Office of Highway Safety (GOHS), and Maryland Department of Transportation wrote that although lap/shoulder belts on large school buses is an important safety issue, the biggest danger to children, as evidenced by years of data, is in the area around school buses and on the way to and from school. The commenters stated that emphasizing the use of Federal 402 funds for school bus safety represents a significant shift in Federal policy, but there is no evidence to support such a shift. They expressed concern that the impact on the 402 program is potentially enormous and devastating to a State's highway safety program, could eliminate a State's entire apportionment and still barely pay for the costs of the improvement. They believe that from a cost/benefit perspective, this solution threatens many other higher priority objectives, including impaired driving prevention, child passenger safety, and aggressive driving. For example, Maryland stated that in the past 10 years, there has been one school bus occupant-related fatality in the State of Maryland. In contrast, the commenter stated, in 2006 in Maryland there were 199 fatal crashes involving alcohol, 79 fatal crashes involving aggressive drivers, 95 fatal crashes involving pedestrians, 83 fatal crashes involving motorcycles, and 102 fatal crashes involving young drivers. Maryland expressed the view that because of media coverage of recent school bus crashes, "states may be pressured to spend federal highway safety money for this purpose [seat belts on large school buses], at the expense of many competing highway safety needs."

The GOHS stated that in the NPRM, NHTSA chose not to calculate the costs of installing seat belts on large school buses, because installation is voluntary. It stated its belief that local school districts that wish to install safety belts on large school buses would incur sizable costs. The GOHS also stated that most school districts identify the specifications for new school buses and then they put the specifications out to bid. They further stated that costs of improvements are not individualized, but are part of the overall cost of the new bus design. It would therefore be difficult for school districts to determine the incremental cost of a single improvement and then invoice the state highway safety office just for the improvement.

Agency Response

NHTSA does not agree that using Federal safety grant money to install safety equipment on school buses represents a significant shift in Federal policy. For example, when we issued final rules in the early 1990s requiring stop arms and upgraded mirror systems on school buses as a means to provide enhanced protection for children who ride school buses, we specifically allowed Federal safety grant funds to be used to purchase the newly specified school bus safety equipment.

Nothing in this final rule changes the fact that deciding how to use section 402 grant funds is at the discretion of each State. If a State should decide that lap/shoulder belts on large school buses is a safety priority, NHTSA is simply stating that the Federal safety grant funds may be used to purchase the belts. If a State should choose to purchase seat belts, its decision must be based on the State's own priorities identified in its Annual Highway Safety Plan and comply with all requirements under 23 CFR Part 1200. Section 402 funds may not be used to purchase the entire school bus, but may fund only the incremental portion of the bus' cost that is directly related to the purchase and installation of seat belts. NHTSA has also determined that in addition to using section 402 funds, 23 U.S.C. section 406 Safety Belt Performance Grant Funds can be used to fund the incremental portion directly related to the purchase and installation of seat belts on school buses.

NHTSA is aware that many important safety issues compete for funding from each State's Federal safety grant funds. Therefore, it is imperative that each State base its selection for fundable projects on its highway safety priorities. For States considering the installation of seat belts on large school buses, NHTSA has provided estimates of the cost to install seat belts in large school buses in the Preliminary Regulatory Evaluation that was available in the docket (NHTSA–2007–0014–0005.1) for the NPRM. NHTSA believes that in order to determine the incremental cost of seat belts on large school buses, when it orders the school buses, it would be a simple matter for the State to ask the school bus manufacturer for an itemized list of options, including seat belts.

2. Additional Federal Grant Funds To Purchase Seat Belts

The GOHS, North Carolina Dept. of Public Instruction, the National Association of State Directors of Pupil Transportation Services (NASDPTS), and the Texas Department of Transportation all sought additional funding for school bus improvements in NHTSA's next reauthorization. The commenters believe that additional funding is needed in order to make a change in school bus seating viable on a widespread basis. They asked NHTSA to establish a "separate designated federal fund source" (using NASDPTS' words) to offset the additional cost of lap/shoulder belts on school buses, either within section 402 or apart from it. The commenters stated that existing funds are insufficient to implement lap/shoulder belts without significant cutbacks in other highway safety initiatives. NADSPTS commented: "When this NPRM was introduced, the general public was given the impression through the media and news releases that school bus lap/shoulder belt funding would be made available, not that we would have to compete for existing section 402 funds."

NHTSA Response

NHTSA has not identified any additional funds that can be used as a separate set-aside for the purchase of seat belts on school buses. NHTSA emphasizes that it makes available

existing Federal safety grant funds only if a State, in its Annual Highway Safety Plan, includes school bus safety initiatives related to improving the protection of children that ride in school buses.

V. Overview of Upgrades to Occupant Crash Protection Standards

a. Summary of the NPRM Proposed Upgrades

After considering the findings of NHTSA's 2002 School Bus Safety Study, the NPRM proposed several sets of upgrades to the school bus safety requirements. The first set of upgrades involved improving the compartmentalized school bus interior for all school buses. Seat back height was proposed to be increased from 508 mm (20 inches) to 610 mm (24 inches) to reduce the potential for passenger override in a crash. We also proposed to require self-latching mechanisms for school buses with seat bottom cushions that are designed to flip up or be removable without tools.

The second set of upgrades proposed to require small school buses to have lap/shoulder belts instead of just lap belts. The lap/shoulder belt systems were to fit all passengers from ages 6 through adult, to be equipped with retractors, to meet the existing anchorage strength requirements for lap/shoulder belts in FMVSS No. 210, and to meet new requirements for belt anchor location and torso belt adjustability. The seat belts were to meet a "quasi-static" test requirement to help ensure that seat backs incorporating lap/shoulder belts are strong enough to withstand the forward pull of the torso belts in a crash and the forces imposed on the seat from unbelted passengers to the rear of the belted occupants. A minimum seat belt width of 380 mm (15 inches) was proposed for belted occupants. In addition, the vehicles had to meet FMVSS No. 207 because the load in some seating configurations imposed by FMVSS No. 207 is greater than the load that would be imposed by FMVSS No. 222's seat performance requirements.

The third set of upgrades involved requirements for voluntarily-installed seat belts on large school buses. For large school buses with voluntarily-installed lap/shoulder belts, it was proposed that the vehicle meet the requirements described above for lap/shoulder belts on small school buses, except the quasi-static test would be slightly revised for the large school buses to account for crash characteristic differences between the vehicles. (Due to the mass and other characteristics of the vehicles, in crashes typically small school buses are subject to higher severity crash forces than are large school buses.) Further, we did not propose to apply FMVSS No. 207 to large school buses.

b. Overview of Comments

Commenters [30] generally supported the proposed increase in seat back height, citing the increased compartmentalization and safety benefits that higher seat backs would provide. Some seat manufacturers and members of the general public asked that seat backs be made even higher than the proposed 610 mm (24 inches), to protect against whiplash or to meet Federal head restraint standards. On the other hand, most school bus drivers and some members of the general public opposed raising the seat back height, mainly due to concerns about decreased driver visibility of students and potential discipline problems. Similarly, most comments also acknowledged the safety benefit of self-latching mechanisms for seat cushions. However, the NTSB commented that the weight required to activate the latching mechanism (that of a 6-year-old child) did not guarantee attachment of the cushion.

There was widespread support for the proposed requirement for lap/shoulder belts on all small school buses from the commenters (school bus seat and restraint manufacturers, transportation providers and other organizations). A number of commenters asked that "small school bus" be redefined to include similarly built buses that have a GVWR of over 4,536 kg (10,000 pounds). In addition, the National Child Care Association was concerned that the NPRM, if made final, would result in increased costs for the multifunction school activity bus.

Commenters generally supported the proposed performance standards for school buses, with bus, seat, and restraint manufacturers providing detailed comments on technical aspects of the test procedures and performance requirements. Many commenters asked NHTSA to ensure that the proposed seat width minimum of 380 millimeters (mm) (15 inches) did not prohibit flex-seats.

c. Post-NPRM Testing

To support this final rule, NHTSA performed additional research after the NPRM was published. The testing was done to verify analyses used to derive NPRM test values and to address questions raised by comments to the NPRM. Below, we provide a brief description of the post-NPRM testing and how some of the results affected this final rule. A more complete discussion of the post-NPRM testing can be found in the technical document supporting this final rule (2008 Technical Analysis).[31]

Both dynamic and static testing was performed. The tested seats were lap/shoulder equipped and manufactured by CEW, IMMI and Takata. The CEW seat is a unified frame seat back design with two fixed lap/shoulder belts. The IMMI and Takata seats are flex-seat designs with configurations of 3 and 2 occupants per bench. The IMMI design has a dual-frame seat back, with the outer frame providing compartmentalization of the rearward occupants and the inner frame anchoring the lap/shoulder belt for the occupant of the seat.

Sled testing of school bus seats was performed in a manner similar to the 2002 School Bus Safety Study.[32] However, testing was performed using both the large and small school bus crash pulse, rather than just the large school bus pulse use in previous testing. This testing helped the agency gain general insight into the dynamic performance of flex-seat designs.

The small school bus sled testing was also specifically performed to verify the proposed torso body block pull force applied in the quasi-static test. The proposed value had been derived through mathematical calculation using Newtonian mechanics and measurements made in large school bus pulse sled testing. The results of the new testing confirm that the proposed small school bus torso body block pull force is appropriate.

The small school bus sled testing was also useful in verifying the peak dynamic loading on the entire seat structure. These data were used in our analysis of the need for implementing

[30] The commenters included school bus seat and restraint manufacturers or consultants (AmSafe Commercial Products (AmSafe), C.W. White Company (CEW), Concepts Analysis Corp., Freedman Seating Company, IMMI, M2K, Takata, school bus manufacturers and their professional associations (Blue Bird Corp., Girardin Minibus Inc., IC Corp. (IC), National Truck Equipment Association/Manufacturers Council of Small School Buses (MCSSB), and Thomas Built Buses, Inc., the NTSB, the National Association of State Directors of Pupil Transportation Services (NASDPTS), numerous other organizations, and the general public.

[31] "NHTSA Technical Analysis to Support the Final Rule Upgrading Passenger Crash Protection in School Buses," September 2008.

[32] "NHTSA Vehicle Research and Test Center's Technical Report on Dynamic and Quasi-Static Testing for Lap/Shoulder Belts in School Buses," September 2008. See docket for this final rule.

the FMVSS No. 207 requirements to the seats during the FMVSS No. 210 testing.

The agency performed extensive testing to address comments related to the proposed quasi-static test.[33] [34] A particular focus of this testing was the many issues raised by potential allowance of flex-seats in the final rule. Through this test work, the agency determined that it would be appropriate to increase the preload and the zone where the torso body blocks are initially placed.[35] We also determined that the quasi-static test could be applied to flex-seats in all potential seating configurations. A similar determination was made when flex-seats were tested to the FMVSS No. 210 requirements for seat belt anchorages. The FMVSS No. 210 testing can be performed on flex-seats in all potential seating configurations.

To address comments specific to dual-frame seats, the agency also verified the ability to measure seat back displacement in the quasi-static test in addition to, and separate from, anchor point displacement.

d. How This Final Rule Differs From the NPRM

The following are the most important differences between the final rule and the NPRM:

1. The minimum seat width requirement is revised to accommodate flexible occupancy seats (flex-seats). Further, quasi-static loading requirements appropriate for flexible occupancy seats are adopted.

2. The quasi-static test at S5.1.5 of FMVSS No. 222 will limit the displacement of the torso belt anchor point *and* the seat back, rather than just the anchor point. This change was made to make the requirement more performance oriented, and not unnecessarily restrict seat designs that incorporate other than unified frame design. Further, to address practicability concerns, the performance limit on anchor point displacement is revised to allow the equivalent of four degrees of additional rotation.

3. In the quasi-static test, the energy absorption requirement will specify that the seat back force-deflection signature must stay below the upper bounds of existing force/deflection zone upper boundary of FMVSS No. 222. In addition, the torso belt adjustment must be maintained during the test.

4. To accommodate flex-seats, the torso anchor point minimum height requirement of FMVSS No. 210 will allow, but not require, the center seating positions in flex-seats to only accommodate an occupant as large as an average 10-year-old child, rather than an adult male. Such a center seating position is defined as a "small occupant seating position" (SOSP) and will be marked as such by way of a label on the seat belt for that seating position. In addition, the minimum lateral anchorage separation requirement is modified to allow a reasonable accommodation of existing designs of flex-seats and non-flex-seats.[36]

e. Organization of Discussion

The discussion of the amendments made by this final rule are organized as follows: Upgrades for all school buses (seat back height; cushion latches); upgrades for small school buses (requiring lap/shoulder belts; FMVSS No. 207; other issues); upgrades for large school buses (requiring voluntarily installed belts to meet performance requirement,); performance requirements for vehicles with seat belt systems (seat width requirements; seat belt anchorage requirements (FMVSS No. 210); quasi-static test; other issues).

For the NPRM, NHTSA prepared a 2007 Technical Analysis that, among other things, presented a detailed analysis of data, engineering studies, and other information supporting these amendments. A copy of the document was placed in Docket NHTSA–2007–0014. As indicated above, an updated 2008 Technical Analysis has also been prepared and placed in the docket for this final rule. In addition, several other technical reports supporting this final rule have also been placed in the docket. The agency refers to these documents from time to time in this preamble.

VI. Upgrades for All School Buses

a. Seat Back Height

In the NPRM, we proposed that the minimum seat back height for school bus seats (specified in FMVSS No. 222) be raised from a minimum 508 mm (20 inches) to 610 mm (24 inches). This increase in minimum seat back height was supported by agency-conducted sled tests that assessed the compartmentalization performance of 508 mm (20 inch) and 610 mm (24 inch) seat backs for large (50th percentile male) occupants. The results of these tests indicated that 610 mm (24 inch) seat backs would provide more effective compartmentalization for larger occupants than 508 mm (20 inch) seat backs. In tests with the higher seat back, the extent to which the dummies overrode the seats in front of them was lessened. The higher seat back was also effective in reducing head contact with test dummies that were placed in seats forward of the dummies. In tests using the 508 mm (20 inch) seat backs where dummy head contact did occur because of override, the HIC15 values tended to be well above the established IARVs.

In general, the commenters supported the proposal for the increase in seat back height to 24 inches. Three school bus seat and restraint manufacturers (Concepts Analysis Corp. (Concepts), CEW, and Takata) supported an increase in seat back height, with CEW agreeing with the proposed seat back height and barrier area and both Concepts and Takata recommending that the minimum seat back be increased as set forth in FMVSS No. 202a. Three school bus manufacturers and associations (Thomas Built Buses, Inc. (Thomas), National Truck Equipment Association/Manufacturers Council of Small School Buses (NTEA/MCSSB), and Girardin Minibus, Inc. (Girardin)) agreed with the proposed increase in seat back height. However, Thomas, NTEA/MCSSB, and Girardin requested that this requirement not apply to the last row of seats because it was believed that there is no rearward occupant to compartmentalize, driver visibility through the rear window would be better, and a lower seat back would allow for more knee room in the last row. Those opposing the proposal expressed concern about reduced driver visibility of students.

Agency Response

This final rule increases the minimum seat back height for school bus seats to 610 mm (24 in), as proposed in the NPRM.

1. In response to Takata *et al.*, when FMVSS No. 202a begins to phase-in for rear seats in the 2011 model year, it will require that any head restraints provided in the rear outboard seats (they are optional) must have a minimum height of 750 mm (29.5 inches) above the H-point.[37] This requirement will be applicable to passenger vehicles, trucks

[33] *Id.*

[34] "FMVSS No. 222 School Bus Seat Quasi-Static Testing for Various School Bus Seats Equipped with Type 2 Seat Belts, Test Procedure Development Testing," General Testing Laboratories, Inc., August 2008. See docket for this final rule.

[35] "FMVSS No. 222 School Bus Seat Quasi-Static Testing for Various School Bus Seats Equipped With Type 2 Seat Belts, Torso Block Preload and Positioning," General Testing Laboratories, Inc., July 2008. See docket for this final rule.

[36] To address small occupant seating positions, in FMVSS No. 208, "Occupant crash protection," dimensions of a 10-year-old child are added to the provisions (at S7.1.5) that specify dimensions of the occupant that must be restrained by a seat.

[37] For illustration purposes, the H-point is similar to the actual SgRP of the seat as opposed to the design SgRP. It is found by placing the SAE J826 manikin in the seat.

and buses, including school buses, with a GVWR of 4,536 kg (10,000 pounds) or less. Under FMVSS No. 202a, rear seats are not required to have a head restraint but if the seat back is above 700 mm above the H-point, it is considered a "head restraint" and must meet the requirements of the standard. Outboard school bus seats meeting the 610 mm (24 inch) requirement will not have to meet the rear seat provisions of FMVSS No. 202a unless they are over 700 mm above the H-point, or 90 mm (3.5 inches) in excess of the 610 mm (24 inch) limit. We will not raise school bus seat back heights above 24 inches in this final rule because the greater mass of large school buses reduces the potential risk of whiplash for their occupants (the harm addressed by FMVSS No. 202a) in comparison to other vehicles on the road and a seat back height of 610 mm (24 inches) will offer better whiplash protection to a broader spectrum of school-aged children than would a height of 508 mm (20 inches).

It should be noted that this final rule only requires that seat backs be a minimum of 610 mm (24 inches). If individual states, counties, or school districts wish to specify a seat back higher than 610 mm (24 inches), they are free to do so. As noted above, FMVSS No. 202a would apply to small school buses with seat backs above 700 mm.

2. We are denying the request that the minimum seat back height requirement not be applied to the last row of seats. There is no current exemption for the seat back height of the last row of seats. Given that there are rigid structures in a school bus rearward of the last row, this additional seat back height will provide added potential protection to the occupants of the last row in the event of a rear impact. Further, the occupants of the last row should be afforded the better whiplash protection offered by the 610 mm (24 inch) seat back.

The argument that the height should be reduced to improve driver visibility is not persuasive. Since the row directly forward of the last row would not be exempted from the seat back height requirement, any decrease in driver visibility due to the seat back of the rearmost row would be minimal. (Further discussion of the driver visibility issue is provided below.)

Finally, it was stated that additional knee space would be available if the last row did not have to be 610 mm (24 inches) high. If we assume a seat back with a 12 degree angle from the vertical, the higher seat back height would necessitate the rear seat row to move forward approximately 21 mm (0.84 inches) [100 mm × tan(12deg.)]. This change could be spread evenly over the entire length of the vehicle, resulting in a negligible difference in leg room for each row of seats.

3. With regard to reduced driver visibility of the students, as discussed in the NPRM preamble and in comments from school transportation providers, a number of states, including Illinois, New Jersey, New York, Ohio, North Carolina and Washington, already require seat back heights of 610 mm (24 inches) in their school buses. We are not aware of reports of visibility problems or insufficient discipline of students on the buses. In fact, the Monroe-Woodbury Central School District indicated that the 24-in seat back improved student behavior as students were unable to easily hang over the tops of the seat backs to interact with friends in distant rows, but instead had to converse with passengers around him or her while staying seated. Additionally, as pointed out by some commenters, increasing the minimum seat back height to 610 mm (24 inches) would make the minimum seat back height the same as the industry designations from the 2005 edition of the National School Transportation Specification and Procedures (NSTSP) for minimum seat back height.

4. Mr. James Hofferberth stated that NHTSA "has failed to consider alternative [compartmentalization] strategies, such as a reduction of seat height to reduce cost, coupled with the provision of a vertical transverse containment panel from the top of the seat to the ceiling of the bus." To our knowledge, there is no compartmentalization strategy such as that discussed by the commenter that has been tested and proven in both effectiveness and feasibility as compartmentalization. Therefore, at this time, such alternatives are not viable alternatives to the heightened seat back approach.

b. Seat Cushion Latches

NHTSA proposed to amend S5.1.5 of FMVSS No. 222 to require latching devices for school bus seats that have latches that allow them to flip up or be removed for easy cleaning. We also proposed a test procedure that would require the latch to activate when a 22 kg (48 pounds) mass is placed on top of the seat at the seat cushion's center. The 22 kg (48 pounds) mass is that of an average 6-year-old child. The test was to ensure that any unlatched seat cushion would latch when a child occupant sits on the seat.

In general, comments addressing this issue supported the proposal. The NSTA noted that New York and Connecticut already require self-latching mechanisms for seat cushions in their buses, and NCDPI stated that they now require positive locking devices on their school bus seats. They did not provide any details on the specifications they require. CEW noted that currently, manually operated seat cushion latches can inadvertently be left unlatched after cleaning, and that the proposed self-latching mechanisms could "benefit safety in a crash situation." Concepts believed that this requirement "should add only pennies to the cost of [a] school bus seat."

While NTSB supported a requirement for self-latching mechanisms for school bus seat cushions, it had concerns about the proposed test requirements regarding the mass required to activate the latch. It stated that its concern that "some designs of flip-up or removable seats that comply with this standard may allow the seat to come loose during a crash or rollover if a sufficient weight is not applied to the seat cushion for the self-latch to activate." NTSB stated that the load requirement should be removed from the proposed seat cushion retention standard unless NHTSA can verify that all seats with this design are hinged and cannot fully separate from the seat frame when the latch is not activated.

Agency Response

This final rule adopts the requirement that self-latching mechanisms be installed on school bus seat cushions that flip up or are removable. We acknowledge that, under the requirement, some cushions could still come loose during a crash because the latch would only be required to activate under a 22 kg (48 pounds) mass. While latching devices which activate under the weight of the seat cushion alone (as NTSB suggested) would be preferred, at this time we have not received any data indicating the minimum loads that are required to activate latches of this type. We specify 22 kg (48 pounds) because that is the mass of the 50th percentile 6-year-old child, *i.e.*, a child in kindergarten or first grade. The cushion will thus latch when a child sits on it. We received no data in response to the NPRM that indicate alternative loads. Therefore, we do not have the information necessary to support removing or reducing this load requirement.

One commenter described the currently-used seat cushion latches as "primitive" and "hard to open," and state that "they are not always secured fully when [they] get the seat back down." We believe that such problems

may be the main reason why school bus seat cushions are not always secured to the seats in current school buses. With self-latching devices that meet the proposed requirements, a bus driver would only have to firmly push down on the top of the seat cushion to re-attach it after cleaning. This greatly simplifies the process of latching the seat cushions, making it much more likely that they will be properly attached to the seats.

Finally, regarding a comment from the National Child Care Association, we do not require that seat cushions flip up, but rather have adopted a requirement for self-latching mechanisms that would be installed on seat cushions that do flip up or are removable.

VII. Upgrades for Small School Buses

a. Requiring Lap/Shoulder Belts

The agency proposed that small school buses be required to have lap/shoulder belts at all passenger seating positions. Since the FMVSSs were first promulgated, small school bus passenger seats have been required to have passenger lap belts (defined as Type 1 belts in FMVSS No. 209) as specified in FMVSS No. 208, belts that meet the lap belt strength requirements specified in FMVSS No. 210. Lap/shoulder belts provide an increased level of protection from lap belts in small school buses by reducing the potential of head and neck injuries in frontal impacts.

All commenters supported the proposal. Accordingly, this final rule adopts the requirement for the reasons stated in the NPRM. The seat belt systems are required to meet the performance requirements of FMVSS Nos. 208, 210, and 222 as discussed in the NPRM and this final rule. (Under current requirements, the seat belts already must meet FMVSS No. 209, "Seat belt assemblies.")

b. Raising the Weight Limit for Small School Buses

Historically the dividing line between what is considered a "large" and a "small" school bus is the GVWR delineation. School buses with a GVWR above 4,536 kg (10,000 pounds) are large school buses, while school buses with a GVWR of 4,536 kg (10,000 pounds) or less are small school buses.

In response to the NPRM, several commenters suggested raising the weight limit for small school buses from 4,536 kg (10,000 pounds) to 6,576 kg (14,500 pounds). IMMI stated that the small school bus requirement that lap/shoulder belts be installed at all seating positions should apply to all school buses that are built on a van chassis, which are known in the industry as type "A" school buses. The commenter stated that these consist of type "A–1" school buses, which have a GVWR of 4,536 kg (10,000 pounds) or less, and type "A–2" school buses, which have a GVWR that can range up to 6,576 kg (14,500 pounds). IMMI explained that both the type A–1 and the type A–2 buses are built on similar van chassis, and so they are both exposed to similar operating and crash environments. Another commenter stated that the National School Transportation Specifications and Procedures (NSTSP) for school bus types defines Type A–1 school buses as having an upper weight limit of 6,576 kg.[38] Thus, this comment suggested, it would be easier to determine which school buses must comply with the lap/shoulder belt requirement if NHTSA's definition of small school buses followed the NSTSP recommendation.

Agency Response

The suggestion to raise the weight cut-off for small school buses to include Type A–1 buses with a GVWR below 6,576 kg (14,500 pounds) may have, but it is beyond the scope of this rulemaking. We also note that the suggested change in weight limit is not trivial. Expanding the small school bus category as suggested would result in a substantial increase in the fleet percentage of small school buses, i.e., from 7.2 to 24 percent.

c. FMVSS No. 207, Seating Systems

In the NPRM, we proposed to apply FMVSS No. 207 to small school buses with lap/shoulder belts because the load imposed by FMVSS No. 207 appears to be greater than the load that would be imposed by FMVSS No. 222's seat performance requirements at S5.1.3.

There was no consensus between commenters. CEW disagreed with the proposal to apply the FMVSS No. 207 loading to small school buses. It explained that "[m]any of our customers request that we pull the FMVSS No. 210 test to higher forces than those required by NHTSA to insure that they have a 'safety margin' above NHTSA's requirement * * * Most of our customers ask us to pass FMVSS No. 210 by 110% or 120% * * * If FMVSS No. 207 and FMVSS No. 210 are added and customers still want 110% and 120%, we would be adding safety factors to safety factors, as well as undue additional costs." In contrast, IMMI agreed that FMVSS No. 207 should apply to all small schools buses and "all van-based, A type school buses, regardless of their GVWR."

Blue Bird Corp. (Blue Bird) disagreed with the proposal. Using the data the agency provided in the NPRM, it provided an extensive analysis showing that for a seat bench with three lap/shoulder belts, the FMVSS No. 210 load is 130 percent [18,000 pounds/(11,802 + 2,040) pounds] of the total dynamic load on the seat, plus the load that would be imposed by FMVSS No. 207.

If the final rule makes FMVSS No. 207 applicable to small school buses with lap/shoulder belts, Blue Bird requested an exemption for a "davenport" mounted seat which "consists of separate seat cushion and seat back assemblies of wood or plastic, foam, and upholstery fastened to the bus body structure forming the front and top of the engine compartment." However, Blue Bird stated that it was unaware of such rear engine configurations for small school buses.

Agency Response

With respect to Blue Bird's analysis, the commenter used the peak total force on the seat in the large bus sled tests performed by the agency (35,000 N (7,869 pounds)).[39] Using an assumption expressed in the NPRM (regarding the quasi-static test) that belt loads for the small school bus situation would be 1.5 times that of the large school bus, the commenter estimated that the total seat force for a small school bus seat occupied by two persons would be 52,000 N (11,803 pounds).[40]

The agency now has actual measurements of total seat load in a small school bus crash pulse, and has found that the ratio of large to small school bus forces is about 58 percent.[41] [42] Using this actual small school bus total seat loading, we have estimated the extent to which the FMVSS No. 210 load combined with the FMVSS No. 207 load exceeds the actual measured total load on the seat.

By first assuming the seat in question has three lap/shoulder belt positions,

[38] This information is different than that provided by IMMI, but the difference is inconsequential to the commenters' arguments.

[39] These seats were occupied by two 50 percentile male Hybrid III dummies.

[40] Rather than the value used by Blue Bird, however, the agency actually derived a range of potential ratios for the small to large school bus belt loads from 1.1 to 2.4 times. We choose 1.5 in the NPRM out of a concern for practicability in the quasi-static test.

[41] "NHTSA Technical Analysis to Support the Final Rule Upgrading Passenger Crash Protection in School Buses." September 2008.

[42] "NHTSA Vehicle Research and Test Center's Technical Report on Dynamic and Quasi-Static Testing for Lap/Shoulder Belts in School Buses," September 2008.

we calculate that the total FMVSS No. 210 loading is 80,064 N (18,000 pounds) [3 × 26,669 N]. This assumes that the total dynamic load on the seat from the three occupants (for the purposes of this analysis, we assumed the occupants were three 5th percentile females) is as we measured in the sled testing with two 50th percentile dummies (we assumed for this analysis that the loading from three 5th percentile females would be about the same as the loading from the two adult dummies). Assuming this three positions seat weighs 46.3 kg (102 pounds),[43] the combined FMVSS Nos. 207 and 210 loading will be 146 percent of the dynamic load [(80,064 N + 46.3 kg × 20 g × 9.81)/(2 × 30,574 N)].

Second, by assuming a 990 mm (39 inch) wide seat with two fixed lap/shoulder belts and a seat mass of 34.5 kg (76 pounds), we calculate that the combined FMVSS Nos. 207 and 210 loading is 98.4 percent of the dynamic load [(53,376 N + 34.5 kg × 20 g × 9.81)/(2 × 30,574 N)].

As these calculations have shown, depending on the number of lap/shoulder belts on the bench and the assumed occupant sizes, the addition of the FMVSS No. 207 loading to the FMVSS No. 210 loading creates a condition where the total seat loading is even higher than what might be expected to occur dynamically (as in the situation with the three small occupants) or the total seat loading matches the dynamic loading level fairly closely (latter situation with two adult occupants). Accordingly, the data indicate that the FMVSS No. 207 load is not redundant to the FMVSS No. 222 loads.

We note that, as explained below in section IX.b.6, flex-seats would tend to be in the category of bench seats that would be overloaded (first situation) since all three belted positions in the maximum occupant configuration will receive the same FMVSS No. 210 belt loading. The agency considered whether to develop a scheme by which some small school bus seats (those with 2 fixed seating positions) would be subject to the FMVSS No. 207 loading and some (those configurable to 3 seating positions) would not. We decided against this approach because it seemed to be an unnecessary complication not based on any need to assure practicability.

Finally, we have decided against Blue Bird's recommendation to exempt seats that might be mounted on the cover of a rear engine bus (davenport seats). First, we note that Blue Bird stated they were not aware such a design currently exists in small school buses. Second, the final rule will require such a seat to have lap/shoulder belt anchorages mounted on it, unless the seat satisfies the last row seat exemption discussed later in this preamble. We seek to ensure that a seat with belt anchorages attached be sufficiently robust to sustain the additional FMVSS No. 207 seat inertial loading and that a last row seat that does not have belt anchorages still be mounted to the vehicle firmly enough to stay attached under its own inertial loading.

[43] This is the value Blue Bird used in its comments for a 1,143 mm (45 inch) wide seat bench.

VIII. Upgrades for Large School Buses

This final rule requires voluntarily installed seat belts on large school buses to meet performance requirements of FMVSS Nos. 208, 210, and 222 as discussed in the NPRM and this final rule. (Under current requirements, the seat belts already must meet FMVSS No. 209, "Seat belt assemblies.") Comments to the NPRM were overwhelmingly supportive of the objective to require voluntarily installed seat belts to meet performance requirements.

IX. Performance and Other Requirements for Vehicle Belt Systems

a. Minimum Seat Width Requirements and Calculating W and Y

In S4.1 of FMVSS No. 222, NHTSA currently considers the number of seating positions (W) on a bench seat to be the width of the bench seat in millimeters, divided by 381 and rounded to the nearest whole number. This W value is used to calculate the compartmentalization requirements for seats on all school buses and the number of lap belt only seating positions on small school buses that must meet the provisions of FMVSS Nos. 208 and 210. In the NPRM, we proposed to continue to consider W to be the number of seating positions per bench seat with optionally provided lap belts on large school buses as well as the compartmentalization requirements for all school buses, except that the divisor was proposed to be 380 (for simplicity) rather than 381.

However, for the seating positions on small school buses with required lap/shoulder belts and on large school buses with optional lap/shoulder belts, we proposed to define the number of seating positions (using "Y") in a slightly different way. Y is the total seat width in millimeters divided by 380, rounded down to the nearest whole number. Under the definitions of W and the proposed definition of Y, a 1,118 mm (44 inch) wide seat would have W = 3 seating positions for the purposes of calculating the magnitude of the compartmentalization requirements to apply to the seat back, but only Y = 2 seating positions for determining the lap/shoulder belts installed on the seat.[44] The result of this "Y" calculation would be that each passenger seating position in a school bus seat with a lap/shoulder belt would have a minimum seating width of 380 mm (15 inches). In addition, the NPRM also proposed to adopt a requirement in FMVSS No. 222 (at S5.1.7) that each passenger seating position with a Type 2 (lap/shoulder) restraint system shall have a minimum seating width of 380 mm (15 inches). We proposed a minimum seating position width of 380 mm (15 inches) for seats with lap/shoulder belts because we sought to ensure that lap/shoulder belt anchorages are not installed so narrowly spaced that they would only fit the smallest occupants.

A new school bus seat belt technology has emerged in the marketplace involving 990 mm (39 inch) bench school bus seats with lap/shoulder belts that have flexible configurations (flex-seats). These flex-seats have lap/shoulder belts that can be adjusted to provide two lap/shoulder belts for two full average-size high school students or three lap/shoulder belts for three elementary school students. Takata and its partner, M2K LLC (M2K), and IMMI both produce these bench seats with flexible occupancy seat designs. In its minimum occupancy configurations, two 50th percentile male occupants can be accommodated per bench. In its maximum occupancy configuration, three 6- to 10-year-old children can be accommodated per bench. In comments to the NPRM, many commenters (pupil transportation providers, state and local districts, schools, individuals, advocacy groups) urged NHTSA to permit these flexible occupancy seats in the final rule.

In comments, IMMI, Takata, M2K, and Concepts stated that while they supported the NPRM, the provision that each seating position with a lap/shoulder belt have a minimum width of 15 inches is design restrictive, would reduce bus capacity, and would discourage installation of lap/shoulder belts. IMMI, Takata, and Concepts specifically recommended a minimum seat width of 330 mm (13 inches). The 330 mm (13 inch) minimum seat will permit the flexible occupancy seats that

[44] "Y" would also be used to determine the loads to be applied to the shoulder belts for the quasi-static test, discussed below in this preamble. See also paragraphs S5.1.6.5.5(a) and (b) of the proposed regulatory text.

IMMI and Takata manufacture. Other commenters, including Thomas, NTEA/MCSSB, and IC Corp. (IC) also asked that the value be reduced to 330 mm (13 inches). Thomas and NTEA/MCSSB also asked that W be used for lap/shoulder seating positions rather than Y. They also suggested that the divisor be 380 rather than 381 and that the result be rounded up instead of down.

Other commenters wrote in favor of the 380 mm (15 inch) (or wider) seat. Blue Bird, CEW and AmSafe Commercial Products (AmSafe) agreed that 380 mm (15 inches) is the appropriate seat width value. Blue Bird believed that since children are getting larger, smaller minimum spacing is not in their best interest. Freedman Seating Company (Freedman) stated that the minimum seat width should be increased to 16 inches. AmSafe stated that if three 330 mm (13 inch) positions were allowed on a 990 mm (39 inch) bench seat, three average adult males could attempt to use the seat, resulting in a dangerous situation if there were a crash.

Agency Response

When we proposed that each seating position with a lap/shoulder belt have a minimum width of 380 mm (15 inches), our stated concern was that manufacturers not be allowed to install lap/shoulder belts in such a narrow space that only the smallest occupants would fit. We also acknowledged that a bench seat with 380 mm (15 inches) of width per lap/shoulder belt position would not accommodate occupants larger than a 5th percentile female simultaneously in every position. When developing the NPRM, the flex-seat designs had not yet reached the marketplace so the design restrictiveness of an absolute 380 mm (15 inch) seat width requirement was not fully recognized by the agency during the NPRM stage.

1. Flex-Seats

The comments and presentations to the agency since the NPRM have had us reconsider the proposed requirement for a 380 mm (15 inch) minimum seat width and whether design flexibility could be accommodated while assuring that seats will be wide enough for real world use by full size high school students. We agree with the majority of those commenting on the issue that flex-seats should be permitted as an option for school transportation providers wishing to implement lap/shoulder belts. Depending on the size mix of occupants being transported, flex-seats could be helpful in maximizing the occupancy rate of school buses.

The commenters opposing the reduction of the 380 mm (15 inches) minimum width per lap/shoulder belted position indicated that 330 mm (13 inches) is too small even for smaller children. They also indicated their concern that if narrower positions were allowed, adult size occupants might try to fit in them, potentially resulting in dangerous situations.

It may be true that today's children are larger than children in the past, and that would argue against reducing the 380 mm (15 inches) specification for fixed width lap/shoulder belted positions. However, we do not believe it justifies prohibiting flex-seats since they are designed to accommodate occupants needing seat widths from 330 to 495 mm (13 to 19.5 inches). We agree that there is a risk that a 330 mm (13 inches) seating position on a flex-seat in a maximum occupancy configuration may be misused by a person too large for the seat (one who should have sat in a flex-seat in a minimum occupancy configuration), but such misuse could be reduced through student training.

To provide more design flexibility in FMVSS No. 222 and to accommodate flex-seats, this final rule specifies that one lap/shoulder belt may be installed for every 330 (13 inches) of seat bench width, provided that the lap/shoulder belt seat can be reconfigured to have seating positions for every 380 mm (15 inches) of seat bench width. This ability for the seat bench width to be adjusted is specified because, as stated in the preamble of the NPRM, we continue to believe there is merit in limiting a manufacturer's ability to install too many fixed position lap/shoulder seat belts on a bench seat that accommodates only the smallest occupants.

2. Using W and Rounding Up

Both Thomas and NTEA/MCSSB indicated that the number of lap/shoulder belt seating positions should be W instead of Y. They also commented that after dividing the bench width by 380, the result should be rounded up to the next integer. NHTSA disagrees with these comments. Under the commenters' suggested methodology, a 759 mm (29.9 inches) wide bench seat could have 3 lap/shoulder belts, with each position providing 253 mm (10 inches) of seat width. We decline to adopt this suggestion for the same reason we reject the idea of a fixed 330 mm (13 inches) seat, i.e., manufacturers should not be permitted to install fixed position lap/shoulder seat belts on a bench seat that accommodates only the smallest occupants. In addition, a bench with 253 mm (10 inches) wide seating positions cannot accommodate 6-year-old occupants in every seating position.

3. Definitions

In this final rule, we are changing the seat width specification and making other necessary changes to the regulatory text modifications to permit flex-seats. To clarify the reduction in seat width and its restriction to flex-seats, we are adding new definitions to FMVSS No. 222, as follows:

Fixed occupancy seat means a bench seat equipped with Type 2 seat belts that has a permanent configuration regarding the number of seating positions on the seat. The number of seating positions on the bench seat cannot be increased or decreased.

Flexible occupancy seat means a bench seat equipped with Type 2 seat belts that can be reconfigured so that the number of seating positions on the seat varies based on occupant size. The seat has a minimum occupancy configuration for larger occupants and maximum occupancy configuration for smaller occupants, and the number of passengers capable of being carried in the minimum occupancy configuration must differ from the number of passengers capable of being carried in the maximum occupancy configuration.

Maximum occupancy configuration means, on a bench seat equipped with Type 2 seat belts, an arrangement whereby the lap belt portion of the Type 2 seat belts is such that the maximum number of occupants can be belted.

Minimum occupancy configuration means, on a bench seat equipped with Type 2 seat belts, an arrangement whereby the lap belt portion of the Type 2 seat belts is such that the minimum number of occupants can be belted.

Under these definitions, a traditional bench seat is a "fixed occupancy seat." Flex-seats (which are flexible occupancy seats) must have both a maximum and minimum occupancy configuration. These definitions by themselves do not detail the numbers of occupants (W or Y) allowed in these configurations. Instead, that specification is conveyed in S4.1(c) and (d) of FMVSS No. 222, specified by this final rule.

Section S4.1(c) states that the number of fixed lap/shoulder seat belt positions per bench must be Y, essentially the same as that proposed in the NPRM. S4.1(c) also states that a flexible occupancy seat configured to hold the minimum number of occupants must also have Y lap/shoulder belt positions. Therefore, a 39-inch wide bench seat will either have 2 [rounded down from (990/380)] lap/shoulder belts or will be configurable to have 2. This assures that a seat belt equipped bench provides a

sufficient number of seating positions (Y) to accommodate the number of larger students that might be seated there.

Section S4.1(d) requires that when a flexible occupancy seat is configured to hold the maximum number of occupants, it must have Y + 1 lap/shoulder belted positions. However, the minimum allowed bench seat width must be no less than (Y + 1) × 330 mm (13 inches). As an example, a 990 mm (39 inches) flexible occupancy seat may have 3 lap/shoulder belts, of seat widths of 330 mm (13 inches), as long as the seat can be reconfigured to have 2 lap/shoulder belts of seat widths of at least 380 mm (15 inches). For this example, the 2 lap/shoulder belt seating positions would each be 445 mm (19.5 inches) wide.

Since proposed S5.1.7 is no longer needed because the minimum seat belt width requirement for older children is now specified in S4.1(c) and (d), proposed S5.1.7 is not adopted by this final rule.

b. Seat Belt Anchorages (FMVSS No. 210)

NHTSA proposed that requirements be added to FMVSS No. 210 that would ensure that the seat belt anchorages on school bus seats be designed so that the belt system will properly fit the range of children on a school bus: the average 6-year-old (represented by the Hybrid III 6-year-old child dummy (45 inches tall/52 pounds)); the average 12-year-old (represented by the Hybrid III 5th percentile female dummy (59 inches/108 pounds)); and the large high school student (represented by the 50th percentile adult male dummy (69 inches/172 pounds)). Proper seat belt fit prevents injury and helps ensure that the system performs properly in a crash. If the lap/shoulder seat belts did not fit the child occupant properly, there is an increased likelihood that the child would misuse the lap/shoulder belt system by placing the shoulder portion under the arm or behind the back. NHTSA's school bus research results showed that when the shoulder belt was placed behind the back, the restraint system functioned like a lap belt. Lap belts produced a higher risk of neck injury in the testing program when evaluated in a simulated severe frontal crash. Further, a torso belt anchorage located below the top of the shoulder may increase the spinal compression loading in a crash, increase the risk of the occupant sliding under the belt in a crash, and increase the risk of spinal and abdominal injuries.

1. Height of the Torso Belt Anchorage

We proposed that school bus seats with lap/shoulder belts have a minimum shoulder belt adjustment range between 280 mm (11 inches) and 520 mm (20.5 inches) above the SgRP (which was the location of the school bus torso belt anchor point), to ensure that the shoulder belt will fit passengers ranging in size from a 6-year-old child to a 50th percentile adult male. We proposed a definition of "school bus torso belt adjusted height" in FMVSS No. 210 as an objective means of determining the adjustment height. We also proposed regulatory text for FMVSS No. 208 to specify belt fit and performance characteristics for lap/shoulder belts on school bus bench seats. Specifically, we proposed to amend S7.1.5[45] to assure that the belts fit a 50th percentile 6-year-old to a 50th percentile male.

Five commenters (AmSafe, Blue Bird, CEW, IMMI and Takata) addressed the minimum distance above the SgRP for the torso belt anchor point, 520 mm (20.5 inches), and the distance above the SgRP for the lowest point on the adjustment range of the torso belt, 280 mm (11 inches). CEW, AmSafe and Blue Bird supported the proposed minimum torso anchor point height proposal. AmSafe expressed concern that a lower torso anchor point could be dangerous to the average adult male because of potential spinal compression during a crash.

IMMI commented that in order to allow the flexible occupancy seats, changes would be necessary to FMVSS Nos. 208, 209, and 210. It stated that the 520 mm (20.5 inches) minimum anchor point height in FMVSS No. 210 would need to be reduced to 394 mm (15.5 inches) so that the "flexible configuration cannot be used by three large students." It believed 394 mm (15.5 inches) would accommodate a 10-year-old child. IMMI suggested that the minimum torso anchor point for the center seating position of a flex-seat be located in a range between 387 and 400 mm (15.2 to 15.7 inches) above the SgRP.

Takata's comments suggested several alternatives to the torso belt adjustment range and the torso anchor point minimum height. One Takata-suggested alternative was to place various anthropomorphic test dummies (ATDs) (6-year-old, 10-year-old, 5th percentile female and 50th percentile male) in belted seating positions and then determine whether proper belt fit could be achieved. Takata also made proposals specific to flex-seats. One of these was to specifically not require a 330 mm (13 inches) wide seating position to accommodate a 50th percentile male. Another was to specifically allow the torso belt anchor point to be a minimum of 380 mm (15 inches) from the SgRP for the center seating position of a flex-seat, rather than 520 mm (20.5 inches) proposed in the NPRM.

Agency Response

The Takata seat design described in comments to the NPRM (hereafter referred to as the original Takata design or seat) differs from the IMMI and CEW designs in that the torso anchor point itself is adjustable rather than just the torso belt.[46] Therefore, the proposed language in S4.1.3.2 of FMVSS No. 210 would effectively disallow these designs because the minimum anchor point is much less than 520 mm, even for the outside seating positions.

Since the original Takata design was not known to the agency until after the NPRM was drafted, we did not consider in the NPRM stage the use of adjustable anchorages to achieve the desired torso belt adjustment range. After considering the comments to the NPRM, we believe it would be appropriate to have a minimum anchorage height specification for a fixed anchorage and an achievable position for an adjustable anchorage. For the reasons discussed in the NPRM, for fixed anchorages, the anchorage must be a minimum of 520 mm (20.5 in) above the SgRP. A fixed point above 520 mm (20.5 inches) would be acceptable. An adjustable anchorage may have a lower position of adjustment as long as this minimum distance from the SgRP (520 mm) can be achieved.

We are adopting a different requirement for the torso anchor for the

[45] The NPRM at S7.1.5 of the proposed regulatory text for FMVSS No. 208 (72 FR at 65527) proposed that the seat belt assembly has to operate by means of an emergency-locking retractor (ELR) or an automatic-locking retractor (ALR). In this final rule, we have removed the allowance for ALRs. No current lap/shoulder seat belts on school bus seats utilize ALRs and there is no clear indication that ALRs would provide any performance or comfort benefits compared to emergency locking retractor (ELR) equipped lap/shoulder belts. This will not preclude manufacturers from providing convertible ELRs, i.e., ALR/ELR type belts, just those that function solely as ALRs. In addition, any lap/shoulder belts in large or small school buses must still have to meet S7.1.1.5 of FMVSS No. 208, which specifies the lockability of belts. (The lockability feature facilitates the installation of child restraints using the belt system.) This is currently the situation for small school buses with lap/shoulder belts, and was proposed and now made final by this rulemaking for large school buses.

[46] A more recent Takata design, tested after the NPRM was published, had fixed torso belt anchorages in all three seating positions. Torso belt adjustment was achieved by an adjustment device sliding on a separate length of webbing.

center seating position of flex-seats that is designed for elementary school passengers only. (Elsewhere in this preamble we explain that the standard will refer to this position as a "small occupant seating position" and will define the term.) IMMI stated that the torso anchor for this small occupant seating position was lowered in their design to reduce the likelihood that large occupants would sit there. The lowered torso anchor would act as a disincentive to overcrowd the flex-seat. We agree that design disincentives to overcrowding the flex-seat are desirable. A lower anchor point for the center seat of a flex-seat in its maximum occupancy (3-seating position) configuration may serve as a visual cue that only a small occupant should be located in the center position. (In addition, as also discussed later in this preamble, we are requiring the torso belt of a small occupant seating position to be labeled: "Do Not Sit In Middle Seat If Over Age 10." This label is to further discourage full size occupants from using the center seating position if it has a lower torso anchorage point.)

As to what the minimum height should be for that position, IMMI suggested that the minimum torso anchor point height should be lowered to a range between 387 and 400 mm (15.2 and 15.7 inches) above the SgRP. Takata requested a minimum torso anchor point of 380 mm (15 inches). We have decided to reduce the value for the minimum allowable anchor point height for the center seating position in a flexible occupancy seat to 400 mm (15.7 inches), which was the upper limit of IMMI's suggestion. We have chosen 400 mm (15.7 inches) over 380 mm (15 inches) because the higher value places the anchorage higher on the seat vis-à-vis the child's shoulder, thus reducing the likelihood of spinal compression loading in a crash. According to the anthropometric data submitted by Takata, the anchor point will be above the shoulder of an average 10-year-old occupant by at least 37 mm (1.5 inches).[47] Since the required labeling suggests that a 10-year-old can be accommodated by such a seating position, we believe it is reasonable to exceed the 10-year-old shoulder height by this value to assure the vast majority of 10-year-olds would be accommodated.

2. Anchorage Adjustability

CEW, AmSafe, and Blue Bird supported the torso belt adjustment range to ensure that lap/shoulder belts fit all passengers from an adult.

IMMI believed that a center seating position in a flexible occupancy seat that adjusts from 280 to 394 mm (11 to 15.5 inches) above the SgRP would accommodate occupants from a 6-year-old to a 10-year-old and be configured so that larger occupants would not use it. Takata suggested that instead of the adjustment range proposed in the NPRM, NHTSA could place various anthropomorphic test dummies (ATDs) (6-year-old, 10-year-old, 5th percentile female and 50th percentile male) in belted seating positions to determination whether proper belt fit could be achieved. Alternatively, the commenter suggested, NHTSA could specifically not require a 330 mm (13 inch) wide seating position to accommodate a 50th percentile male.

[47] It was necessary to add specifications in FMVSS No. 208 that provides the weight and dimensions for a 10-year-old occupant. In addition, this final rule specifies that lap/shoulder belts at a SOSP need only restrain an occupant up to the size of an average 10-year-old child.

Agency Response

For the reasons provided in the NPRM, we have decided to maintain the adjustment range proposed for torso belts in the NPRM.

Takata's comments indicate that they believe their original design would properly fit occupants down to the size of a 6-year-old child even though it does not adjust down to 280 mm (11 inches) above the SgRP. We believe that maintaining torso belt adjustability is an objective way of ensuring that lap/shoulder belts will fit even the smallest school bus riders. In the past, the agency has reviewed belt fit devices in order to determine an objective fit criterion for children riding in child restraint systems and booster seats in automobiles, but has been unsuccessful.[48] Therefore, we have produced guidelines for caregivers to use to keep the torso belt off the neck and upper abdomen.[49] We believe that the minimum seat width and anchor spacing, along with the general design constraints, will provide sufficient belt fit without establishing additional "belt fit" requirements with test dummies. The adjustment range proposed for torso belts is practicable, objective and clear, and all other commenters on this issue agreed that adjustment to the 280 mm (11 inches) level is appropriate to address the full range of potential occupants.

The location of the anchorage is shown below in Figure 1.

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[48] 70 FR 51720, 51722–51728 (August 31, 2005; Docket No. NHTSA–2005–21245). See also 69 FR 13503, (March 23, 2004; Docket NHTSA–99–5100).

[49] See, e.g., tip #3 of Transportation Safety Tips for Children *http://www.nhtsa.dot.gov/people/injury/childps/newtips/index.htm*. "The lap belt must fit low and tight across the upper thighs. The shoulder belt should rest over the center of the shoulder and across the chest."

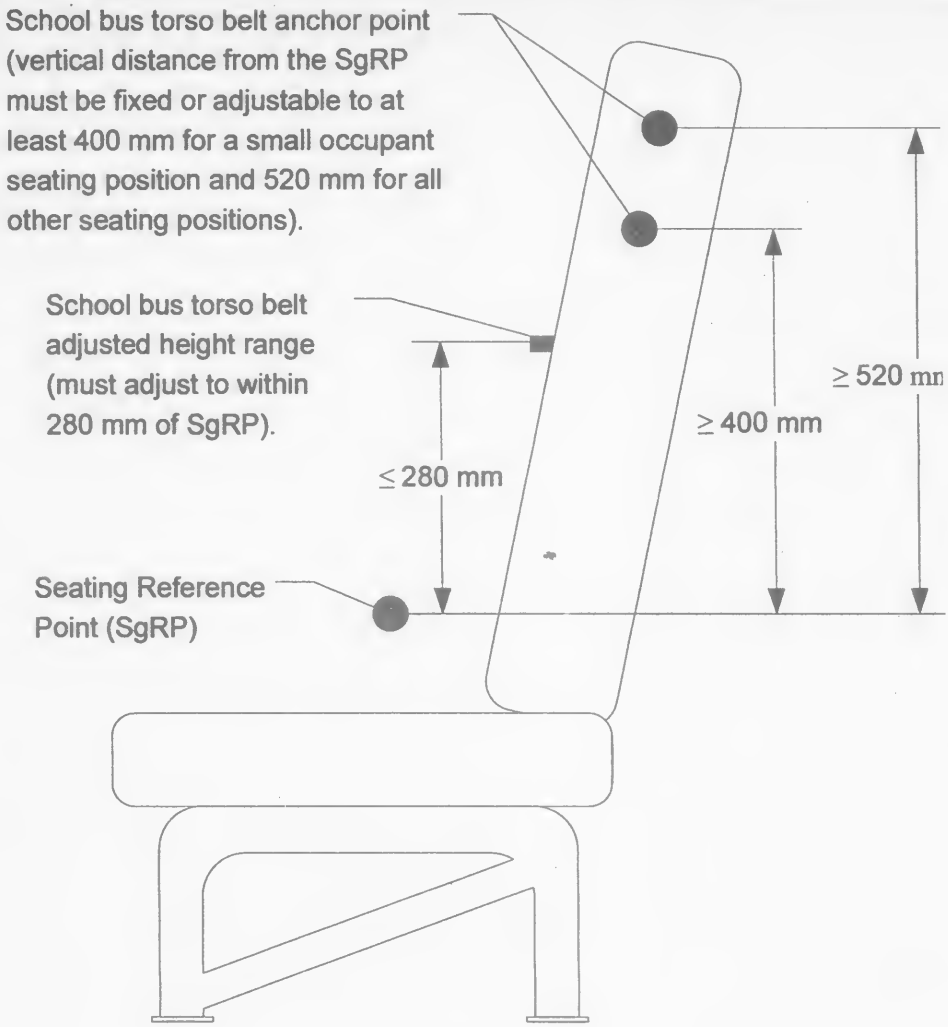

Figure 1—Seat belt anchorage diagram

3. Clarifications of Torso Anchorage Location

i. Blue Bird asked if the reference to "more than 10 degrees from the horizontal plane" in the proposed definition of "school bus torso belt adjusted height" in S3 of FMVSS No. 210 was meant to state "from the vertical plane." The answer is no. We believe that the commenter may have misunderstood the definition and the concept behind it. This definition was added to FMVSS No. 210 to provide an objective means of determining the height position of the torso belt. Fundamental to the concept of correct positioning of a torso belt is that the anchorage not be below the shoulder, which could result in compressive loads on the spine in a frontal crash. The horizontal plane is relevant to see where the torso belt anchorage is located relative to the top of the shoulder.

However, because the definition was unclear to the commenter, we have decided to add a small clarification to the definition to specify that the height is measured from the SgRP.

ii. Takata also stated that in addition to vertical position, the lateral position of the torso belt relative to the midsagittal plane is also important. We agree with Takata that lateral position of the torso anchor point will also influence belt fit. However, the agency will leave this parameter to the discretion of the manufacturer so it might be optimized in the context of the required vertical adjustment range.

4. Integration of the Seat Belt Anchorages Into the Seat Structure

The NPRM proposed that the seat belt anchorages, both torso and lap, be required to be integrated into the seat structure. This proposal was made because we were concerned that if we did not, some manufacturers could incorporate seat belt anchorages into other structures in the school bus, potentially injuring unbelted school bus passengers in a crash, or obstructing passengers during emergency egress. We also requested comment on whether there were anchorage designs, other than those integrated into the seat back, that would not impede emergency evacuation or potentially cause injury to unbelted passengers.

In its comments, CEW stated that it was "not aware of a seat belt anchor design (other than being integrated into the structure of the seat) that would not impede access/egress to an emergency exit or become a source of injury or hazard." IMMI agreed with the requirement proposed in the NPRM that seat belt anchors be integrated into the seat structure for most seats, but requested an exception for the last row of "Type D" school buses. Their rationale for the exemption was:

> The seats in such a row are integral with the vehicle body structure and most commonly, the torso restraint retractors at such seats are mounted into the bus body structure, and the shoulder belts are routed over the upper edge or through the seat back. The lap belt anchorages are also incorporated into the lower structure of the davenport. This design helps bus manufacturers minimize seat back thickness in order to optimize seat spacing for maximizing capacity. And restraints mounted in this manner can not impede access to emergency exits or become an injury hazard to unbelted passengers.

In opposition to the proposal were Thomas, IC, NTEA/MCSSB, and Girardin, which stated that seat belt anchorages, at least for certain bus types or seat positions, do not need to be integrated into the seat structure. Alternatively, Thomas requested that "anchorages integrated into the bus body structure be permitted in the last seating row" for all bus sizes.

Thomas and NTEA/MCSSB both commented that seat belts should not be required to be integrated into the seat structure for small school buses. They stated that some anchorages could be installed on the bus floor, sidewall, or roof, and stated that "[t]hese installations could be optionally configured or designed so that they do not impede access to emergency exits." Girardin, a small school bus manufacturer, stated: "Anchorages provided in the side wall or in the rear structure can be achieved without obstructing passenger exit and could also help to reduce the deflection of the rear seats in the row against the rear wall."

Agency Response

We agree not to adopt the requirement for the last row, but since the commenters have not provided any information on vehicle mounted belt anchorage designs other than for the last row, we were unable to assess the safety and effectiveness of bus-mounted anchorage systems in general. In addition, the commenters did not address our other concern about whether "non-integrated" seat belts could be safety hazards for unbelted occupants in a crash. Therefore, in this final rule, we will not reject the requirement in its entirety for all school buses.

Based on comments received on this issue, the last row is excluded from the requirement because our concern about emergency exit access is lessened for the last row of seats. The last row of seats in conventional large school buses and small school buses typically has two seats with a 610 mm (24 inch) aisle (large buses) or 559 mm (22 inch) aisle (small buses) between them, to provide access to the rear emergency exit door. FMVSS No. 217 imposes requirements for unobstructed passage through the door. Thus, at least in the immediate vicinity of the door, that standard should prevent seat belts from being installed in such a way that could impede access to the emergency exit.[50] We also believe that the location and style of the last row seats in these buses make it possible to place belt anchorages behind or to the side of the seat, where the belt webbing would not impede safe travel in and out of the seat. Thus, if these belts are out of the way of the students, they are unlikely to pose risks of injury to unbelted students in a crash (e.g., a student could become entangled in belt webbing). This is not the case for all bus seats, where belts for inboard seat positions in particular could be mounted such that the belt webbing could impede safe passage through the bus interior or pose an injury risk for unbelted students in a crash.

There are rear-engine buses with a rear emergency exit window instead of a door. Regardless of the type of emergency exit there is in the bus (door or push-out rear window[51]), we emphasize the importance of keeping the area of the rear emergency exit free from seat belt webbing so that emergency egress is not impeded. We will monitor anchorage designs in this subset of vehicles to ensure that safety is not compromised. With regard to small school buses, several commenters (Thomas, Girardin, and NTEA/MCSSB) indicated that in these vehicles, anchorages could be placed such that they do not interfere with emergency exits. However, the commenters did not address the other agency concern with whether "non-integrated" seat belts could be safety hazards for unbelted occupants in a crash. In addition, no data or specific information about anchorage designs were provided to enable us to make a determination as to whether the belts could be injurious to unbelted passengers. Therefore, in this final rule, we will not exempt small school buses generally from the requirement that seat belt anchorages be integrated into the seat structure, except for the last row of seats as discussed in the previous paragraph.

5. Minimum Lateral Anchorage Separation

The NPRM proposed to adopt a requirement in FMVSS No. 222 (S5.1.7) that each passenger seating position with a lap/shoulder restraint system shall have a minimum seat belt anchor width of 380 mm (15 inches) (and a minimum seating width of 380 mm (15 inches)). At the same time, the NPRM proposed to amend the application section of FMVSS No. 210 so that it expressly applied to school buses, and thus proposed to extend S4.3.1.4 of FMVSS No. 210 to school buses. S4.3.1.4 states: "Anchorages for an individual seat belt assembly shall be located at least 165 mm [(6.5 inch)] apart laterally, measured between the vertical center line of the bolt holes or, for designs using other means of attachment to the vehicle structure, between the centroid of such means."

We have realized that the 380 mm (15 inches) anchorage minimum lateral spacing requirement proposed for FMVSS No. 222 is inconsistent with the proposed FMVSS No. 210 requirement that all belts on school bus seats must be attached to the seat structure. Assuming that the anchorage lateral spacing is to be measured in a manner consistent with proposed S4.3.1.4 of

[50] The requirement for a large school bus emergency exit door opening is found in 49 CFR 571.217 S5.4.2.1(a)(1).

[51] Emergency exit windows in a school bus must provide an opening large enough to admit unobstructed passage of an ellipsoid generated by rotating about its minor axis an ellipse with major axis of 50 cm and minor axis of 33 cm, as given in FMVSS No. 217, S5.4.2.1(c).

FMVSS No. 210 and the belted seating position width were 380 mm (15 inches), it would be very difficult to have a 380 mm (15 inches) anchorage lateral spacing without extending the seat structure beyond the width of the seat cushion.[52]

Since it seems very unlikely for the anchorage minimum allowed lateral spacing to be equal to the seating position width for designs with the minimum allowed seating position width, in this final rule, we have decided that the seat belt anchorage of school bus seats must be less than the proposed value. For example, as proposed in the NPRM, a 1,143 mm (45 inch) wide bench seat could have lap/shoulder equipped seating positions, each with a 380 mm (15 inch) seat width. At the same time, each lower anchorage for those seating positions would have needed a 380 mm (15 inch) lateral separation. Therefore, the physical width of the seat structure makes it difficult to achieve this anchorage separation. Thus, we will specify spacing of less than 380 mm (15 inches) that is consistent with the minimum seating position width, but takes into consideration the physical limitation of the space available on the seat structure. (As explained below, we are specifying 330 mm (13 inches) for fixed positions or flex-seat position in the minimum occupancy configuration (both of these must have at least a 380 mm (15 inch) seat widths) and 280 mm (11 inches) for flex-seats in maximum occupancy configuration (this must have at least a 330 mm (13 inch) seat width).) This value must be achieved at all seating positions simultaneously, which is important for flex-seat designs that have a sliding anchorage, like the IMMI design. The specification for "simultaneous" specification is important for sliding anchorages to assure that when multiple occupants are seated on the bench, each occupant's belt has an acceptable separation.

We continue to believe that a minimum anchorage lateral spacing should be specified to provide better pelvic load distribution for frontal impacts than narrow spacing. If anchorages are narrower than the occupant pelvis; the belts can wrap around the iliac crests and cause compressive loading. This may be even more undesirable when the lap portion of the belt is poorly positioned such that it loads the abdominal region.

To determine the appropriate value for lateral anchorage separation, we measured the lower anchorage space of several flex-seats with nominal total bench widths of 990 mm (39 inches).[53] [54] Based on these data, we believe that flexible occupancy seat designs in a maximum occupancy configuration (Y + 1 seating positions with lap/shoulder belts) should be able to achieve a lateral separation of the lower anchorages of no less than 280 mm (11.0 inches) simultaneously in any seating position. We found that the IMMI seat is well above this value. We believe the Takata seat can be easily altered to meet this requirement. Similarly, any non-flex-seat or a flex-seat in a minimum occupancy configuration (Y seating positions with lap/shoulder belts) should be able to achieve a lateral separation of the lower anchorages of no less than 330 mm (13.0 inches) simultaneously in any seating position.

Since this lateral separation need only be achievable, it is acceptable that the sliding buckle anchorage for the IMMI flex-seat allows the left or center seat anchorage separation to be independently less than 280 mm (11.0 inches). One reason we are not unduly concerned with sliding anchorages as they relate to the issue of the lateral distance between anchorages is because we believe that such a design will be self-centering. In other words, the only time the anchorage separation would likely to be less than 280 mm (11.0 inches) would be when an occupant with hips narrower than this dimension would be seated in this position. In that case, the anchor width would tend to match the occupants' hip width, which would not be problematic in terms of belt loading on the occupant. Nevertheless, to ensure that sliding or otherwise movable anchorages cannot be adjusted so close together such that they could be positioned narrower than a child occupant's pelvis in a crash, we have also retained the current FMVSS No. 210 requirement of 165 mm (6.5 inches) minimum spacing for the anchorages. Thus, movable anchorages for an occupant seating position cannot be capable of being closer than 165 mm (6.5 inches).

To summarize, this final rule reduces the lower anchorage minimum lateral spacing from the 380 mm (15 inches) value to 280 mm (11.0 inches) for flexible occupancy seats with the maximum number of occupants and 330 mm (13 inches) for all other seating positions with lap/shoulder belts. We note that these must be minimum distances simultaneously achievable by all seating positions. This is necessary because it would be very difficult to have a 380 mm (15 inches) anchorage lateral spacing without extending the seat structure beyond the width of the seat cushion. The value selected is practicable, based on measurements of existing designs. Further, under FMVSS No. 210, movable (e.g., sliding) anchorages for an occupant seating position cannot be capable of being closer than 165 mm (6.5 inches).

Given space is available, we continue to believe there is merit to requiring a wide anchorage separation in school buses so as to obtain good load distributions.

6. Anchorage Strength

The agency proposed that for large school buses with voluntarily installed lap belts or lap/shoulder seat belts, the FMVSS No. 210 anchorage strength requirement be identical to the requirements for passenger seat belt anchorages in smaller vehicles, i.e., 22,240 N (5,000 pounds) applied to the pelvic body block for Type 1 belts and 13,334 N (3,000 pounds) applied to the torso and pelvic body blocks for Type 2 belts. We stated our recognition that anchorages in large school buses would be likely exposed to lower crash forces than would small school buses. We used measurements of seat-to-sled attachment forces in the deceleration direction to estimate that the total peak dynamic loading sustained by the seat belts in a large school bus crash pulse is about 2/3 of that applied in FMVSS No. 210.

We also requested comment on the appropriateness of the strength levels being proposed for large school buses in FMVSS No. 210. We asked how much the load could be reduced and still provide an appropriate safety margin in a variety of crash scenarios. We also sought information about the cost and weight savings associated with a lesser requirement.

There was no consensus on this issue in the comments. Many commenters supported a single FMVSS No. 210 body block load for both large and small school buses. Takata stated that "NHTSA sled testing confirmed that current FMVSS 210 loads are *not* excessive when the seat is occupied by two 95th percentile males (such as high school football players)." To illustrate this, they calculated that "[e]ach 95th percentile male would impart approximately 5,114 pounds/seating position." M2K addressed the issue of practicability and stated that "at least

[52] The width of each belted seating position is determined as a multiple of the seat cushion width.

[53] "FMVSS No. 222 School Bus Seat Quasi-Static Testing for Various School Bus Seats Equipped with Type 2 Seat Belts, Test Procedure Development Testing," General Testing Laboratories, Inc., August 2008.

[54] "NHTSA Technical Analysis to Support the Final Rule Upgrading Passenger Crash Protection in School Buses." September 2008.

two school bus seat manufacturers seem to be fulfilling current strength requirements; and reducing these strength requirements would seem counter-productive to stated goals of the NPRM." Concepts stated that it was logical to apply the current FMVSS No. 210 loads to all school bus seats since it applies to all other vehicle types. Concepts also stated: "We must question the need for, and express strong opposition to, any proposed reductions in strength required for seat backs, seat belt anchorages, or seat-to-floor attachment points." CEW stated that they actually test beyond the FMVSS No. 210 limit; in some cases as high as 32,000 N (7,200 pounds) per seating position. CEW stated its belief that "any cost saving by lowering the large bus FMVSS No. 210 strength levels would most likely be off-set by a corresponding cost increase by having two different seats, one for the small bus and one for the large bus."

IMMI proposed a reduction for the center seating position of flexible occupancy seats. IMMI recommended that for the center seating position, a loading of 8,896 N (2,000 pounds) through the torso and pelvic blocks be applied, rather than 13,345 N (3,000 pounds). IMMI stated its belief that its suggestion was "consistent with NHTSA's rationale for varying the loads in the quasi-static test procedure depending on whether a seat will accommodate three small or two large children."

Blue Bird stated that it would be appropriate to reduce the load on lap/shoulder belts of large school buses by ⅓ (apply 8,896 N (2000 pounds) each on the torso and lap body blocks). They also recommended a lap body block value of 17,500 N (3,934 pounds) for lap belt only systems, taken directly from NHTSA calculations of per seating position loading. IC stated that the belt load should—

> be changed to ⅔ of the small bus requirement for both Type 1 and Type 2 restraint systems. While it may be desirable and cost effective in some cases to use the same design for both small and large school buses, that certainly is not always the case and that should not dictate establishing the performance requirement for large buses at a level higher than necessary * * * * In essence, setting the performance requirement at a level higher than necessary could ultimately reduce the number of children riding on school buses.

NYAPT stated that "[a]bsent any *bona fide* testing results and research-based data to the contrary, we would recommend against establishing any differential standards among school buses."

Agency Response

In this final rule we will not reduce the loading for either large school buses or for any seating position of a flexible occupancy seat, including the small occupant seating position (center position with a reduced anchor point height). We specify one anchorage strength requirement (i.e., 13,334 N (3,000 pounds) applied to the torso and pelvic body blocks) for both large and small school buses with Type 2 seat belts. Based on data from the post-NPRM testing,[55] [56] the assumption that the large school bus pulse generates about 67 percent of the FMVSS No. 210 force still appears to be valid, assuming two belted seating positions. Assuming three belted positions, the same peak dynamic load generates 44 percent of the FMVSS No. 210 force.[57]

As discussed elsewhere in this preamble, the agency has chosen a tiered approach to the quasi-static loading as an acknowledgement that large and small school buses have different crash characteristics. Nevertheless, in this final rule, we are keeping a single requirement in FMVSS No. 210, equal to the more severe small school bus case. One of the main reasons is a unified FMVSS No. 210 requirement provides a safety margin and facilitates better efficiency in the testing.

NHTSA's testing and the comments from school bus seat manufacturers lead us to believe that it is not difficult to sustain the loads traditionally required by FMVSS No. 210, given that there is no displacement limit in FMVSS No. 210. This is not true of the quasi-static test, where we do recognize the multiple force/displacement and energy criteria that school bus seats must meet supports our decision not to require a single quasi-static requirement for all school bus seats. With the FMVSS No. 210 loading, one requirement for all school bus seats meets the need for safety without being unduly burdensome.

Another fundamental difference between the tiered loading level approach the agency has taken in the quasi-static test and a single level of stringency we are specifying to meet FMVSS No. 210 requirements is that the anchorage strength provides the foundation upon which the restraint system is built. There is a more vital safety need to require the anchorages to meet the more stringent FMVSS No. 210 requirement. In addition, having the safety margin better ensures that the anchorages will be strong enough to deal with loading in excess of what is anticipated, either because of use or misuse by larger occupants, the stiffness and mass of the vehicle (e.g., vehicles closer in mass to a small bus than the large school bus will experience a more severe crash pulse), or because of the nature of the particular school bus crash. Further, commenters did not provide cost and weight data showing as to the cost savings, if any, that would result from a reduced loading for a larger class of school buses. Accordingly, a 13,334 N (3,000 pounds) load will be applied to the torso and pelvic body blocks for both large and small school buses with Type 2 seat belts. Sinilarly, we continue to specify a pelvic body block force of 22,240 N (5,000 pounds) for optionally provided Type 1 seat belts on large school buses.

c. Quasi-Static Test for Lap/Shoulder Belts on All School Buses

I. Quasi-Static Test Requirement

The agency proposed school buses with lap/shoulder belts must meet a quasi-static test procedure that was developed by NHTSA to address possible safety problems caused by having both belted and unbelted passengers on the same school bus. (The quasi-static test requirements would be in addition to existing compartmentalization requirements for seat performance). (72 FR at 65521)

School bus seats designed to provide compartmentalized protection must contain the child between well-padded seat backs that provide controlled ride-down in a crash. A school bus seat with a lap/shoulder belt would have the torso (shoulder) belt attached to the seat back. In a crash involving a belted child and an unbelted child aft of the belted occupant, the seat back would be subject to consecutive force applications from the belted occupant's torso loading the seat back *and* the force generated by impact of the unbelted passenger. The quasi-static test replicates this double-loading scenario and specifies limits on how far forward the seat back may displace. The test helps ensure that the top of a seat back does not pull too far forward and jeopardize the protection of compartmentalized passengers to the rear of the belted occupants, or diminish the torso restraint effectiveness for lap/shoulder belted occupants.

[55] "NHTSA Technical Analysis to Support the Final Rule Upgrading Passenger Crash Protection in School Buses," September 2008.

[56] "NHTSA Vehicle Research and Test Center's Technical Report on Dynamic and Quasi-Static Testing for Lap/Shoulder Belts in School Buses," September 2008.

[57] This calculation assumes a bench seat with three fixed or flex-seating positions and that three 5th percentile female occupants would be generating the dynamic loading.

a. Background

The agency developed the quasi-static test by performing a sled test using the same large school bus crash pulse that was used in the school bus research program. We measured the loads on the shoulder belts and both lower parts of the lap belt. Two unbelted 50th percentile male dummies were positioned behind the seat that contained two restrained 50th percentile male dummies. Visual observation of seat kinematics and load cell data produced by the shoulder belts from this test revealed the following sequence of events:

1. The knees of the unbelted dummy to the rear struck the back of the forward seat, causing some seat back deflection.
2. The seat back was loaded by the shoulder belt of the restrained dummy in the forward seat.
3. The shoulder belt load was reduced as the seat back to which it was attached deflected forward.
4. The shoulder belt loads reduced to approximately zero when the unbelted dummies' chests struck the forward seat back.
5. The forward seat back deflected further forward as the energy from the unbelted dummies was absorbed.

This crash scenario is replicated in the quasi-static test. The load requirement for the quasi-static test is dependant upon the number of seating positions and also the likely seat capacity. A seat that has the minimal allowed overall seat width for either a two or three occupant seat will have a reduced loading requirement from other seats.[58]

Stage 1: Torso Belt Anchorage Displacement

The first part of the quasi-static test replicates steps 1 and 2 of the crash scenario above. The procedure uses the knee and top loading bars that are currently specified in S5.1.3 of FMVSS No. 222 (seat back strength), which replicate a passenger's knee and torso loading the forward seat back[59] and the FMVSS No. 210 upper torso body block.[60] The test procedure uses the bottom loading bar to replicate the knee loading by the unbelted rear passengers (based on W), then specifies a pull test on the shoulder belts at each seating position in the seat to replicate loading of the shoulder belt by the belted passengers (based on Y). The large school bus shoulder belts are pulled using the upper torso body block specified in Figure 3 of FMVSS No. 210 with a specified force. The NPRM proposed a force of 5,000 N (1,124 pounds) at each seating position for large school buses, and a force of 7,500 N (1,686 pounds) for small school buses.[61]

We explained in the NPRM that an applied load of 5,000 N (1,124 pounds) for large school buses appeared to be necessary to replicate the torso belt loading from the sled test and to get the similar seat response observed from high speed video. For small school buses, a higher force was proposed because the small school bus crash pulse has twice the peak acceleration of the large school bus, i.e., approximately 25 g's.[62]

At this mid-point of the quasi-static test when the torso block force is being applied, NHTSA measures whether the seat back has pulled too far forward and jeopardized the protection of compartmentalized passengers to the rear of the belted occupants or diminished the torso restraint effectiveness for the lap/shoulder belted occupant. In the NPRM, the proposed criterion for passing this part of the test was a specified limit on the forward displacement of the torso belt anchorage. The specified value was a function of the vertical location of the anchorage (AH) and the initial angle (Φ)[63] of the seat back surface that compartmentalizes the occupants rearward of the seat being tested, i.e., the posterior surface of the seat back. Basically, for large school buses, the proposed allowable displacement was equivalent to the amount of displacement that would result from the seat back deflecting forward 10 degrees past a vertical plane.[64] For large school buses, this is represented in the equation below by sin(10 deg.) = 0.174. Thus, the total allowable forward horizontal displacement for large school buses was proposed to be:

Large School Bus Displacement Limit = $(AH + 100)(\tan\Phi + 0.174\sin(10\text{ deg.})/\cos\Phi)$ mm.

For small school buses, the displacement limit was proposed to be equivalent to the amount of displacement resulting from a seat back deflecting forward 15 degrees past a vertical plane (sin(15 deg.) = 0.259). The displacement limit would be determined using the equation:

Small School Bus Displacement Limit = $(AH + 100)(\tan\Phi + 0.259\sin(15\text{ deg.})/\cos\Phi)$ mm.

The proposed allowed displacement for small school buses would be greater than the limit for large school buses to account for agency concerns about practicability of small school buses meeting the displacement criterion.

As noted above, the goal of the proposed torso belt anchorage displacement criterion was two-fold. The first goal was to assure that the seat back to which the torso belt is anchored has sufficient strength to restrain and protect the belted occupant in a frontal crash. The second goal was to assure that the seat back is still in a sufficiently upright position to compartmentalize unbelted occupants to the rear. Thus, we believed that the displacement limit should be narrow, to ensure that seat backs deviate as little as possible from the initial upright position.

Stage 2: Energy Absorption Capability of the Seat Back

The quasi-static test continues with procedures to replicate steps 3, 4 and 5 of the crash scenario above. After the torso anchorage displacement is measured, the torso body block load is released. Immediately after this load is released, forward load is applied to the seat back through the top loading bar. It was proposed that the seat back must be able to absorb the same amount of energy per seating position (452 joules (4,000 in-pounds)) as is required of a seat back under the compartmentalization requirement. However, it was proposed that for this quasi-static test, the seat back need not perform such that the top loading bar force must stay in the force/deflection corridor specified for the

[58] A school bus bench seat has the minimum allowed overall width if the total seat width in millimeters minus 380Y is 25 mm (1 inch) or less.

[59] The current knee loading test procedure requires that initially a force of 3,114 N (700 pounds) times the number of seating positions in the test seat (W) be applied to the seat back within 5 and not more than 30 seconds, and then the force is reduced to 1,557 N (350 pounds) times W. The knee loading bar is locked in this position for the remainder of the test. The current top loading test procedure requires an additional force through the top loading bar until 452 joules (4,000 inch-pounds) times W of energy is absorbed by the seat back.

[60] The agency is considering a rulemaking that would replace the torso body block in FMVSS No. 210 with an updated force application device. If the upper torso body block in FMVSS No. 210 is changed, the body block discussed in this quasi-static procedure proposed today may be changed to the new force application device as well.

[61] As discussed earlier in this section, these 5,000 N (1,124 pounds) and 7,500 N (1,686 pounds) values would be reduced depending on the width of the seat.

[62] The rationale for the load application is explained in the agency's 2007 Technical Analysis. We have verified the appropriateness of this load value through additional dynamic testing performed after the NPRM was published.

[63] We note that in the preamble of the NPRM, the initial seat back angle was mistakenly represented by θ in the displacement limit equation. However, the proposed regulatory text and the 2007 Technical Analysis correctly identified the initial seat back angle as Φ in the displacement limit equation.

[64] The derivation of the equation defining this displacement limit was explained in the agency's 2007 Technical Analysis.

compartmentalization requirement.[65] We were concerned about the practicability of meeting the force/deflection corridor, since the torso body block load may have generated stresses in the seat frame that exceed the elastic limit of the material and result in residual strain.

b. Comments and Agency Responses

School bus seat and restraint manufacturers and school bus manufacturers commented on the quasi-static test. The commenters generally concurred with the need for a test to assure the compatibility of belts and compartmentalization, and most suggested technical changes to the test. IMMI and Takata raised issues concerning implications of the proposed requirements on their seat designs.

The comments are addressed below, with the agency's responses.

i. IMMI's comments supported the agency's proposal to add the quasi-static test to assure that compartmentalization is maintained for seats with lap/shoulder belts, but was concerned that an aspect of the test procedure would "disfavor" its dual frame seat design. It indicated that using the torso anchor point as the reference for measuring the displacement "is not relevant to the ability of certain school bus seating designs to provide such compartmentalization." This is because with IMMI's design, the outer seat back frame providing compartmentalization is not attached to the inner frame where the anchor point is located, so the seat would not meet the proposed displacement requirement. They urged the agency to change the test procedure to avoid limiting their dual frame design, which they believe to have good dynamic performance. IMMI asked that the test measure "the rear surface of the seat back—rather than measuring the displacement of the torso anchorage, which is irrelevant to compartmentalization in this innovative seat design."

Agency Response

NHTSA does not agree that it is a simple matter to change from the restriction on the horizontal displacement of the torso anchor point to the rear surface of the seat back. Simply placing a rotation or displacement limit on the compartmentalizing seat back would provide no limit on the forward displacement of the torso anchorage of a dual frame design such as IMMI's. If the agency were to just limit the seat back displacement/rotation, the dual frame design could offer very little resistance to forward excursion of the belted occupant while still meeting the requirement, which could in some designs provide no better protection than just a lap belt. Thus, just measuring the displacement/rotation of the seat back would not achieve our goals of protecting both the belted and rearward unbelted occupants.

However, in recognition of the merits of making our requirements as performance-oriented as possible, we have decided to limit the horizontal displacement of both the anchor point and seat back to avoid unnecessary design restrictions. As discussed in the 2008 Technical Analysis, in consideration of comments to the NPRM, the agency believes there is sufficient justification to limit the displacement of torso anchor point as well as the seat back in the final rule. This will have no substantial effect on unified frame seat designs in that the seat back displacement limit will be identical to the anchor point displacement limit in the NPRM.

Thus, the quasi-static displacement measurement will include both a seat back and a torso anchor point displacement. We have decided that the best way to do this is to measure the displacement of a point on the rear surface of the seat back, rearward of the anchor point. This seat back displacement point is found by passing a horizontal longitudinal line through the torso anchor point and determining where it intersects the seat back surface. With the seat back displacement point defined in this way, the displacement limits can be calculated. We selected this approach for determining the seat back displacement point because of its simplicity. While we acknowledge that a point on the surface of the seat back may be prone to displacement as a result of deformation of non-structural elements such as upholstery, our testing has indicated that such movement is not significant in comparison to the structural deformation of the seat back caused by torso belt loading.

We also considered measuring the displacement of other points on the seat back structure. For example, we considered removing a section of upholstery in the vicinity of the seat back displacement point described above, in order to expose a portion of the seat back frame that could be tracked. However, our examination of the structure of lap/shoulder belt equipped seat backs showed a great deal of variation in the internal structure. We felt this might lead to substantial variability in objectively identifying a point on the internal structure to track.

ii. IMMI requested that NHTSA allow additional torso anchor point displacement equivalent to 4 degrees of additional seat back rotation for both the large and small school bus requirements to accommodate its design. The commenter provided data in support of its request.

Agency Response

We have decided to grant IMMI's request. The commenter asked for torso anchor point displacement equivalent to 4 degrees of additional seat back rotation for both the large and small school bus requirements. We estimate that this will result in approximately a 40 mm increase in allowable anchor point displacement.

As explained in the 2008 Technical Analysis, IMMI presented comparative dynamic testing data in its supplemental comments on the NPRM that showed the results of tests of prototype designs of flex-seats under consideration by IMMI with 5th percentile female dummies and with the two 50th percentile male dummies. The dummies measured injury levels under the IARVs even though the seat was not capable of achieving the displacement limit with the added approximately 40 mm of displacement. IMMI informed NHTSA that it was going to redesign the flex-seat's inner frame to provide additional torso belt support. We would expect that a redesign of the dual frame seat to meet the final rule anchor point limit would have equal or better dynamic performance. In addition, our analysis indicates that anchor point displacement of a dual frame seat design will still be bound by the energy absorption phase of the quasi-static test even as greater anchor point displacement is allowed during the torso belt pull phase of the test. Also, the seat will still need to meet the energy absorption of 452 J (4,000 inch-pounds) per occupant seating position specified in S5.1.3. These parameters will still limit the reduction in strength/energy absorption capability of the inner frame.

iii. Freedman commented: "If a seat assembly includes more than one torso belt anchor point how should the displacement be measured? Should the average or the worst case displacement be used for evaluation? FSTL recommends that NHTSA clarify the procedure to address the possibility of multiple torso belt anchor points on one seat."

[65] A separate FMVSS No. 222 forward loading test is still performed on a different test specimen, one that was not subjected to the quasi-static test, to assure that in a crash, if the seat were not occupied by a belted passenger and it were impacted by an unbelted rearward passenger, the seat would meet the force/deflection corridor.

Agency Response

The agency will use the displacement of any of the torso belt anchorage points to determine if a seat meets the performance criteria.

iv. Freedman tested its double occupant 3PT Family Seat "according to the parameters proposed for small school buses." As a result, Freedman suggested one change to proposed S5.1.6.5.7.; that "the forward and rearward travel distance of the upper loading bar pivot attachment point measured from the position at which the initial application of 44 N of force is attained" be changed to "the forward and rearward travel distance of the upper loading bar pivot attachment point measured from the position at which an application of 44 N of force is attained."

Agency Response

The agency has adjusted the performance criteria in such a way that the measurement for forward travel will start after the 44 N force is obtained.

v. CEW asked NHTSA to remove the requirement to measure the initial seat back angle. CEW believes this would be time-consuming and unnecessary if an angular rotation limit were used. CEW proposed that "the criteria for both large and small school buses could be: Shoulder anchor displacement must be < 10 degrees forward of vertical per above quote or a linear equivalent." Takata also suggested the agency consider different displacement measurement methodology and limits when assessing the performance of the seat back in various stages of the quasi-static test. They specified that a displacement plane should establish the limit on seat back rotation. The primary context of this seemed to be the energy absorption criteria of the quasi-static test. However, this would also seem to limit the seat back rotation during the torso belt loading portion of the test.

Agency Response

We decline to accept the CEW or Takata suggestions. The final rule will continue to use a horizontal displacement limit for anchor point motion. The final rule will also use a horizontal displacement limit for seat back motion.

As explained in the 2007 Technical Analysis, the agency derived the torso anchor point displacement assuming rigid body rotation of the seat back about a point 100 mm below the SgRP. We understood that the actual anchor point displacement is dependent upon the seat back design. Although specific points on the seat back may rotate and translate, the seat back may actually bend like a cantilever beam under load. As CEW and Takata suggest, certainly this bending motion can be described as a change in angle of a line passing through the anchor point or upper part of the seat back and some other reference point near the seat base. However, we continue to believe that the forward displacement of the anchor point is more relevant to occupant restraint than rotation of a line passing through it. That is because a rotational measurement would not take into consideration the absolute displacement of the anchor point. While the Takata suggestion provides a displacement limiting plane in space and thus restricts absolute translation of the anchor point, we do not regard this method to be superior to the agency's proposal.

We disagree with the CEW comment that measurement of the initial seat back angle, which is necessary to calculate the displacement limit, is complicated and time consuming. We believe this to be a relatively simple measurement to make. We also do not agree with Blue Bird's suggestion to place Figure 9 from the 2007 Technical Analysis in the regulatory text, since this may imply that only rigid body rotation is occurring.

Finally, while the idea to use a rotational limit to control the seat back motion as opposed to a displacement limit has merit, we do not believe it is more merited than the displacement value of the anchor point as proposed by the agency. We also believe it would be challenging to find an objective method of measuring the seat back angle at multiple locations along the seat back as it is being deformed in a non-uniform way due to non-symmetric loading from multiple torso belts.

vi. Takata believed that the final rule should limit the displacement of the "effective point" or "effective anchorage." This would differ from the anchor point in that it would include where the torso belt interacts with the torso belt adjustment device. Takata was concerned that the adjustment device might slip during the torso body block loading. This slippage would result in additional belt spool-out. Thus, the displacement of the anchor point would not be representative of the actual occupant displacement. Takata was also concerned that movement of the adjustment device could cause the torso belt angle to change and cause the load path to move off the shoulder. They suggested that the quasi-static procedure mark the belt webbing and limit slippage to no more than 25 mm (1.0 inch), after accounting for webbing stretch. In an *ex parte* meeting with the agency they explained that the distance between the effective point and latch plate should not increase by more than 25 mm (1.0 inch).

Agency Response

Both quasi-static and dynamic testing of seat belt designs with torso belt adjustment devices showed that the devices tended to slip when loading was applied to the torso belts. Thus, we believe that Takata's suggestion of limiting the adjuster slippage to 25 mm (1.0 inch) or less is reasonable. However, we believe that this value should be relative to the initial position on the fixed webbing upon which the adjuster travels. This avoids having to deal with or compensate for stretch in the torso restraint webbing, which would be necessary if we were to use the test method suggested by Takata.

Finally, to implement this change, the initial position of the torso belt adjustment device must be such that slippage will be possible. For example, if the starting position for the adjuster is fully up, there is nowhere for it to go, and the test will not discern the sufficiency of adjuster's capability of remaining in position. To verify that the adjuster does not slip more than 25 mm (1.0) under load, the final rule will require it to be placed 38 mm (1.5 inches) below its highest position of adjustment.

vii. The proposed quasi-static procedure applied no load through the pelvic body block. A pelvic body block was not included because the focus of the test is to assure that the top of the seat back does not pull too far forward, reducing compartmentalization, and because a visual assessment showed that the desired seat response could be achieved with only the torso body block load. However, the agency requested comments on whether the quasi-static test should apply a pelvic block loading. IMMI, CEW and Blue Bird agreed with the NPRM as it relates to not applying pelvic block loading during the quasi-static test as it would not make a significant contribution to the seat back loading/displacement. Blue Bird argued it would be an unnecessary complication.

Takata was the sole commenter indicating a preference for the pelvic loading. Takata also indicated that there should be limits placed on the lateral displacement of lap belt anchorages, consistent with ECE R14, to reduce the likelihood of occupants loading each other. It requested that after the belt loading sequence in the quasi-static test, the anchorage spacing of a 330 or 380 mm (13 or 15 inches) seating position

should be not less than 305 or 350 mm (12 or 13.77 inches), respectively.

Agency Response

We agree with the majority of commenters and continue to believe that pelvic block loading would be of no consequence to the outcome of the quasi-static test. Therefore, the only reason to apply the pelvic load would be to implement the Takata recommendation to restrict the change in lateral anchorage spacing after belt loading in the quasi-static test, consistent with ECE R14. We are not convinced that the quasi-static test as currently written would be appropriate to ascertain the tendency for anchorages to displace in the real world. The quasi-static test pulls only on the torso belt. The pelvic belt portion of the restraint is not pulled. To implement the ECE R14 requirement according to the Takata suggestion, the test would need to pull on the pelvic belt portion, which is not done in the test. In addition, the ECE R14 requirements are applicable to general passenger vehicles and are not specifically tailored to school buses. In Europe, non-school buses, and not buses designed to meet the compartmentalization requirements in FMVSS No. 222, are used.

ECE R14 is essentially the analogous regulation to FMVSS No. 210. After application of loading to the anchorages, the minimum allowed anchorage spacing cannot be violated. We note that FMVSS No. 210 has no equivalent requirement to limit lateral anchorage spacing after anchorage loading. The agency has never found that a safety need exists for such a requirement in any vehicle to which FMVSS No. 210 applies. In addition, application of the suggested provision would be design restrictive, effectively eliminating flex-seat designs with sliding lower anchorages. As we expressed in section IX.b.5., we see no safety need to disallow such designs. Moreover, the commenter did not provide any test data to support the contention that performance would be compromised by allowing anchors to slide.

viii. In the NPRM, we proposed that any seating position that has greater than a 380 mm (15 inches) seat width would be exposed to a body block load based on a 50th percentile male occupant (5,000 N (1,124 pounds) and 7,500 N (1,686 pounds) for large and small school buses, respectively). Any seating position that has the minimum seating width of 380 mm (15 inches) would be exposed to a torso body block load based on a 5th percentile female occupant (3,300 N (742 pounds) and 5,000 N (1,124 pounds) for large and small school buses, respectively).[66] Thus, a bench seat having a width between 1,140 mm (44.9 inches) and 1,165 mm (45.9 inches) could have three belted positions that need to meet the 5th percentile female loading.

Takata suggested that if the minimum seat width for a lap/shoulder belt seating position is maintained at 380 mm (15 inches), all seating positions should be loaded assuming 50th percentile male occupants rather than the 5th percentile female occupants. Takata argued that the reduced load is not representative of potential worst case usage.

Agency Response

There is a potential that three 50th percentile (or larger) males may try to sit in a 1,143 mm (45 inch) wide seat with three lap/shoulder belts. However, data submitted by Takata indicates the shoulder width of a 50th percentile male is 465 mm (18.3 inches), substantially larger than the 380 mm (15 inch) seat spacing. In making a determination of appropriate loading, the agency must consider the probability of a loading situation occurring. We are not convinced that the likelihood of this misuse condition is high, and Takata has not provided the agency any information as to the likelihood of the loading scenario they described.

Further, there is an issue of the practicability of requiring seats to meet the quasi-static requirements assuming three 50th percentile males are occupying all three lap/shoulder belt positions. The agency has no quasi-static testing or sled testing in this configuration. This would represent a 50 percent increase in stringency for total torso body block loading for seats that would fall in this category. We estimated the torso body block load normalized to the upper loading bar. Increasing the total torso body block loading by adding an additional torso load (50 percent increase) would result in a load of 13,770 N (3,096 pounds) and 9,180 N (2,064 pounds) for the small and large school bus cases, respectively.

The small school bus load would clearly exceed the upper limit of the force-deflection zone required by S5.1.3 of FMVSS No. 222. In the 2007 Technical Analysis we discussed the implications of requiring a normalized torso body block load that was at or above the upper limit of the force-deflection zone. We stated that such a requirement might necessitate novel designs that have an energy absorbing phase during seat back contact with unbelted occupants and a stiff phase when the belted occupant is loading the seat back through the anchorage. These designs will take time and resources to develop.

Ultimately, the agency must establish a reasonable limit to the seating position width that should be expected to accommodate a 50th percentile male and the associated belt loading. This is particularly true given our new minimum width of 330 mm (13 inches) for the "small occupant seating position" of flex-seats. Given the available information, we see no sufficient reason to change the load requirement from what was proposed.

The question arises as to what should be the appropriate torso body block loading for a flex-seat at its maximum occupant capacity. NHTSA believes that it is reasonable to assume that the outside seating positions of a flex-seat, in a maximum occupancy configuration, could be loaded to levels consistent with occupancy by adult 5th percentile adult females and so is adopting that load requirement. Certainly, larger occupants could be present in these outside seats, but this would result in the center seating position accommodating correspondingly smaller occupants. Assuming the outside seats are occupied by 5th percentile adult females (a 12-year-old child is approximately the size of a 5th percentile adult female), the center seat could be occupied by an occupant about the size of a 10-year-old. This is consistent with our allowance for a lower anchor height for the center seat of flex-seats. Nonetheless, we believe that it is in the best interest of safety to maintain the loading of this position to the same level as the other positions on a flexible occupancy seat, i.e., equivalent to that of a 5th percentile adult female.

There is not much of a difference between the associated loads of a 5th percentile adult female and a 10-year-old child. Our latest data on the mass of a 10-year-old is 37.2 kg (82 pounds). The total percentage increase in applied torso load between assuming three 5th percentile females or two 5th percentile females and one 10-year-old would be 9% $[((3 \times 49) - ((2 \times 49) + 37.2)/((2 \times 49) + 37.2)]$. We have no practicability concerns with the three-across 5th percentile female loading on a flexible occupancy seat. Moreover, the approach is consistent with the load level that the

[66] S5.1.6.5.5 specified that 5,000 N is applied to the torso belts if the bench width is no more than 25 mm greater than the number of belted positions (Y) times 380 mm (15 inches). A wider bench indicates that there is nominally more than 380 mm (15 inches) per belted seating positions and the load applied to the torso belts must be 7,500 N.

agency is establishing for other three-seating position bench seats with fixed lap/shoulder belts.

Accordingly, the agency has concluded that flex-seats in a maximum occupancy configuration must be loaded in the quasi-static test to a level consistent with all seat positions being occupied by 5th percentile female occupants, that is to say, a torso body block load of 3,300 N (742 pounds) and 5,000 N (1,124 pounds) for large and small school buses, respectively. This would include flexible occupancy seating positions down to a 330 mm (13 inch) width, up to a fixed seat width of nominally 380 mm (15 inches). As was proposed, seating positions with widths of 380 mm (15 inches) or larger are load values consistent with occupancy of a 50th percentile male occupant.

ix. CEW asked that the agency to modify the quasi-static energy absorption requirement such that the upper loading bar load remains in the present FMVSS No. 222 force-deflection corridor. They argued that the compartmentalized occupant behind a belted occupant should be offered the full protection of a seat back that can stay within the force-deflection corridor and not just that of a seat back that meets the reduced performance level proposed in the NPRM.

Agency Response

We believe there is merit to the CEW request. In the preamble of the NPRM, we contrasted the energy absorption for an occupant behind belted and unbelted occupants. We stated that for unbelted occupants behind belted occupants, "the manner of absorbing energy would not be as controlled as when impacting a seat back that had not been subjected to the previous loading from the seat belts." An altered performance level as specified in the force-deflection corridor would no longer be applied. However, the required amount of energy absorption remained the same as specified by S5.1.3. We believed that this was necessary because the torso belt pull would have loaded the seat back into plastic deformation and it was unclear how well controlled the force/deflection curve of subsequent loading with the upper loading bar could be.

According to CEW, at least for their design, this subsequent loading is sufficiently controllable. In fact, the agency's own data is verification of CEW's position. Figures 2 and 3 below entitled, "CEW with three fixed width seating positions" and "CEW with two fixed width seating positions," respectively, show the force-deflection curves of the upper loading bar in the quasi-static test for a CEW unified frame design.[67]

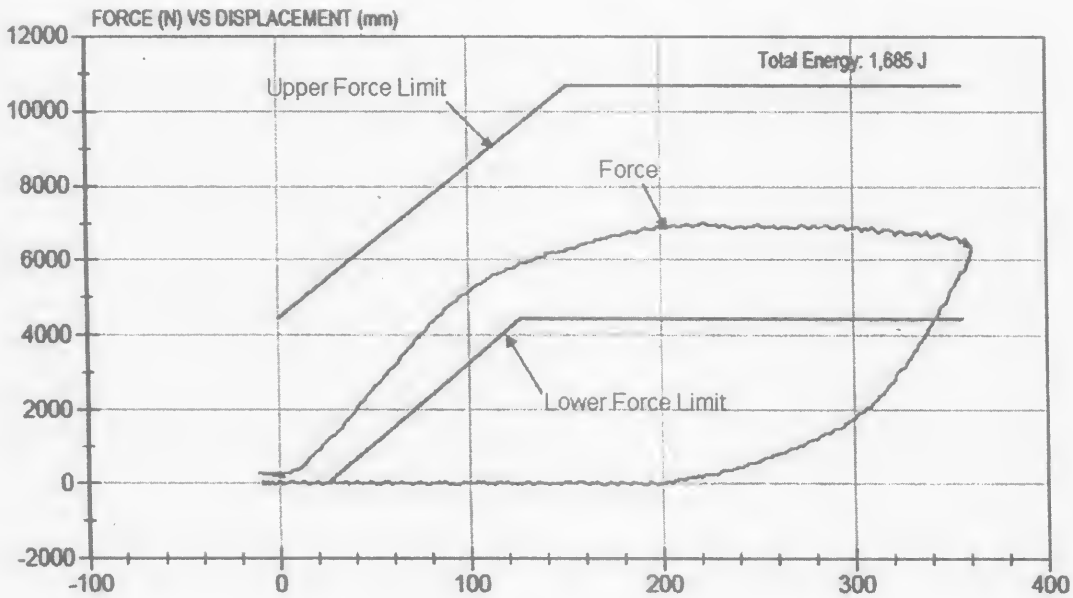

Figure 2: CEW with three fixed width seating positions.

[67] NHTSA–2007–0014–0016.

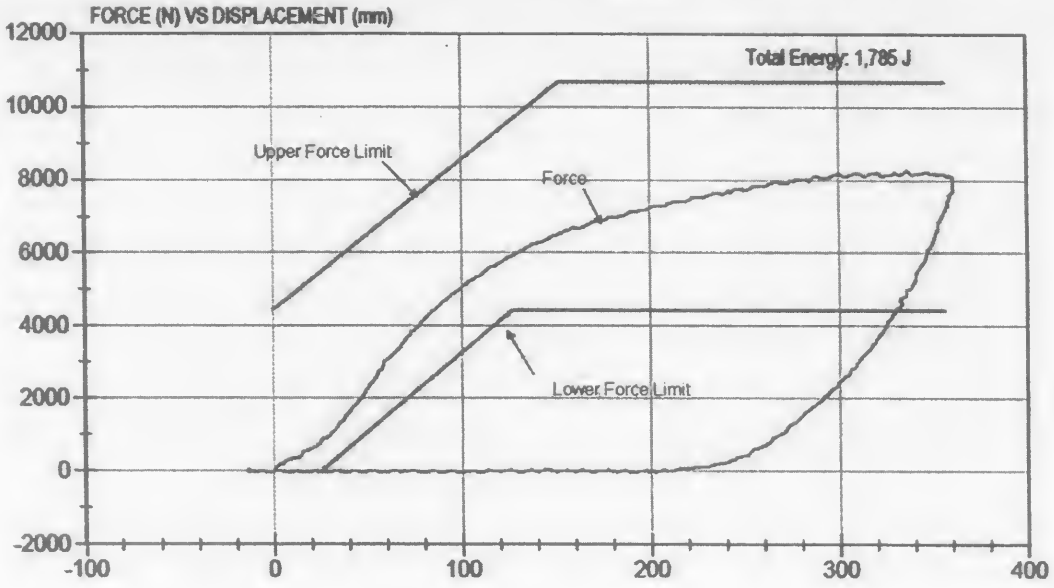

Figure 3: CEW with two fixed width seating positions.

However, we are concerned that adopting the entire corridor may unnecessarily restrict the design of seat backs other than that of conventional unified frame seats. Figures 4 and 5 below, "IMMI–V1 with three fixed width seating positions" and "IMMM–V1 two fixed width seating positions," respectively, show the results of agency testing for the IMMI–V1 dual frame design. Note that the force/deflection curve exits the lower boundary at the location of the upward slope and reenters at the flat portion of the boundary. However, this design still achieved the necessary amount of energy absorption prior to 356 mm of displacement in the case of the two-position seat and prior to exiting the upper bound of the corridor in the case of the three-position seat. We note that testing with a prototype considered by IMMI showed a force-deflection signature that remained within the required corridor.[68]

Our concern about being design restrictive relates to imposing the lower bound of the corridor. For the dual frame design in the quasi-static test, the inner frame will have been initially pulled away from the rest of the seat back. As the upper loading bar initially loaded the outer seat back frame, for this particular version of the IMMI design (IMMI–V1) this outer frame did not offer sufficient resistance to stay in the corridor and neither did it meet the proposed anchorage displacement requirement.[69] If the manufacturer were to modify the design so as to meet the new torso anchor point displacement limit, the seat will have a stronger inner frame. We are concerned that strengthening of the inner frame would make it problematic to strengthen the outer frame such that it could stay above the lower bound of the force deflection curve.[70] The result of the prototype IMMI design staying within the corridor does not change this conclusion since that design also did not meet the new torso anchor point displacement limit.

However, we do believe it is reasonable to expect a compliant dual frame design to stay below the upper bound of the corridor. Accordingly, we are adopting the upper boundary of the corridor, so the seat back must perform such that the top loading bar force must stay within the top of the force/deflection corridor specified for the compartmentalization requirement. This requirement helps ensure that the seat back will not be too stiff in containing the unbelted passenger in a crash.

BILLING CODE 4910–59–P

[68] "NHTSA Technical Analysis to Support the Final Rule Upgrading Passenger Crash Protection in School Buses," September 2008.

[69] This version of the IMMI seat is no longer manufactured.

[70] This is because the combined frame still needs to stay in the corridor for the S5.1.3 energy requirement.

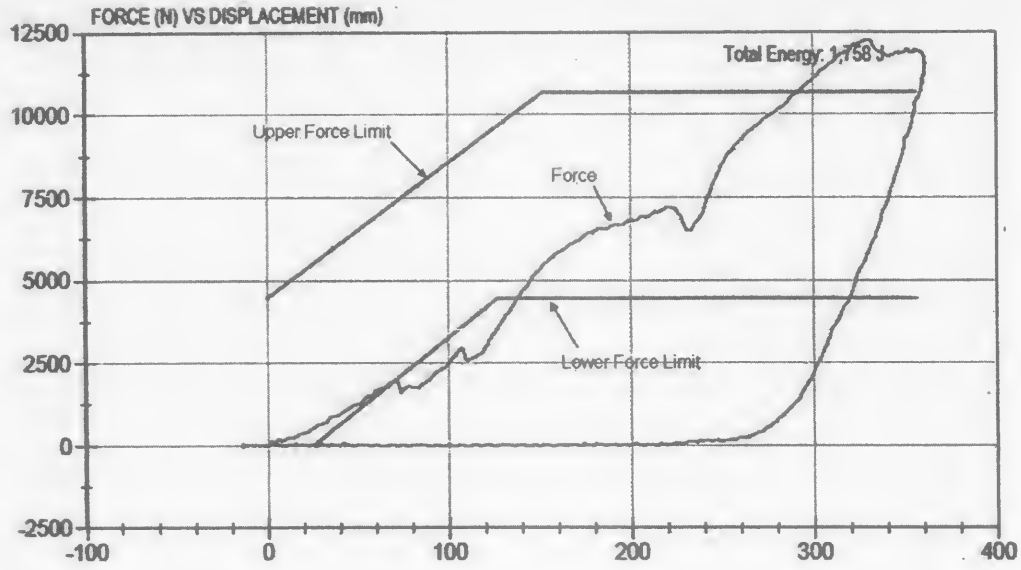

Figure 4: IMMI-V1 with three fixed width seating positions.

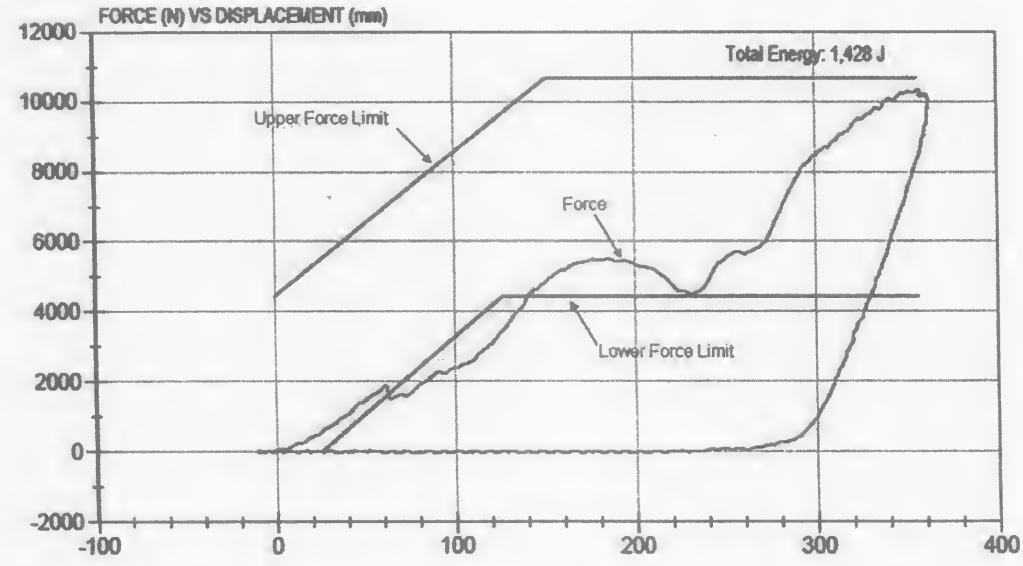

Figure 5: IMMI-V1 with two fixed width seating positions.

x. CEW and Girardin requested that lap/shoulder belt equipped seats not have to independently meet the energy absorption requirement of S5.1.3 since the quasi-static test addresses this separately. Takata asked that the energy quasi-static energy absorption requirement be met prior to the seat back going beyond a specified displacement plane.

Agency Response

We do not agree with this request. We still believe it is important that the seat back meet the compartmentalization requirement as it currently exists, i.e., prior to the seat being deformed or stressed by belt loading. Even when there are lap/shoulder belts on school buses, some occupants may not use them. In that case,

compartmentalization is the only restraint method. We have no guarantee, nor have we been shown any data indicating, that a seat back remaining in the corridor after belt loading will always be in the corridor prior to belt loading. In addition, to implement the CEW and Girardin recommendation the quasi-static test would have to impose compliance with the entire force-deflection corridor. As we explained above, we are not imposing the lower bound at this time.

xi. Both Freedman and Blue Bird requested that the displacement limit in the energy absorption phase of the quasi-static test begin when the 44 N (10 pounds) is obtained as a result of upper loading bar in S5.1.6.5.7 as opposed to when the 44 N (10 pounds) is applied when the seat back position is determined in S5.1.6.3.

Agency Response

The comments indicate confusion as to where the calculation of displacement for the energy calculation in S5.1.6.5.7 should begin. It is to begin when 44 N of force is achieved in the upper loading bar during the load application specified in S5.1.6.5.7. Changes have been made to the regulatory text to make this clear.

xii. We also sought comment on the proposed procedure (see S5.1.6.5.4 of the proposed rule) for positioning the torso block used in the quasi-static test. We also asked whether the proposed procedure was sufficiently clear and whether there are ways to improve the clarity of the test procedure.

Several commenters addressed the proposed 300 N (67 pounds) preload used in the test. CEW stated testing indicated that the 300 N (67 pounds) preload is not sufficient to hold the torso body block in place until the full load is applied. They recommended that the preload be increased to 896 N (200 pounds). Freedman stated that it was difficult to position the torso body blocks as described in S5.1.6.5.4 and the 300 N (67 pound) preload seemed inadequate to position the torso body block in the prescribed zone. Freedman recommended that the preload be increased to a load between 890 to 1,334 N (200 to 300 pounds). Freedman indicated that the torso body block was also difficult to position without any support beneath it. They requested clarification on whether the use of supports to help position the body block within the required zone was permissible.

Blue Bird stated that their experience has been that a 300 N (67 pounds) preload applied slightly upward (5–15 degrees) is not sufficient to counteract the body block weight and hold it such that the applied load remains at the desired angle. They did not suggest a specific load, but stated their belief it would be several hundred pounds. They stated that at such a weight, the seat belt webbing stretches and seat back displacement becomes a concern. They suggested the use of a spacer on top of the seat cushion as a superior alternative method to achieve the desired initial body block position until the applied load negates the gravitational pull on the body block.

Agency Response

After considering the comments, the agency is revising the applied preload and positioning zone for the torso body block. We found that a preload of 600 N (135 pounds) will position the torso body block in a repeatable manner without the use of any support under the block.[71]

In addition, the agency has found that the zone for locating the origin of the torso body block radius must be referenced to the adjusted height of the torso belt to address flex-seat designs. As earlier discussed in this preamble, this final rule specifies that the torso belt adjusted height will be 38 mm (1.5 inches) below its highest position of adjustment to account for slippage. In addition, for small occupant seating positions of a flex-seat, this adjusted position may be well below 400 mm above the SgRP.

The agency evaluated the sensitivity and repeatability of the torso body block position to preload values and torso belt adjusted height. Our analysis showed that a preload of 600 N (135 pounds) was sufficient to position the torso body block in a repeatable manner without the use of any support under the block. The origin of the torso block will still be located no more than 100 mm forward of the SgRP. However, the vertical zone is now referenced to the torso belt adjusted height. This zone is established by locating a horizontal plane that has a vertical position halfway between the torso belt adjusted height and 100 mm below the SgRP. The origin of the torso body block radius must be within 75 mm (3.0 inches) of this plane. Mathematically, the vertical location of the upper and lower plane is as follows:

Upper Plane = (TBAH – 100)/2 + 75 = (TBAH)/2 + 25 mm

Lower Plane = (TBAH – 100)/2 – 75 = (TBAH)/2 – 125 mm

Where TBAH is the torso belt adjusted height above the SgRP.

Figure 6 below shows the newly defined zone. The new torso block zone now "floats" with the torso belt adjusted height, which allows a reasonable and achievable zone that can be used with the large potential range of belt heights on school bus seats. This is particularly important when the center position is a flexible occupancy seat that potentially has a lower torso anchor point height.

[71] "FMVSS No. 222 School Bus Seat Quasi-Static Testing for Various School Bus Seats Equipped with Type 2 Seat Belts, Torso Block Preload and Positioning," General Testing Laboratories, Inc., July 2008.

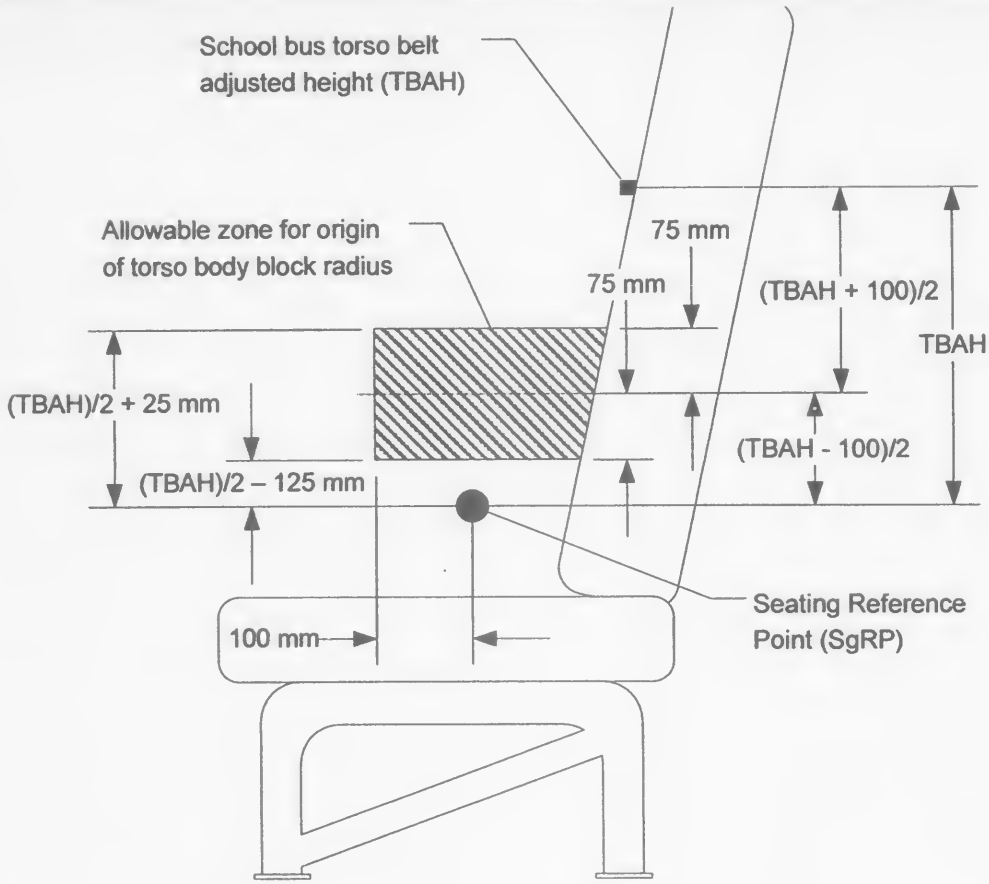

Figure 6: Zone in which the origin of the torso block radius must be located.

xiii. IMMI, Takata and Concepts all asked that the agency allow dynamic certification of lap/shoulder belt equipped school bus seats as an alternative to the quasi-static test. These tests would use instrumented dummies and IARVs. They stated that sled or full-vehicle crash testing more accurately represents "real world" performance.

Agency Response

These commenters are addressing an issue (dynamic testing) that is outside the scope of this rulemaking since a dynamic test component was expressly not proposed by NHTSA. Nonetheless, the agency wishes to take this opportunity to provide some views on the issue.

In the preamble to the NPRM, the agency stated it was proposing the quasi-static test instead of a dynamic test because "manufacturers are familiar with quasi-static testing * * * [M]anufacturers would be able to test a large number of seats and a variety of design configurations without incurring the delay and additional cost of sending each configuration to an outside testing facility." In terms of testing cost, we continue to believe it is less expensive to certify compliance by the quasi-static test than it would be to perform a dynamic equivalent. Now, with the advent of flex-seats that must be tested in several occupant configurations, this cost differential may be even larger. Because the quasi-static test is less costly than sled testing, the quasi-static test allows testing of more seating systems on a school bus and/or more school buses than 5 if a sled test were specified.

In addition, a quasi-static test is currently specified in FMVSS No. 222 to test the performance characteristics of compartmentalization. The test has been successful in ensuring the integrity of the compartmentalized passenger compartment since the inception of FMVSS No. 222. A quasi-static test to assess the effect that lap/shoulder belts have on the compartmentalized seating systems thus is a rational aspect of this rulemaking, as it broadens the current successful framework used to assess school bus seating systems and extends it to assess the effect that equipment (lap/shoulder belts) added to the systems affect the seating systems. Developing a dynamic test for lap/shoulder belts in FMVSS No. 222 would

take further study and investment of agency resources that the agency believes is more appropriately directed to other priorities at this time.

xiv. This final rule excludes the last row of seats from the portion of the quasi-static test where the rear loading bar load is applied to simulate the force imposed by compartmentalized occupants seated in a more rearward seat row. However, the torso body block loading will still be applied and the anchor point displacement limit must still be met. The reason for this exclusion is that there will be no occupants rearward of the last row of occupants. However, the standard will ensure that the lap/shoulder belts are capable of adequately restraining the occupants in the last row in a frontal impact.

This exclusion is consistent with other exclusions of FMVSS No. 222 applied to the last seat row that were adopted based on the appropriateness of the requirement as applied to the last row. In this rulemaking, we have excluded from the FMVSS No. 210 requirement, that last row seat belt anchorages be integrated in the seat structure. Similarly, the last row is currently excluded from the compartmentalization energy absorption requirement of FMVSS No. 223 at S5.1.3.

d. Lap Belt Buckle Belt Length

In the NPRM, we noted that for a proper fit, the lap belt or lap belt portion of a lap/shoulder belt must fit low across the occupant's hips so that the crash loads are distributed across the pelvis and not the abdominal area. Loading of the abdomen rather than the pelvis increases the risk of internal injuries caused by the seat belt penetration into the soft tissue of the abdomen. We stated that we were aware that lap belts supplied to some states have long buckle stalks or long belt lengths between the "seat bight" (approximately the intersection of the seat cushion and seat back) and buckle that cause the lap belt to not fit low across the hips of the passengers. We asked for comment on whether such designs should be retained because of privacy issues, even if the long buckle stalks may result in misplacement of the lap belt across the child's abdomen and difficulty in child restraint attachment.

Most commenters responding to this issue supported the short buckle stalks. CEW agreed that a longer buckle stalk can allow the seat belt to engage in the abdominal area, whereas a shorter buckle stalk forces the belt engagement lower in the pelvic area. However, they stated they respected the privacy considerations and that they let the end user decide whether to use longer buckle stalks. IMMI stated belt buckles should not be permitted to ride across the abdomen and recommended that NHTSA establish a maximum length limit for the distance between the buckle tip and the seat bight. SafeRide News stated that a much shorter buckle stalk should be used, similar to that found in most private passenger vehicles, with which children are familiar from buckling themselves up. On the other hand, NYAPT stated its belief that the longer stalks can make the seat belt system more conducive to emergency evacuations of children, particularly children with special needs.

Agency Response

In this final rule, to optimize crash protection on school buses, we are limiting the location of the distance between the buckle end and associated latch plate to within 65 mm (2.6 inches) of the SgRP (FMVSS No. 222, S5.1.7). We agree with the commenters that privacy concerns are somewhat allayed by having the seat belt buckles located at the children's sides and not in the middle of the seating position. In response to NYAPT, we understand its concern but believe that the pros of the belt positioned in the pelvic area outweigh the concerns about emergency evacuation. Further, emergency evacuation could be facilitated by the similarity of the short buckle stalks with the family vehicle and the familiarity of the short buckle stalk to the children, as stated by SafeRide News. Driver and student training in emergency evacuation procedures should also help in timely egress from the vehicle.

The measurement is taken by pulling the lap portion of the belt webbing on the latchplate side with a 20 N force applied in the vertical longitudinal plane. (The seat belt assembly is buckled during the test.) The load is applied through a range of angles and the end of the buckle/latchplate assembly must not go beyond a defined limit plane. The limit plane is 40 degrees from the horizontal, transverse with respect to the vehicle and is 65 mm from the SgRP. We have chosen the SgRP as the reference point for measurement since it is more objective than trying to use the seat bight. The 65 mm (2.6 inch) value is based on measurements from seats manufactured by IMMI and Takata. (See discussion in the 2008 Technical Assessment.) All the measured seats would meet the proposal. We also placed a 6YO test dummy in these seats to get an indication of the buckle location with respect to the dummy abdomen and found the location to be acceptable, i.e., the belt was placed nearer to the hip area and not high on the abdominal region.

XI. Lead Time

The NPRM proposed a one year lead time for school bus manufacturers to meet the new requirements for a 24-in minimum seat back and seat cushion retention, since there is limited or no development necessary for these changes. We also proposed a one-year lead time for meeting requirements for voluntarily installed seat belts in large school buses and a three year lead time for meeting mandatory installation in small school buses. We stated our belief that three years are necessary for small school buses since some design, testing, and development will be necessary to certify compliance to the new requirements. We also proposed that optional early compliance be permitted.

IC Corporation requested that NHTSA allow the same lead time for large buses as for small buses, three years, to allow for "adequate time to properly engineer, tool and validate the designs." The commenter stated that the rulemaking establishes new design and performance standards for lap/shoulder belts on large school buses and that time is needed to design, develop and test the systems.

In response, NHTSA agrees with the comment. There is good cause for the lead time because school bus manufacturers need time to design and manufacture school buses that meet the performance requirements adopted by this final rule. We have thus provided a one year lead time for compliance with the requirement to install higher seat backs and restraining barriers on all school buses and to meet the seat cushion retention test. A three year lead time is provided for meeting requirements for voluntarily installed seat belts (lap belts and lap/shoulder belts) in large school buses and for mandatory lap/shoulder belts in small school buses. Optional early compliance is available for all of these amendments, as of the date of publication of this final rule.

XII. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866 and is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA has

prepared a final regulatory evaluation (FRE) for this final rule.[72]

This final rule requires: (a) For all school buses to increase seat back height from 508 mm (20 inches) to 610 mm (24 inches), and to require a self-latching mechanism for seat bottom cushions that are designed to flip up;[73] and (b) for small school buses (GVWR of 4,536 kg (10,000 pounds) or less, passenger seat lap/shoulder belts in lieu of the currently-required lap belts. School bus manufacturers will be required to certify that the belt systems meet specifications for retractors, strength, location and adjustability. Under the requirements, seat backs with lap/shoulder belts are subject to a quasi-static test to assure that the seat backs are strong enough to withstand the forces from a belted passenger and that of an unbelted passenger seated behind the belted occupant. This final rule also requires: Performance requirements for voluntarily-installed seat belts on large (over 4,536 kg (10,000 pounds)) school buses. For large school buses with voluntarily-installed lap/shoulder belts, the vehicle would be subject to the requirements described above for lap/shoulder belts on small school buses, except that applied test forces and performance limits would be adjusted so as to be representative of those imposed on large school buses. Large school buses with voluntarily-installed lap belts would be required to meet anchorage strength requirements. This final rule does not require seat belts to be installed on large school buses. The performance requirements for seat belts on large school buses affect large school buses only if purchasers choose to order seat belts on their vehicles.

The *School Bus Fleet 2007 Fact Book* on U.S. school bus sales for the sales years 2001–2005 reports that for each of these years on average, approximately 40,000 school buses were sold. NHTSA estimates that of the 40,000 school buses sold per year, 2,500 of them were 10,000 pounds GVWR or under. The other 37,500 school buses were over 10,000 pounds GVWR. Four states currently require high back seats (Illinois, New Jersey, New York, and Ohio). These states have 21.7 percent of the sales. Thus, the high back seat incremental costs apply to 78.3 percent of these sales or 1,958 buses that are 10,000 pounds GVWR or under and 29,362 buses that are over 10,000 pounds GVWR.

Small School Buses

NHTSA estimates that the costs of this rulemaking are the incremental cost of the higher (24 inch) seat back ($45 to $64 per small school bus for 78.3 percent of the fleet) plus the incremental cost for lap/shoulder belts over lap belts of $1,121 to $2,417. This amounts to a total incremental cost per school bus of $1,166 to $2,481 per bus for those states without high back seats. If it is assumed that in a given year, 2,500 small school buses are sold, for all small school buses, the total incremental costs of this rulemaking are estimated to be from $2,889,000 ($45 × 1,958 + $1,121 × 2,500 small school buses) to $6,167,000 ($64 × 1,958 + $2,417 × 2,500 small school buses).

The estimated benefits resulting from the higher seat backs and lap/shoulder belts on small school buses is, per year, 43 fewer injuries, and 0.8 fewer fatalities.

Large School Buses

Costs of Higher Seat Backs on Large School Buses—In this final rule, all large school buses must have the higher seat backs of 24 inches. NHTSA estimates the cost per large school bus of the higher seat back to be $125. NHTSA estimates that the total costs of the higher seat backs on large school buses to be $3,680,000 (29,362 large school buses times $125.40).

Benefits of Higher Seat Backs on Large School Buses—The benefits from higher seat backs on large school buses is estimated to be 23 fewer injuries per year, and 0.14 fewer fatalities per year.

Costs and Benefits of Performance Requirements for Voluntarily-Installed Belts on Large School Buses—As earlier noted, nothing in this rulemaking requires any party to install lap or lap/shoulder belts at passenger seating positions in large school buses. Instead, this rulemaking specifies performance requirements that voluntarily-installed lap or lap/shoulder belts at passenger seating positions must meet. Lap or lap/shoulder belts that are now installed in large school buses are affected by this rulemaking, in that the voluntarily-installed belt systems would be subject to the performance requirements set forth in this final rule whereas currently the systems are not subject to any Federal standard. The agency is unable to estimate the costs and benefits of this part because not enough is known about the requirements that state and local authorities now specify for the performance of seat belt systems on large school buses.

Overview of Costs and Benefits

Costs of High Back Seats and Lap/Shoulder Belts for Small School Buses, and of High Back Seats for Large School Buses

Small School Buses: Adding together the high back seat incremental cost of $45 to $64 to the incremental cost for lap/shoulder belts over lap belts of $1,121 to $2,417, results in a total incremental cost of $1,166 to $2,481 per bus.

Large School Buses: The incremental cost for high back seat is estimated to be $125 per bus.

TABLE 1—TOTAL COSTS (PER BUS AND FOR THE FLEET)

[$2006]

	Large buses 66 passenger	Small buses 14 passenger	Small buses 20 passenger
Per Bus Costs	$125	$1,166	$2,481.
Annual Fleet Costs	$3.7 million	$2.9 million	$6.2 million.
Combined Annual Fleet Costs	$6.6 to $9.9 million.		

[72] NHTSA's FRE discusses issues relating to the potential costs, benefits and other impacts of this regulatory action. The FRE is available in the docket for this final rule and may also be obtained by contacting *http://www.regulations.gov* or by contacting DOT's Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone 202–366–9324.

[73] The agency estimates that a self-latching mechanism on flip-up seat bottoms will cost less than $3 per seat, or $66 per bus. This cost was not included in the estimates given below.

Benefits of High Back Seats and Lap/Shoulder Belts for Small School Buses, and of High Back Seats for Large School Buses

The benefits for small school buses and large school buses are estimated as shown below in Table 2:

TABLE 2—TOTAL BENEFITS

	Small school bus		Large school bus		Total	
	Injuries	Fatalities	Injuries	Fatalities	Injuries	Fatalities
High Back Seat	Combined below [1]		23	0.14	23	0.14
Lap/Shoulder Belts	43	0.08	n.a.	n.a.	43	0.08
Total	43	0.08	23	0.14	66	0.22

[1] We did not have test data to allow us to separate out the high back seats from lap/shoulder belts for small school buses; thus, these data have been combined.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. According to 13 CFR section 121.201, the Small Business Administration's size standards regulations used to define small business concerns, school bus manufacturers would fall under North American Industry Classification System (NAICS) No. 336111, *Automobile Manufacturing*, which has a size standard of 1,000 employees or fewer. Using the size standard of 1,000 employees or fewer, NHTSA estimates that there are two small school bus manufacturers in the United States (U.S. Bus Corp. and Van-Con). NHTSA believes that both U.S. Bus Corp and Van-Con manufacture small school buses and large school buses.

I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. In this final rule, the small businesses manufacturing small buses will incur incremental costs ranging from a low of $1,166 to $2,481 per small school bus, out of a total cost of $40,000 to $50,000 per small school bus. The small businesses manufacturing large school buses will incur incremental costs of $125 per school bus (out of a total of more than $70,000) for the costs of the higher seat backs. The costs of lap/shoulder belts on large school buses is not a factor, as nothing in this final rule requires lap/shoulder belts or lap belts at passenger seating positions in large school buses.

The relatively minimal additional costs outlined above for large and small school buses will be passed on to school bus purchasers. Those purchasers are required to be sold school buses if they purchase a new bus, and to use school buses. Thus, small school bus manufacturers will not lose market share as a result of the changes in this final rule. While small organizations and governmental jurisdictions procuring school buses will be affected by this rulemaking in that the cost of school buses will increase, the agency believes the cost increases will be small compared to the cost of the vehicles and that the impacts on these entities will not be significant.

Executive Order 13132

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999). On July 11, 2007, NHTSA held a public meeting bringing together a roundtable of state and local government policymakers, school bus manufacturers, pupil transportation associations and consumer groups to discuss the safety, policy and economic issues related to seat belts on school buses (see NHTSA Docket 28103). No additional consultation with States, local governments or their representatives is contemplated beyond the rulemaking process. Further, the agency has concluded that the rulemaking will not have federalism implications because it will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule specifies performance requirements for seat belts voluntarily installed on large school buses, but does not require the belts on the large buses.

Further, no consultation is needed to discuss the preemptive effect of today's rulemaking. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). It is this statutory command that preempts State law, not today's rulemaking, so consultation would be inappropriate.

Second, in addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle

manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements unenforceable. See *Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000). NHTSA has not discerned any potential State requirements that might conflict with the final rule, however, in part because such conflicts can arise in varied contexts. We cannot completely rule out the possibility that such a conflict might become apparent in the future through subsequent experience with the standard. NHTSA may opine on such conflicts in the future, if warranted.

National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Today's final rule does not establish any new information collection requirements.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." OMB Circular A–119 "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (February 10, 1998) establishes policies to implement the NTAA throughout Federal executive agencies. In section 4.a. of OMB Circular A–119, "voluntary consensus standards" are defined as standards developed or adopted by voluntary consensus standards bodies, both domestic and international. After carefully reviewing the available information, NHTSA has determined that there are no voluntary consensus standards relevant to this rulemaking.

In its comments to the November 21, 2007 NPRM, the National Association of State Directors of Pupil Transportation Services (NASDPTS) suggested that "NHTSA strongly consider the national consensus recommendations contained within the NSTSP [National School Transportation Specifications and Procedures] whenever they are relevant to the current NPRM." Our response to this comment is to explain that we had reviewed the NSTSP recommendations but did not find them applicable to this rulemaking. Those recommendations are developed by school bus purchasers and users; NHTSA's FMVSSs apply to school bus and equipment manufacture and these manufacturers are not directly involved in the development of the recommendations. Today's final rule do not apply to purchasers and users, but instead sets performance standards for school buses to which school bus manufacturers must certify compliance.

Executive Order 12988

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement. The preemptive effect of this final rule has been discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This final rule will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.207 is amended by revising the introductory text of S4.2, to read as follows:

§ 571.207 Standard No. 207, Seating systems.

* * * * *

S4.2. *General performance requirements.* When tested in accordance with S5, each occupant seat shall withstand the following forces, in newtons, except for: a side-facing seat; a passenger seat on a bus other than a school bus; a passenger seat on a school bus with a GVWR greater than 4,536 kilograms (10,000 pounds); and, a passenger seat on a school bus with a GVWR less than or equal to 4,536 kg manufactured before October 21, 2011.

* * * * *

■ 3. Section 571.208 is amended by revising S4.4.3.3, revising the heading of S4.4.5 and revising S4.4.5.1, revising the table in S7.1.4, and adding S7.1.5, to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S4.4.3.3 *School buses with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less.*

(a) Each school bus with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less manufactured before October 21, 2011 must be equipped with an integral Type 2 seat belt assembly at the driver's designated seating position and at the right front passenger's designated seating position (if any), and with a Type 1 or Type 2 seat belt assembly at all other seating positions. Type 2 seat belt assemblies installed in compliance with this requirement must comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. The lap belt portion of a Type 2 seat belt assembly installed at the driver's designated seating position and at the right front passenger's designated seating position (if any) must meet the requirements specified in S4.4.3.3(c).

(b) Each school bus with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less manufactured on or after October 21, 2011 must be equipped with an integral Type 2 seat belt assembly at all seating positions. The seat belt assembly at the driver's designated seating position and at the right front passenger's designated seating position (if any) shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. The lap belt portion of a Type 2 seat belt assembly installed at the driver's designated seating position and at the right front passenger's designated seating position (if any) shall meet the requirements specified in S4.4.3.3(c). Type 2 seat belt assemblies installed on the rear seats of school buses must meet the requirements of S7.1.1.5, S7.1.5 and S7.2 of this standard.

(c) The lap belt portion of a Type 2 seat belt assembly installed at the driver's designated seating position and at the right front passenger's designated seating position (if any) shall include either an emergency locking retractor or an automatic locking retractor, which retractor shall not retract webbing to the next locking position until at least ¾ inch of webbing has moved into the retractor. In determining whether an automatic locking retractor complies with this requirement, the webbing is extended to 75 percent of its length and the retractor is locked after the initial adjustment. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension-relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

* * * * *

S4.4.5 *Buses with a GVWR of 10,000 lb (4,536 kg) or less, except school buses, manufactured on or after September 1, 2007.*

S4.4.5.1 Except as provided in S4.4.5.2, S4.4.5.3, S4.4.5.4, S4.4.5.5 and S4.4.5.6, each bus with a gross vehicle weight rating of 10,000 lb (4,536 kg) or less, except school buses, shall be equipped with a Type 2 seat belt assembly at every designated seating position other than a side-facing position. Type 2 seat belt assemblies installed in compliance with this requirement shall conform to Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates a webbing tension relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension relieving device, and the vehicle shall conform to S7.4.2(c) of this standard. Side-facing designated seating positions shall be equipped, at the manufacturer's option, with a Type 1 or Type 2 seat belt assembly.

* * * * *

S7.1.4 * * *

	50th-percentile 6-year-old child	50th-percentile 10-year-old child	5th-percentile adult female	50th-percentile adult male	95th-percentile adult male
Weight	47.3 pounds	82.1 pounds	102 pounds	164 pounds ±3	215 pounds.
Erect sitting height	25.4 inches	28.9 inches	30.9 inches	35.7 inches ±.1	38 inches.
Hip breadth (sitting)	8.4 inches	10.1 inches	12.8 inches	14.7 inches ±.7	16.5 inches.
Hip circumference (sitting).	23.9 inches	27.4 inches (standing).	36.4 inches	42 inches	47.2 inches.
Waist circumference (sitting).	20.8 inches	25.7 inches (standing).	23.6 inches	32 inches ±.6	42.5 inches.
Chest depth		6.0 inches	7.5 inches	9.3 inches ±.2	10.5 inches.
Chest circumference:					
(nipple)			30.5 inches.		
(upper)		26.3 inches	29.8 inches	37.4 inches ±.6	44.5 inches.
(lower)			26.6 inches.		

S7.1.5 *School bus bench seats.* The seat belt assemblies on school bus bench seats will operate by means of any emergency-locking retractor that conforms to 49 CFR 571.209 to restrain persons whose dimensions range from those of a 50th percentile 6-year-old child to those of a 50th percentile 10-year-old, for small occupant seating positions, as defined in 49 CFR 571.222, and to those of a 50th percentile adult male for all other seating positions. The seat back may be in any position.

* * * * *

■ 4. Section 571.210 is amended by revising S2; amending S3 by revising the heading and adding definitions for

"school bus torso belt adjusted height," "school bus torso belt anchor point," and "small occupant seating position," in alphabetical order; adding S4.1.3 and S4.1.3.1 through S4.1.3.5; by revising in the introductory paragraph of S4.3.2, the second sentence; revising S4.3.2(b) and by adding Figure 4 to the end of the section, to read as follows:

§ 571.210 Standard No. 210, Seat belt assembly anchorages.

* * * * *

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, and school buses.

S3. *Definitions.*

School bus torso belt adjusted height means the vertical height above the SgRP of the point at which the torso belt deviates more than 10 degrees from the horizontal plane when the torso belt is pulled away from the seat by a 20 N force at a location on the webbing approximately 100 mm from the adjustment device and the pulled portion of the webbing is held in a horizontal plane.

School bus torso belt anchor point means the midpoint of the torso belt width where the torso belt first contacts the uppermost torso belt anchorage.

* * * * *

Small occupant seating position is as defined in 49 CFR 571.222.

* * * * *

S4.1.3 *School bus passenger seats.*

S4.1.3.1 Except for seats with no other seats behind them, seat belt anchorages on school buses manufactured on or after October 21, 2011 must be attached to the school bus seat structure and the seat belt shall be Type 1 or Type 2 as defined in S3 of FMVSS No. 209 (49 CFR 571.209).

S4.1.3.2 Type 2 seat belt anchorages on school buses manufactured on or after October 21, 2011 must meet the following location requirements.

(a) As specified in Figure 4, the vertical distance from the seating reference point for the school bus torso belt anchor point must be fixed or adjustable to at least 400 mm for a small occupant seating position of a flexible occupancy seat, as defined in 49 CFR 571.222, and at least 520 mm above the SgRP for all other seating positions. The school bus torso belt adjusted height at each seating position shall, at a minimum, be adjustable from the torso belt anchor point to within at least 280 mm vertically above the SgRP to the minimum required vertical height of the school bus torso belt anchor point for that seating position.

(b) The minimum lateral distance between the vertical centerline of the bolt holes or the centroid of any other means of attachment to the structure specified in 4.1.3.1, simultaneously achievable by all seating positions, must be:

(i) 280 mm for seating positions in a flexible occupancy seat in a maximum occupancy configuration, as defined in 49 CFR 571.222; and

(ii) 330 mm for all other seating positions.

S4.1.3.3 School buses with a GVWR less than or equal to 4,536 kg (10,000 pounds) must meet the requirements of S4.2.2 of this standard.

S4.1.3.4 School buses with a GVWR greater than 4,536 kg (10,000 pounds) manufactured on or after October 21, 2011, with Type 1 seat belt anchorages, must meet the strength requirements specified in S4.2.1 of this standard.

S4.1.3.5 School buses with a GVWR greater than 4,536 kg (10,000 pounds) manufactured on or after October 21, 2011, with Type 2 seat belt anchorages, must meet the strength requirements specified in S4.2.2 of this standard.

* * * * *

S4.3.2 *Seat belt anchorages for the upper torso portion of Type 2 seat belt assemblies.* * * * Except a small occupant seating position as defined in 49 CFR 571.222, with the seat and seat back so positioned, as specified by subsection (a) or (b) of this section, the upper end of the upper torso restraint shall be located within the acceptable range shown in Figure 1, with reference to a two-dimensional drafting template described in Society of Automotive Engineers (SAE) Standard J826, revised May 1987, "Devices for Use in Defining and Measuring Vehicle Seating Accommodation" (incorporated by reference, see § 571.5). * * *

* * * * *

(b) Except for seating positions on school bus bench seats, compliance with this section shall be determined with adjustable anchorages at the midpoint of the adjustment range of all adjustable positions. For seating positions on school bus bench seats, place adjustable anchorages and torso belt height adjusters in their uppermost position.

* * * * *

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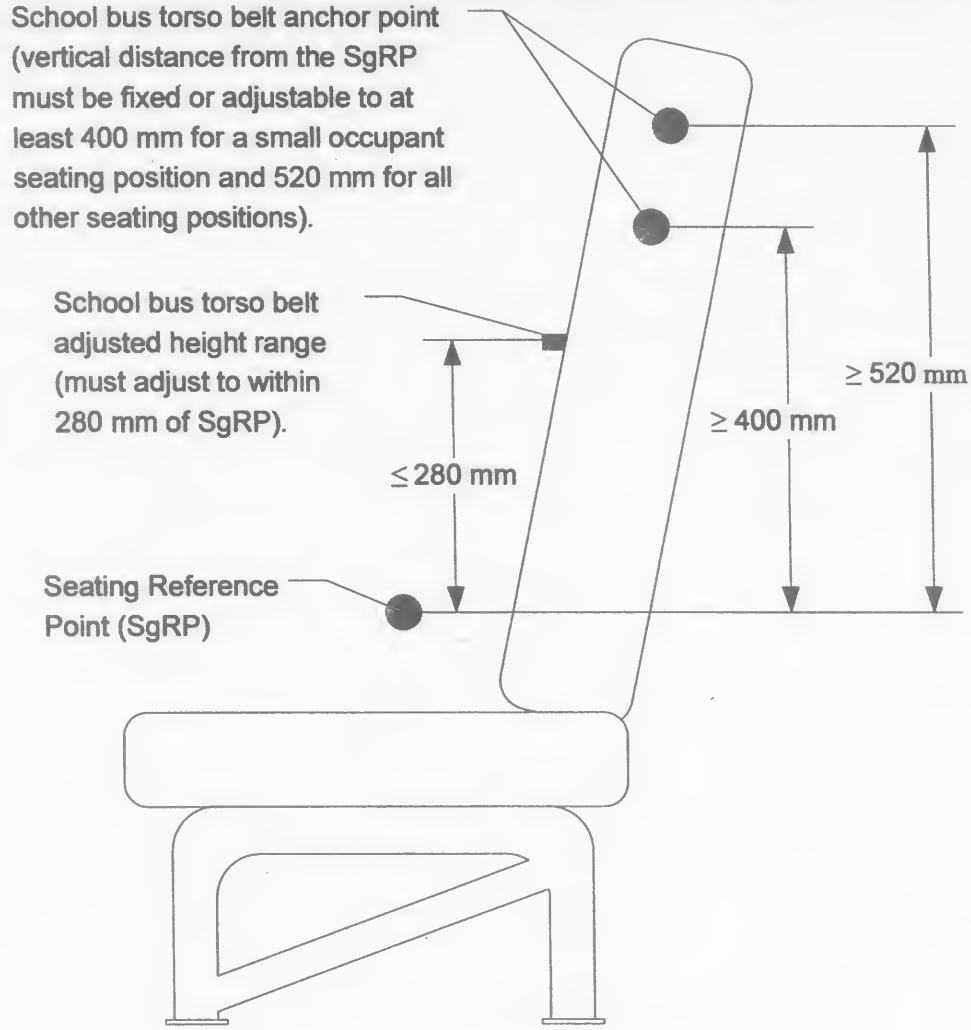

Figure 4 - Seat belt anchorage diagram

■ 5. Section 571.222 is amended by:

■ a. Adding to S4, in alphabetical order, definitions of "fixed occupancy seat", "flexible occupancy seat", "maximum occupancy configuration", "minimum occupancy configuration", "seat bench width" and "small occupant seating position";

■ b. Revising S4.1; revising, in S5, paragraphs (a) and (b); revising S5.1.2; revising S5.1.5; adding S5.1.6, S5.1.6.1 through S5.1.6.5, and S5.1.6.5.1 through S5.1.6.5.7; adding S5.1.7 through S5.1.7.2; revising S5.2.2; adding S5.5; and adding Figures 8 and 9 following Figure 7 at the end of the section.

The revisions and additions read as follows:

§ 571.222 Standard No. 222; School bus passenger seating and crash protection.

* * * * *

S4. *Definitions.*

* * * * *

Fixed occupancy seat means a bench seat equipped with Type 2 seat belts that has a permanent configuration regarding the number of seating positions on the seat. The number of seating positions on the bench seat cannot be increased or decreased.

Flexible occupancy seat means a bench seat equipped with Type 2 seat belts that can be reconfigured so that the number of seating positions on the seat can change. The seat has a minimum occupancy configuration and maximum occupancy configuration, and the number of passengers capable of being carried in the minimum occupancy configuration must differ from the number of passengers capable of being carried in the maximum occupancy configuration.

Maximum occupancy configuration means, on a bench seat equipped with Type 2 seat belts, an arrangement whereby the lap belt portion of the Type 2 seat belts is such that the maximum number of occupants can be belted.

Minimum occupancy configuration means, on a bench seat equipped with Type 2 seat belts, an arrangement whereby the lap belt portion of the Type 2 seat belts is such that the minimum number of occupants can be belted.

* * * * *

Seat bench width means the maximum transverse width of the bench seat cushion.

Small occupant seating position means the center seating position on a flexible occupancy seat in a maximum occupancy configuration, if the torso belt portion of the Type 2 seat belt is intended to restrain occupants whose dimensions range from those of a 50th percentile 6 year-old child only to those of a 50th percentile 10 year-old child and the torso belt anchor point cannot achieve a minimum height of 520 mm above the seating reference point, as specified by S4.1.3.2(a) of 49 CFR 571.210.

* * * * *

S4.1 *Determination of the number of seating positions and seat belt positions*

(a) The number of seating positions considered to be in a bench seat for vehicles manufactured before October 21, 2011 is expressed by the symbol W, and calculated as the seat bench width in millimeters divided by 381 and rounded to the nearest whole number.

(b) The number of seating positions and the number of Type 1 seat belt positions considered to be in a bench seat for vehicles manufactured on or after October 21, 2011 is expressed by the symbol W, and calculated as the seat bench width in millimeters divided by 380 and rounded to the nearest whole number.

(c) Except as provided in S4.1(d), the number of Type 2 seat belt positions on a flexible occupancy seat in a minimum occupancy configuration or a fixed occupancy seat for vehicles manufactured on or after October 21, 2011 is expressed by the symbol Y, and calculated as the seat bench width in millimeters divided by 380 and rounded to the next lowest whole number. The minimum seat bench width for a seat equipped with a Type 2 seat belt is 380 mm. See Table 1 for an illustration.

(d) A flexible occupancy seat meeting the requirements of S4.1(c) may also have a maximum occupancy configuration with Y +1 Type 2 seat belt positions, if the minimum seat bench width for this configuration is Y +1 times 330 mm. See Table 1 for an illustration.

(e) A flexible occupancy seat equipped with Type 2 seat belts in a maximum occupancy configuration may have up to one single small occupant seating position.

TABLE 1—NUMBER OF SEATING POSITIONS AS A FUNCTION OF SEAT BENCH WIDTH

Seating configuration	Seat bench width (mm)				
	380–659	660–759	760–989	990–1139	1140–1319
Minimum or Fixed Occupancy	1	1	2	2	3
Maximum Occupancy	1	2	2	3	3

S5. *Requirements.*

(a) *Large school buses.*

(1) Each school bus manufactured before October 21, 2011 with a gross vehicle weight rating of more than 4,536 kg (10,000 pounds) shall be capable of meeting any of the requirements set forth under this heading when tested under the conditions of S6. However, a particular school bus passenger seat (i.e., a test specimen) in that weight class need not meet further requirements after having met S5.1.2 and S5.1.5, or having been subjected to either S5.1.3, S5.1.4, or S5.3.

(2) Each school bus manufactured on or after October 21, 2011 with a gross vehicle weight rating of more than 4,536 kg (10,000 pounds) shall be capable of meeting any of the requirements set forth under this heading when tested under the conditions of S6 of this standard or § 571.210. However, a particular school bus passenger seat (i.e., a test specimen) in that weight class need not meet further requirements after having met S5.1.2 and S5.1.5, or having been subjected to either S5.1.3, S5.1.4, S5.1.6 (if applicable), or S5.3. If S5.1.6.5.5(b) is applicable, a particular test specimen need only meet S5.1.6.5.5(b)(1) or (2) as part of meeting S5.1.6 in its entirety. Each vehicle with voluntarily installed Type 1 seat belts and seat belt anchorages at W seating positions in a bench seat, voluntarily installed Type 2 seat belts and seat belt anchorages at Y seat belt positions in a fixed occupancy seat, or voluntarily installed Type 2 seat belts and seat belt anchorages at Y and Y + 1 seat belt positions in a flexible occupancy seat, shall also meet the requirements of:

(i) S4.4.3.3 of Standard No. 208 (49 CFR 571.208);

(ii) Standard No. 209 (49 CFR 571.209), as they apply to school buses; and,

(iii) Standard No. 210 (49 CFR 571.210) as it applies to school buses with a gross vehicle weight rating greater than 10,000 pounds.

(b) *Small school buses.* Each vehicle with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less shall be capable of meeting the following requirements at all seating positions:

(1)(i) In the case of vehicles manufactured before September 1, 1991, the requirements of §§ 571.208, 571.209, and 571.210 as they apply to multipurpose passenger vehicles;

(ii) In the case of vehicles manufactured on or after September 1, 1991, the requirements of S4.4.3.3 of § 571.208 and the requirements of §§ 571.209 and 571.210 as they apply to school buses with a gross vehicle weight rating of 4,536 kg or less;

(iii) In the case of vehicles manufactured on or after October 21, 2011 the requirements of S4.4.3.3(b) of § 571.208 and the requirements of §§ 571.207, 571.209 and 571.210 as they apply to school buses with a gross vehicle weight rating of 4,536 kg or less; and,

(2) The requirements of S5.1.2, S5.1.3, S5.1.4, S5.1.5, S5.1.6, S5.1.7, S5.3, S5.4 and S5.5 of this standard. However, the requirements of §§ 571.208 and 571.210 shall be met at Y seat belt positions in a fixed occupancy seat, and at Y and Y + 1 seat belt positions for a flexible occupancy seat. A particular school bus passenger seat (i.e. a test specimen) in that weight class need not meet further requirements after having met S5.1.2 and S5.1.5, or after having been subjected to either S5.1.3, S5.1.4, S5.1.6, or S5.3 of this standard or § 571.207, § 571.210 or § 571.225.

* * * * *

S5.1.2 *Seat back height, position, and surface area.*

(a) For school buses manufactured before October 21, 2009, each school bus passenger seat must be equipped with a seat back that has a vertical height of at least 508 mm (20 inches) above the seating reference point. Each school bus passenger seat must be equipped with a seat back that, in the front projected view, has front surface area above the horizontal plane that passes through the seating reference point, and below the horizontal plane 508 mm (20 inches) above the seating reference point, of not less than 90

percent of the seat bench width in millimeters multiplied by 508.

(b) For school buses manufactured on or after October 21, 2009, each school bus passenger seat must be equipped with a seat back that has a vertical height of at least 610 mm (24 inches) above the seating reference point. The minimum total width of the seat back at 610 mm (24 inches) above the seating reference point shall be 75 percent of the maximum width of the seat bench. Each school bus passenger seat must be equipped with a seat back that, in the front projected view, has front surface area above the horizontal plane that passes through the seating reference point, and below the horizontal plane 610 mm (24 inches) above the seating reference point, of not less than 90 percent of the seat bench width in millimeters multiplied by 610.

* * * * *

S5.1.5 *Seat cushion retention.*

(a) *Seat cushion latching.* For school buses manufactured on or after October 21, 2009, school bus passenger seat cushions equipped with attachment devices that allow for the seat cushion to be removable without tools or to flip up must have a self-latching mechanism that is activated when a 22-kg (48.4-pound) mass is placed on the center of the seat cushion with the seat cushion in the down position.

(b) *Seat cushion retention.* In the case of school bus passenger seats equipped with seat cushions, with all manual attachment devices between the seat and the seat cushion in the manufacturer's designated position for attachment, the seat cushion shall not separate from the seat at any attachment point when subjected to an upward force in newtons of 5 times the mass of the seat cushion in kilograms and multiplied by 9.8 m/s^2, applied in any period of not less than 1 nor more than 5 seconds, and maintained for 5 seconds.

S5.1.6 *Quasi-static test of compartmentalization and Type 2 seat belt performance.* This section applies to school buses manufactured on or after October 21, 2011 with a gross vehicle weight rating expressed in the first column of Tables 2 through 4, and that are equipped with Type 2 seat belt assemblies.

(a) Except as provided in S5.1.6(b), when tested under the conditions of S5.1.6.5.1 through S5.1.6.5.6, the criteria specified in S5.1.6.1 and S5.1.6.2 must be met.

(b) A school bus passenger seat that does not have another seat behind it is not loaded with the upper and lower loading bars as specified in S5.1.6.5.2, S5.1.6.5.3, and S5.1.6.5.7 and is excluded from the requirements of S5.1.6.1(b).

S5.1.6.1 *Displacement limits.* In Tables 2 and 3, AH is the height in millimeters of the school bus torso belt anchor point specified by S4.1.3.2(a) of Standard No. 210 (49 CFR 571.210) and Φ is the angle of the posterior surface of the seat back defined in S5.1.6.3 of this standard.

(a) Any school bus torso belt anchor point, as defined in S3 of Standard No. 210, must not displace horizontally forward from its initial position (when Φ was determined) more than the value in millimeters calculated from the following expression in the second column of Table 2:

TABLE 2—TORSO BELT ANCHOR POINT DISPLACEMENT LIMIT

Gross vehicle weight rating	Displacement limit in millimeters
More than 4,536 kg (10,000 pounds).	(AH + 100) (tanΦ + 0.242/cosΦ)
Less than or equal to 4,536 kg (10,000 pounds).	(AH + 100) (tanΦ + 0.356/cosΦ)

(b) A point directly rearward of any school bus torso belt anchor point, as defined in S3 of Standard No. 210 (49 CFR 571.210) on the rear facing surface of the seat back, must not displace horizontally forward from its initial position (when Φ was determined) more than the value in millimeters calculated from the following expression in the second column of Table 3:

TABLE 3—SEAT BACK POINT DISPLACEMENT LIMIT

Gross vehicle weight rating	Displacement limit in millimeters
More than 4,536 kg (10,000 pounds).	(AH + 100) (tanΦ + 0.174/cosΦ)
Less than or equal to 4,536 kg (10,000 pounds).	(AH + 100) (tanΦ + 0.259/cosΦ)

S5.1.6.2 *Slippage of device used to achieve torso belt adjusted height.* If the torso belt adjusted height, as defined in S3 of Standard No. 210 (49 CFR 571.210), is achieved without the use of an adjustable torso belt anchorage, the adjustment device must not slip more than 25 mm (1.0 inches) along the webbing or guide material upon which it moves for the purpose of adjusting the torso belt height.

S5.1.6.3 *Angle of the posterior surface of a seat back.* If the seat back inclination is adjustable, the seat back is placed in the manufacturer's normal design riding position. If such a position is not specified, the seat back is positioned so it is in the most upright position. Position the loading bar specified in S6.5 of this standard so that it is laterally centered behind the seat back with the bar's longitudinal axis in a transverse plane of the vehicle in a horizontal plane within ± 6 mm (0.25 inches) of the horizontal plane passing through the seating reference point and move the bar forward against the seat back until a force of 44 N (10 pounds) has been applied. Position a second loading bar as described in S6.5 of this standard so that it is laterally centered behind the seat back with the bar's longitudinal axis in a transverse plane of the vehicle and in the horizontal plane 406 ± 6 mm (16 ± 0.25 inches) above the seating reference point, and move the bar forward against the seat back until a force of 44 N (10 pounds) has been applied. Determine the angle from vertical of a line in the longitudinal vehicle plane that passes through the geometric center of the cross-section of each cylinder, as shown in Figure 8. That angle is the angle of the posterior surface of the seat back.

S5.1.6.4 The seat back must absorb 452W joules of energy when subjected to the force specified in S5.1.6.5.7.

S5.1.6.5 *Quasi-static test procedure.*

S5.1.6.5.1 Adjust the seat back as specified in S5.1.6.3. Place all torso anchor points in their highest position of adjustment. If the torso belt adjusted height, as defined in S3 of FMVSS No. 210, is achieved by a method other than an adjustable anchor point, initially place the torso belt adjusted height at its highest position. Then move the adjustment device 38 mm (1.5 inches) downward with respect to its webbing or guide material.

S5.1.6.5.2 Position the lower loading bar specified in S6.5 of this standard so that it is laterally centered behind the seat back with the bar's longitudinal axis in a transverse plane of the vehicle and in any horizontal plane between 102 mm (4 inches) above and 102 mm (4 inches) below the seating reference point of the school bus passenger seat behind the test specimen. Position the upper loading bar described in S6.5 so that it is laterally centered behind the seat back with the bar's longitudinal axis in a transverse plane of the vehicle and in the horizontal plane 406 mm (16 inches) above the seating reference point of the school bus passenger seat behind the test specimen.

S5.1.6.5.3 Apply a force of 3,114W N (700W pounds) horizontally in the forward direction through the lower loading bar specified at S6.5 at the pivot attachment point. Reach the specified

load in not less than 5 and not more than 30 seconds. No sooner than 1.0 second after attaining the required force, reduce that force to 1,557W N (350W pounds) and maintain the pivot point position of the loading bar at the position where the 1,557W N (350W pounds) is attained until the completion of S5.1.6.5.7 of this standard.

S5.1.6.5.4 Position the body block specified in Figure 3 of FMVSS No. 210 (49 CFR 571.210) under each torso belt (between the torso belt and the seat back) in the passenger seat and apply a preload force of 600 ± 50 N (135 ± 11 pounds) on each body block in a forward direction parallel to the longitudinal centerline of the vehicle pursuant to the specifications of Standard No. 210 (49 CFR 571.210). After preload application is complete, the origin of the 203 mm body block radius at any point across the 102 mm body block thickness shall lie within the zone defined by S5.1.6.5.4(a) and S5.1.6.5.4(b) as shown in Figure 9:

(a) At or rearward of a transverse vertical plane of the vehicle located 100 mm longitudinally forward of the seating reference point.

(b) Within 75 mm of the horizontal plane located midway between the horizontal plane passing through the school bus torso belt adjusted height, specified in S3 of Standard No. 210 (49 CFR 571.210), and the horizontal plane 100 mm below the seating reference point.

S5.1.6.5.5 *Laad application.*

(a) *Fixed Occupancy Seat.* For school buses with the gross vehicle weight rating listed in the first column of Table 4, if the expression in the second column is true, simultaneously apply the force listed in the third column to each body block.

TABLE 4—TORSO BODY BLOCK FORCES FOR FIXED OCCUPANCY SEATS

Gross vehicle weight rating	True expression	Applied force
More than 4,536 kg (10,000 pounds)	((seat bench width in mm)—(380Y)) ≤ 25 mm (1 inch).	3,300 N (742 pounds).
More than 4,536 kg (10,000 pounds)	((seat bench width in mm)—(380Y)) > 25 mm (1 inch).	5,000 N (1,124 pounds).
Less than or equal to 4,536 kg (10,000 pounds).	((seat bench width in mm)—(380Y)) ≤ 25 mm (1 inch).	5,000 N (1,124 pounds).
Less than or equal to 4,536 kg (10,000 pounds).	((seat bench width in mm)—(380Y)) > 25 mm (1 inch).	7,500 N (1,686 pounds).

(b) *Flexible Occupancy Seat.*

(1) For school buses with the gross vehicle weight rating listed in the first column of Table 5 and a bench seat in the maximum occupancy configuration for a flexible occupancy seat of Y+1 seat belt positions as specified in S4.1(d), simultaneously apply the force listed in the second column of Table 5 to each body block.

TABLE 5—TORSO BODY BLOCK FORCES IN MAXIMUM OCCUPANCY CONFIGURATION

Gross vehicle weight rating	Applied force
More than 4,536 kg (10,000 pounds).	3,300 N (742 pounds).
Less than or equal to 4,536 kg (10,000 pounds).	5,000 N (1,124 pounds).

(2) For a flexible occupancy seat in the minimum occupant configuration, apply the forces to each body block as specified in S5.1.6.5.5(a).

S5.1.6.5.6 Reach the specified load in not less than 5 and not more than 30 seconds. While maintaining the load, measure the school bus torso belt anchor point and seat back point horizontal displacement and then remove the body block.

S5.1.6.5.7 Move the upper bar forward against the seat back until a force of 44 N has been applied. Apply an additional force horizontally in the forward direction through the upper bar until 452W joules of energy have been absorbed in deflecting the seat back. The maximum travel of the pivot attachment point for the upper loading bar shall not exceed 356 mm as measured from the position at which the initial application of 44 N of force is attained and the maximum load must stay below the upper boundary of the force/deflection zone in Figure 1. Apply the additional load in not less than 5 seconds and not more than 30 seconds. Maintain the pivot attachment point at the maximum forward travel position for not less than 5 seconds, and not more than 10 seconds and release the load in not less than 5 seconds and not more than 30 seconds. (For the determination of S5.1.6.5.7, the energy calculation describes only the force applied through the upper loading bar, and the forward and rearward travel distance of the upper loading bar pivot attachment point measured from the position at which the application in this section of 44 N of force is attained.)

S5.1.7 *Buckle side length limit.* This section applies to rear passenger seats on school buses manufactured on or after October 21, 2011 that are equipped with Type 1 or Type 2 seat belt assemblies. All portions of the buckle/latchplate assembly must remain rearward of the limit plane defined in S5.1.7.1 when tested under the conditions of S5.1.7.2.

S5.1.7.1 *Buckle/latchplate limit plane.* Establish a transverse limit plane 65 mm from the SgRP that is perpendicular to a transverse plane that passes through the SgRP at an angle of 50 degrees to the horizontal.

S5.1.7.2 *Load applicatian.* Insert the seat belt latchplate into the seat belt buckle. Apply a 20 N load to the buckle/latchplate assembly whose vector is in a vertical longitudinal plane. Apply the load along the centerline of the webbing attached to the latchplate at least 100mm from the nearest point on the latchplate. The load may be applied at any angle in the range of 30 to 75 degrees from horizontal.

* * * * *

S5.2.2 *Barrier height, pasition, and rear surface area.* The position and rear surface area of the restraining barrier shall be such that, in a front projected view of the bus, each point of the barrier's perimeter coincides with or lies outside of the perimeter of the minimum seat back area required by S5.1.2 for the seat immediately rearward of the restraining barrier.

* * * * *

S5.5 *Labeling.*

(a) A small occupant seating position must be permanently and legibly marked or labeled with the phrase: "Do Not Sit In Middle Seat If Over Age 10". The phrase must be comprised of no more than two lines of text. The label must be placed on the torso belt portion of the Type 2 seat belt. It must be plainly visible and easily readable when the seat belt is in a stored position. The

distance from the top edge of the top line of text to the bottom edge of the bottom line of text must be at least 35 mm. If the label is sewn on, it must be stitched around its entire perimeter.

(b) [Reserved]

* * * * *

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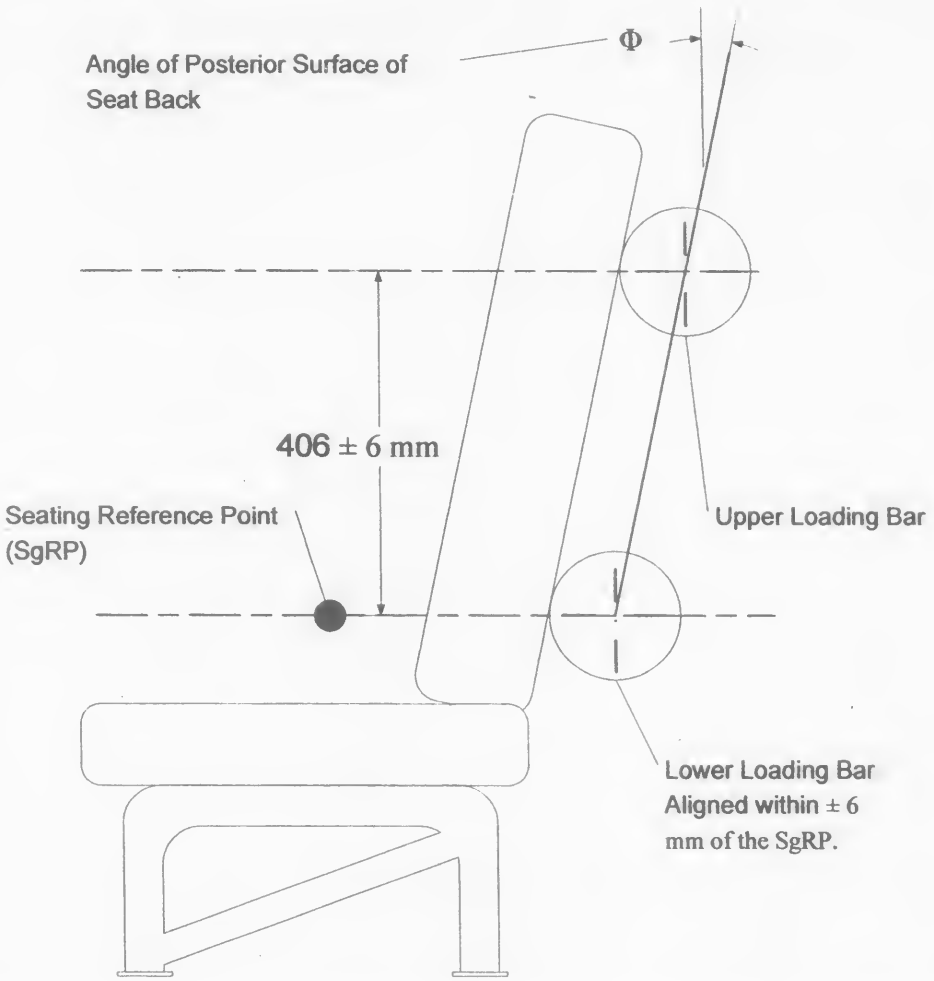

Figure 8 – Definition of initial angle of compartmentalizing seat back surface

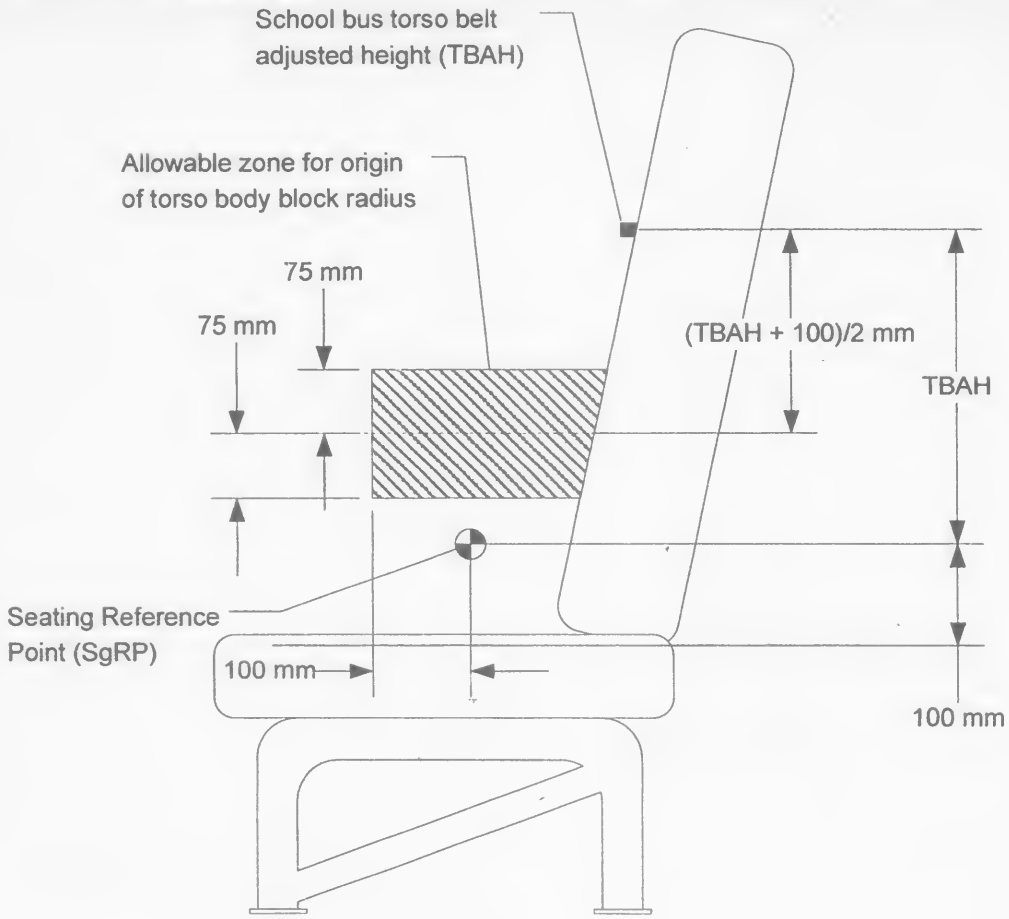

Figure 9 – Torso Block Zone

Issued on: October 14, 2008.

David Kelly,

Acting Administrator.

[FR Doc. E8–24755 Filed 10–15–08; 4:15 pm]

BILLING CODE 4910–59–C

Federal Register

Tuesday,
October 21, 2008

Part IV

Tennessee Valley Authority

Republication of Systems of Records and New Routine Uses; Notice

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974: Republication of Notice of Systems of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of republication of systems of records; notice of new routine uses.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(4), the Tennessee Valley Authority (TVA) is republishing in full a notice of the existence and character of each TVA system of records.

TVA is deleting TVA–10 (Employee Statement of Employment and Financial Interests), TVA–15 (Land Between The Lakes, Hunter Records), and TVA–30 (Land Between The Lakes, Mailing Lists). These programs have ended or have been transferred to other agencies.

TVA is renaming the following systems: TVA–6, from Employee Accident Information to Work Injury Illness System; TVA–19, from Consultant and Personal Service Contractor Records to Consultant and Contractor Records; TVA–21, from Nuclear Assurance Personnel Records to Nuclear Quality Assurance Personnel Records; TVA–29, from Electricity Use, Rate, and Service Study Records to Energy Program Participant Records; and TVA–38, from Wholesale and Retail Data Files to Wholesale, Retail, and Emergency Data Files. These systems are being renamed to better reflect the contents of the systems.

TVA is adding one new routine use to all systems. TVA is also adding new routine uses to TVA–6, Work Injury Illness System, and TVA–38, Wholesale, Retail, and Emergency Data Files.

TVA is removing a routine use from TVA–2, Personnel Files, TVA–9, Health Records, and TVA–11, Payroll Records.

TVA is revising the routine uses for TVA–5, Discrimination Complaint Files, and TVA–26, Retirement System Records.

TVA is also correcting minor typographical and stylistic errors in previously existing notices and has updated those notices to reflect current organizational structure. Also, updates are being made to show any changes to system locations; managers and addresses; categories of individuals and records; procedures and practices for storing, retrieving, accessing, retaining, and disposing of records.

DATES: Submit comments on or before November 20, 2008.

ADDRESSES: Address all comments concerning this notice to Mark R. Winter, Privacy Coordinator, TVA, 1101 Market Street (MP 3C), Chattanooga, TN 37402–2801.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter at (423) 751–6004.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(e)(4), TVA is today republishing a notice of the existence and character of each of its systems of records in order to make available in one place in the **Federal Register** the most up-to-date information regarding these systems.

TVA is deleting three systems of records as follows. TVA–15, "Land Between the Lakes, Hunter Records," and TVA–30, "Land Between the Lakes, Mailing Lists," were maintained and stored at Land Between The Lakes. These records were included in the transfer of Land Between The Lakes from TVA to the U.S. Forest Service. TVA–10, "Employee Statement of Employment and Financial Interests," covered pre-1993 financial disclosure documents, all of which have been disposed of in accordance with their retention schedules. All post-1993 records are covered by an Office of Government Ethics Privacy Act System.

TVA is renaming the following five systems of records to better reflect the contents of these systems. TVA–38, "Wholesale and Retail Data Files," is being renamed to "Wholesale, Retail, and Emergency Data Files." TVA–21, "Nuclear Assurance Personnel Records," is being renamed to "Nuclear Quality Assurance Personnel Records." TVA–6, "Employee Accident Information," is being renamed to "Work Injury Illness System." TVA–29, "Electricity Use, Rate, and Service Study Records," is being renamed to "Energy Program Participant Records." TVA–19, "Consultant and Personal Service Contractor Records," is being renamed to "Consultant and Contractor Records."

TVA is adding a new routine use to two systems: TVA–38, "Wholesale, Retail, and Emergency Data Files" to add "To contact customer personnel during system emergencies." TVA–6, "Work Injury Illness System," to add "To an injured employee's representative."

TVA is deleting routine uses from three systems: TVA–11, "Payroll Records," the routine use being removed is "To report earnings to unions for those crafts on which TVA contributions to union welfare or pension funds are based on earnings. Reports of hours worked are made to unions for those crafts on which TVA contributions are based on hours worked." TVA–9, "Health Records," the routine use being removed is "Clinical Medical Records are used for employee population health monitoring which includes routine clinical and epidemiological investigations. Such studies may require the transfer of selected items of medical data to health-related agencies, organizations, or professionals for the purpose of obtaining specialized clinical consultation, compiling vital health statistics, or conducting biomedical investigations." TVA–2, "Personnel Files," the routine use being removed is "Personnel records may be used for employee population health monitoring which includes routine clinical and epidemiological investigations. Such studies may require the transfer of selected items of radiation dosimetry data to health-related agencies, organizations, or professionals for the purpose of compiling vital health statistics or conducting biomedical investigations."

TVA is revising routine uses in two systems. TVA–5, "Discrimination Complaint Files" is revising the routine use "A report of each complaint is made to the Equal Employment Opportunity Commission. If an administrative appeal is filed, the entire file is disclosed to the Equal Employment Opportunity Commission" to "If a hearing is requested and/or an administrative appeal is filed with the Equal Employment Opportunity Commission, a copy of the complaint file, containing a record of investigations and a correspondence file of each complaint, is forwarded to the Equal Employment Opportunity Commission." TVA–5 is also revising the routine use from "To the employee's representative" to "To a counselee's or complainant's representative." TVA–26, "Retirement System Records," is revising the routine use "To provide the TVA Retirees Association with names and mailing addresses of other retired members and retired employees" to "To provide the following information on retirees to the TVA Retirees Association: names, unique identification numbers assigned by the TVA Retirement System to each retiree, addresses, dates of birth, dates of termination of employment with TVA, retirement class (member, beneficiary, Civil Service, deferred), last official station, and dates of death (if applicable)."

TVA is amending all of its existing Privacy Act systems of records notices to add a new routine use to authorize the disclosure of records to individuals involved in responding to a breach of Federal data. The Office of Management and Budget recently directed agencies to develop and publish a routine use for disclosure of information in connection

with response and remedial efforts in the event of a data breach. This routine use will serve to protect the interest of the individuals whose information is at issue by allowing agencies to take appropriate steps to facilitate a timely and effective response to the breach, thereby improving its ability to prevent, minimize or remedy any harm resulting from a compromise of data maintained in its systems of records. Accordingly, TVA is proposing to add a new routine use to authorize disclosure to appropriate agencies, entities, and persons, of information maintained in the systems of records in the event of a data breach.

New Routine Use: To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

These amendments will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. TVA will publish a revised notice if changes are made based upon a review of comments received.

TVA is also correcting minor typographical and stylistic errors in the previous existing systems. In addition, TVA is updating the system locations; managers and addresses; notification; categories of individuals covered; categories of records; storage policies and practices; retention and disposal; record access; and contesting record procedures. These changes are necessary to reflect TVA's current organizational structure, current technology, and procedural changes.

This document gives notice that the following TVA systems of records below are in effect:

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TVA–1

SYSTEM NAME:

Apprentice Training Records—TVA.

SYSTEM LOCATION:

Human Resource Information Systems, TVA, Knoxville, TN 37902–1499; Computer Operations, TVA, Chattanooga, TN 37402–2801; all TVA locations where apprentices are employed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA apprentices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment, qualifications, and evaluation information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; National Apprenticeship Act of 1937, 50 Stat. 664.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

To the Bureau of Apprenticeship and Training, the Veterans' Administration, Tennessee Valley Trades and Labor Council, and the State and local Government agencies for reporting and evaluation purposes.

To respond to a request from a Member of Congress regarding the status of an apprentice.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information to a prospective employer of a TVA or former TVA employee: Job description, dates of employment, reason for separation.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by name, craft, job code, union code, and social security number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Shared Resources, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, craft, and location of employment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. Federal contracts, or access to classified information to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualification for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; General Aptitude Test Battery scores from State employment security office; references from employers, military and educational institutions; and evaluations from joint committee on apprenticeship.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing and examination material would compromise the objectivity of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k)(5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–2

SYSTEM NAME:

Personnel Files—TVA.

SYSTEM LOCATION:

Human Resources, TVA, Knoxville, TN 37902–1499; Human Resource Information Systems, TVA, Knoxville, TN 37902–1499; area human resources offices throughout TVA; Information Services, TVA, Chattanooga, TN 37402–2801; National Personnel Records Center, St. Louis, MO 63118. Security/suitability investigatory files are located separately from other records in this system. Duplicate or certain specified temporary information may be maintained by human resources officers, supervisors, and administrative officers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA employees, some contractors, applicants for employment, and applicants for employment by TVA contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Equal Employment Opportunity Act of 1972, Pub. L. 92–261, 86 Stat. 103; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; various sections of title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose test results to State employment services.

To a State employment security office in response to a request relating to a former employee's claim for unemployment compensation.

To respond to a request from a Member of Congress regarding the status of an employee, former employee, or applicant.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request from any pertinent source directly or through a TVA contractor engaged at TVA's direction, information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information, as requested, to a prospective employer of a TVA or former TVA employee: job descriptions, dates of employment, and reasons for separation.

To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

To provide information to TVA contractors engaged in making suitability determinations for their

prospective employees under TVA contracts.

To contractors and subcontractors engaged at TVA's direction in providing support services to TVA in connection with mailing materials to TVA employees or other related services.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information necessary to support a claim for life insurance benefits under Federal Employees' Group Life Insurance to Office of Federal Employees' Group Life Insurance.

To transfer information regarding claims for health insurance benefits to health insurance carrier.

To union representatives in exercising their responsibilities under TVA collective-bargaining agreements.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To TVA contractors and subcontractors engaged at TVA's direction in studies and evaluation of TVA personnel management and benefits; or the investigation of nuclear safety, reprisal, or other matters involving TVA personnel practices or policies; or the implementation of TVA personnel policies.

To provide pertinent information to local school districts and other Government agencies in order to study TVA project impacts and to aid school districts in qualifying for assistance under Pub. L. 81–874 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To commemorate the month and day of employee birthday anniversaries.

To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) The disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically in the Human Resources Information System (HRIS), Personal Records Information System (PRIS), or on microfiche. Duplicate or certain specified temporary information may be maintained by human resource officers, supervisors, and administrative officers in a locked, secure location.

RETRIEVABILITY:

Records are indexed by name and Employee Identification number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Access to systems storing these records must be approved by the Senior Manager of HRIS. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Personal History Records:

Nonmicrofilmed records stored at National Personnel Records Center and microfilmed and optical disk records stored at TVA are destroyed 75 years after birth date of employee or 60 years after date of earliest document in the record if the date of birth cannot be ascertained. Reference copies are destroyed when no longer needed.

Congressional inquiries are retained indefinitely; test records are retained 10 years; occupational register cards are retained 1 year, with the exception of apprentices which are retained for 5 years; some information maintained on magnetic tape is erased after 1 year; records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Human Resources Information Services, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the Manager, TVA Service Center, TVA, Knoxville, TN 37902–1499. Requests should include the individual's full name, job title, and date of birth. A Social Security number is not required but may expedite TVA's response; however, an Employee Identification Number may be included.

Current employees should address inquiries also to their supervisors or the TVA Service Center.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the Manager, TVA Service Center, TVA, Knoxville, TN 37901–1499. In addition, current employees may present requests for access to their supervisors or the personnel officer of the employing division. Requests should include the individual's full name, job title, and date of birth. A Social Security number is not required but may expedite TVA's response; however, an Employee Identification Number may be included. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or access to classified information to the extent that the disclosure of such

material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the Manager, TVA Service Center, TVA, Knoxville, TN 37902–1499.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; educational institutions; former employers; and other reference sources; State employment services; supervisors and other TVA personnel or personnel records; medical officers; other Federal agencies.

In addition to the above sources, security/suitability investigatory files contain information from law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f)(2), (3) and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k)(5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–5

SYSTEM NAME:

Discrimination Complaint Files—TVA.

SYSTEM LOCATION:

TVA Equal Opportunity Compliance Staff, Knoxville, TN 37902–1499. Duplicate copies may be maintained in the files of the TVA organization where the complaint originated.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, or applicants who have received counseling or filed complaints of discrimination based on race, color, religion, sex, national origin, age, reprisal, or handicap (disability).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to a decision or determination made by TVA or the Equal Employment Opportunity Commission affecting an individual. The records consist of the complaint, letters or notices to the individual, record of hearings when received from the Equal Employment Opportunity Commission, materials placed into the record to support the decision or determination, affidavits or statements, testimonies of witnesses, investigative reports, and related correspondence, opinions, and recommendations. Also, if the case is appealed to the Federal District Court of Appeals, the records will contain a copy of the complaint on file with the Federal District Court.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 11478; 42 U.S.C. 2000e–16; 29 U.S.C. 633a; Title VII of the Civil Rights Act of 1964; Age Discrimination in Employment Act of 1967; Rehabilitation Act of 1973.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

If a hearing is requested and/or an administrative appeal is filed with the Equal Employment Opportunity Commission, a copy of the complaint file, containing a record of investigations and a correspondence file of each complaint, is forwarded to the Equal Employment Opportunity Commission.

To the counselee's or complainant's representative.

To respond to a request from a Member of Congress regarding the status of a complaint.

To the parties of complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery.

In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To TVA consultants, contractors, and subcontractors who are engaged in studies and evaluation of TVA's administration of its Equal Employment Opportunity program or who are providing support services to the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) The disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are kept in file folders.

RETRIEVABILITY:

Records in this system are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those personnel whose official duties require such access.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of TVA Equal Opportunity Compliance, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals who have filed discrimination complaints are aware of that fact. However, inquiries may be addressed to the system manager named above. Individuals should provide their full name, the approximate date of their complaint, and their employing organization, if employed.

RECORD ACCESS PROCEDURES:

Individuals who have filed a discrimination complaint have been provided a copy of the record. However, an individual may gain access to a copy of their official complaint record by writing the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals who have filed a discrimination complaint have had an opportunity during the complaint procedure to timely amend their record. TVA management has the same opportunity during the complaint procedure to timely amend the applicable record. However, requests for amendment or correction of items not involving the complaint procedure may be addressed to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA personnel and other records; and witnesses.

TVA–6

SYSTEM NAME:

Work Injury Illness System—TVA.

SYSTEM LOCATION:

TVA Safety, TVA, Muscle Shoals, AL 35661. Accident reports may also be maintained in the file of the employing organization.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and Staff Augmented contractors who have sustained a work-related injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to the accident, injury, or illness.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 12196; Occupational Safety and Health Act of 1970, Pub. L. 93–237, 87 Stat. 1024.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To an injured employee's representative.

To the Department of Labor as required by the Occupational Safety and Health Act.

To the Office of Workers' Compensation Programs in relation to an individual's claim for compensation.

To respond to a request from a Member of Congress regarding the status of an employee.

To provide information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purpose of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) The disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on automated data storage devices and in file folders.

RETRIEVABILITY:

Records are indexed by name, date of injury, and Employee Identification Number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are retained for five years, and after that period are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Safety Program Manager, TVA Corporate Safety, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, date of birth, and approximate date of injury.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them

maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA medical records; witnesses of accidents and inquires, including appraisers of property damage.

TVA–7

SYSTEM NAME:

Employee Accounts Receivable—TVA.

SYSTEM LOCATION:

Human Resources, TVA, Knoxville, TN 37902–1499; Office of the General Counsel, TVA, Knoxville, TN 37902–1499.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees who: Authorize a payment for specified purposes in their behalf; receive overpayment of earnings; receive duplicate payments; are otherwise indebted to TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information concerning indebtedness and repayment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; 5 U.S.C. Chapter 55.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on printouts, invoices, microfiche, and posting documents.

RETRIEVABILITY:

Records are indexed by payroll number, social security number, badge number, name, or invoice number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Printouts are disposed of in 3 years, invoices in 7 years, microfiche of registers in 50 years, and posting documents in 50 years.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Disbursement Services, Human Resources, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and employing organization. Provisions of the social security number is not required, but may expedite TVA's response and may prevent the erroneous retrieval of records for another individual with the same name.

RECORD ACCESS PROCEDURES:

Individuals who seek access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in the system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; TVA payroll records; TVA disbursement voucher records.

TVA–8

SYSTEM NAME:

Employee Alleged Misconduct Investigatory Files—TVA.

SYSTEM LOCATION:

Office of the General Counsel, TVA, Knoxville, TN 37902–1499.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees about whom a complaint of misconduct during employment has been made.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information regarding conduct during employment with TVA which may be in violation of law or regulations compiled prior to 1986. Information compiled after 1986 is maintained under TVA–31, "OIG Investigative Records." TVA–8 will be phased out when the records are destroyed in accordance with established retention schedules.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive order 10450; Executive Order 11222; Hatch Political Activity Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule,

regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decisions on that matter.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA, grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by individual name or investigation number.

SAFEGUARDS:

These records are stored in a locked GSA-approved security container. Access to the records is limited to TVA attorneys and their administrative assistants who have a need for them in the course of TVA business and to other TVA employees whose need is approved by Office of the General Counsel management.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD SOURCE CATEGORIES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted from subsections (c)(3); (d); (e)(1); (4)(G), (4)(H), (4)(I); and (f) of 5 U.S.C. 552a (Section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

TVA–9

SYSTEM NAME:

Health Records—TVA.

SYSTEM LOCATION:

TVA HR Health & Safety, Chattanooga, TN 37402–2801; all TVA medical facilities; Computer Operations, TVA, Chattanooga, TN 37402–2801; National Personnel Records Center, St. Louis, MO 63118; District Offices, Office of Workers' Compensation Programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for TVA employment, employees, former employees, official visitors, contractual assignees to TVA, interns, externs, employees of TVA contractors, and other Federal agencies who are examined under contract.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health information pertinent to an individual's employment, official visit, or contractual work with TVA or other Federal agencies, including the basic Clinical Medical Record, the Employee Assistance Program case files, Worker's Compensation and Rehabilitation claims and case files, Psychological and Fitness for Duty files including alcohol and drug testing information, clinical information received from outside sources, and information relative to an employee's claim for medical disability retirement. Health information includes paper documents, x-rays, microfiche, microfilm, and/or any automatic data processing media, regardless of the form or process by which it is maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; 5 U.S.C. 7902; Federal Employees' Compensation Act, 5 U.S.C. chapter 81, 5 U.S.C. chapter 87 (Medical information relating to life insurance program); 5 U.S.C. 3301; Occupational Safety and Health Act of 1970, Pub. L. 93–237, 87 Stat. 1024, Pub. L. 91–616, Federal Civilian Employee Alcoholism Program and Pub. L. 92–255, Drug Abuse Among Federal Civilian Employees, which are amended in regard to confidentiality of records by Pub. L. 93–282; Public health laws (State and Federal) related to the reporting of health hazards, communicable diseases or other epidemiological information; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Compensation claim records are used for adjudicating claims and providing

therapy. Appropriate information is exchanged with physicians, hospitals, and rehabilitation agencies approved by the Office of Workers' Compensation Programs for service to injured employees.

Alcohol and drug testing and employee assistance program records may be exchanged with a physician or treatment center working with an employee, or in accordance with the provisions of Pub. L. 93–282.

Information in the Health Records System provided to officials of other Federal agencies responsible for other Federal benefit programs administered by Office of Workers' Compensation Programs. Retired Military Pay Centers, Veterans' Administration, Social Security Administration, and private contractors engaged in providing benefits under Federal contracts.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, the issuance of a security clearance, the reporting of an investigation of an employee, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

To respond to a request from a Member of Congress regarding an employee.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority or a court of competent jurisdiction.

To transfer information regarding claims for health insurance or disability benefits to the health insurance carrier or plan participant.

To request information from a Government agency or private individual, if necessary, to obtain information relevant to a TVA decision within the purposes of this system of records.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To TVA consultants, contractors, and subcontractors who are engaged in studies and evaluation of TVA's administration of its medical and employee benefits program or who are providing support sources to the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To provide information to private physicians and other health care professionals or facilities designated by an employee.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Health information includes paper documents, x-rays, microfiche, microfilm, and/or any automatic data processing media, regardless of the form or process by which it is maintained.

RETRIEVABILITY:

Records are indexed by name, social security number, date of birth, and/or case number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

Remote access facilities are secured through physical and system-based safeguards. Special instructions issued to medical staff employees assure the confidentiality of health records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with TVA rules and regulations approved by the Archivist of the United States. Retention schedules specify the length of time various records are kept. Active clinical medical records are kept indefinitely. Specific retention schedules for various components of the records systems are contained in the Comprehensive Records Schedule (CRS) which has been approved by the National Archives and Records Administration (NARA) for use by Health Services. These dispositions are mandatory unless TVA requests a revision from NARA. Items in this CRS should be cited as the disposition authority for transferring or destroying any records.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Occupational Health Services, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals should address inquiries to the system manager named above. Individuals should provide their full name, Employee Identification Number (EIN) or social security number, date of birth, employing organization, and date of last employment, and employee compensation case number, if any.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact or address their inquiries to the system manager named above. Inquiries should be specific as to which component of the health records system is to be accessed. If inquiries are not specific to a particular component of the health records, it will be assumed the access is directed toward the individual's clinical medical record.

CONTESTING RECORDS PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA medical staff; private physicians and medical institutions; Office of Workers' Compensation Programs; TVA personnel records; other health agencies and departments.

TVA–11

SYSTEM NAME:

Payroll Records—TVA.

SYSTEM LOCATION:

Human Resources, TVA, Knoxville, TN 37902–1499; garnishment files are located at the Office of the General Counsel, TVA, Knoxville, TN 37902–1499; duplicate copies of some records may also be maintained in the files of the employing organization; National Personnel Records Center, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees and personal service contractors selected for certain training programs and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, pay, leave, and debt claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Internal Revenue Code; Fair Labor Standards Act, 29 U.S.C. Chapter 8; 5 U.S.C. Chapter 63.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To report earnings and other required information to Federal, State, and local taxing authorities as required by law.

To report earnings to the Civil Service Retirement System for members of that system.

To transmit payroll deduction information to financial institutions and employee organizations.

To report earnings to courts when garnishments are served or in bankruptcy or wage earner proceedings.

To report earnings to the Department of Housing and Urban Development, State welfare agencies, and State employment security offices where an individual has made a claim for benefit with such agency.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To disclose to any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information necessary to support a claim for life insurance benefits under Federal Employee's Group Life Insurance to Office of Federal Employee's Group Life Insurance.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To transfer information regarding claims for health insurance benefits to health insurance carriers.

To TVA contractors and subcontractors engaged in studies and evaluations of TVA payroll and personnel management.

To union representatives exercising their responsibilities under TVA collective bargaining agreements.

To report earnings to the Department of Housing and Urban Development, and State welfare agencies where an individual makes a claim for benefits, and to report earnings to State employment security offices in both manual and automated form for use by these offices in determining unemployment benefits.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

To the Office of Child Support Enforcement for release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in an optical scanned electronic file.

RETRIEVABILITY:

Records are primarily indexed by name. They may also be retrieved by reference to employing organization, date of end of pay period, social security or badge number, year of birth, or job title.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Scanned information is stored on CD–ROM and retained indefinitely. File folders are retained for 3 years after termination. Timesheets are retained for 7 years, payroll registers are retained in active status for 1 year, transferred to secured off-site storage facility for 5 years, and to National Personnel Records Center for an additional 50 years. Magnetic tapes processed by the Controller are retained for 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Disbursement Services, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, employing organization, and date of last employment. The social security number is also required to expedite TVA's response and prevent the erroneous retrieval of records for another individual with the same name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information on them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend information on them in this system of records should contact the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA personnel records; employee's supervisor for report of hours worked.

TVA–12

SYSTEM NAME:

Travel History Records—TVA.

SYSTEM LOCATION:

Payment Control, Human Resources, TVA, Knoxville, TN 37902–1499. Duplicate copies of certain records may also be maintained in the files of the employing organization.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA employees who traveled on official business and filed travel expense vouchers, applied for a travel advance, or transferred between official stations; recently-hired employees who filed for reimbursement of relocation expenses; candidates for TVA positions who filed for reimbursement of travel expenses; and contractors with which there is an employer/employee relationship (i.e., personal services contractors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel advance requests, travel expense vouchers and supporting documentation, travel charge card program records and reports, and travel orders. Records supporting relocation expense claims also include real estate sales agreements and settlements, Federal Truth-In Lending disclosure statements, lease agreements, receipts for loss of rental deposit, and relocation income tax allowance documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; 5 U.S.C. 5701–5709, and related Federal travel regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding the status of an employee, former employee, or applicant.

To TVA contractors and subcontractors engaged at TVA's direction who are providing support services to TVA's travel charge card program.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media, hard-copy printouts, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Security will be provided by physical, administrative, and computer system safeguards. Files are kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Payment Control, Human Resources, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and social security number.

RECORD ACCESS PROCEDURES:

Individuals who seek access to information about them in this system of records should contact the system manager named above. Requests should include the individual's full name and social security number.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above. Requests should include the individual's full name and social security number.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA disbursement voucher records; TVA application for travel advance; travel charge card program records and reports.

TVA–13

SYSTEM NAME:

Employment Applicant Files—TVA.

SYSTEM LOCATION:

Human Resources, Employment Resources and Human Resource Information System, TVA, Knoxville, TN 37902–1499; area and project employment offices; Computer Operations, TVA, Chattanooga, TN 37402–2801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment including former employees seeking reemployment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; 5 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an individual's application.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request from any pertinent source, directly or through a TVA contractor engaged at TVA's direction, information relevant to a TVA decision concerning the hiring of an employee, the issuance of a security clearance, or other decision within the purposes of this system or records.

To disclose test results to State employment services.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To provide information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically in the Human Resources Information System (HRIS), Personnel Records Information System (PRIS), or on microfiche. Duplicate or certain specified temporary information may be maintained by human resource officers, supervisors, and administrative officers in a locked, secure location.

RETRIEVABILITY:

Records are indexed by name and Employee Identification number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Access to systems storing these records must be approved by the Senior Manager of HRIS. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Applications are kept for one year from last indication of interest, with the exception of apprenticeship applications, which are kept for five years.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Human Resources Information Services, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the Senior Manager, HRIS, TVA, Knoxville, TN 37902–1499. Requests should include the individual's full name, social security number, date of birth, and approximate date of application.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information on them in this system of records should contact the Senior Manager, HRIS, TVA, Knoxville, TN 37902–1499. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to Manager, TVA Service Center, TVA, Knoxville, TN 37902–1499.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; educational institutions, employers, and other references; State employment services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k) (5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–14

SYSTEM NAME:

Grievance Records—TVA.

SYSTEM LOCATION:

Labor Relations Staff, TVA, Knoxville, TN 37902–1499. Original correspondence on the initial grievance steps below the Labor Relations level is maintained in the organization in which the grievance originated. Original correspondence on grievance appeals to the corporate level are maintained in the files of the Labor Relations office.

Duplicate copies of such correspondence are also maintained in the files of the organization concerned with the grievance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees and former employees who have formally appealed to TVA for adjustment of their grievances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Evidence and arguments relevant to the matter giving rise to the grievance and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an employee's grievance.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To request information from a Federal, State, or local agency, or private individual, if necessary, to obtain information relevant to a TVA decision within the purposes of this system of records.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices in some organizations and in file folders.

RETRIEVABILITY:

Records are indexed by name or by craft.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Vice President, Labor Relations, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals who have filed grievances are aware of that fact. Inquiries may, however, be addressed to the system manager named above. Requests should include the individual's full name, craft, and location of employment.

RECORD ACCESS PROCEDURES:

Individuals who have filed a grievance may gain access to the official copy of the grievance record by contacting the system manager named

above. Requests should include the grievant's full name, craft, and location of employment.

CONTESTING RECORD PROCEDURES:

The contest, amendment, or correction of a grievance record is permitted during the prosecution of that grievance. However, an individual may address requests for amendment or correction of items not involved in prosecution of the grievance to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA personnel records; statements and testimony of witnesses and related correspondence.

TVA–18

SYSTEM NAME:

Employee Supplementary Vacancy Announcement Records—TVA.

SYSTEM LOCATION:

Human Resources, Knoxville and Chattanooga, Tennessee, and Muscle Shoals, Alabama; may also be maintained in other offices that issue or receive responses to supplementary vacancy announcements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees applying for placement in positions covered by the supplementary vacancy announcement procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and supporting material submitted by employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 11478; Equal Employment Opportunity Act of 1972, Pub. L. 92–261, 86 Stat. 103; 5 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES AND USERS AND THE PURPOSES OF SUCH USES:

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically in the Human Resources Information System (HRIS), Personal Records Information System (PRIS), or on microfiche. Duplicate or certain specified temporary information may be maintained by human resources officers, supervisors, and administrative offices in a locked, secured location.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Access to systems storing these records must be approved by the Senior Manager of HRIS.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, HRIS, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals upon whom records are maintained in this system are aware of that fact through filing an application. However, inquiries may be addressed to the name and address to which application was submitted. Requests should include the individual's full name, position applied for, and location of job.

RECORD ACCESS PROCEDURES:

Individuals upon whom records are maintained in this system have supplied all information in this system. However, requests for access may be addressed to the name and address to which application was submitted.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the name and address to which application was submitted.

RECORD SOURCE CATEGORIES:

The individual upon whom the record is maintained.

TVA–19

SYSTEM NAME:

Consultant and Contractor Records—TVA.

SYSTEM LOCATION:

Human Resource Information System (HRIS) contains personal, employment, job, security restriction and training information. HRIS is located in Human Resource Information Systems, TVA, Knoxville, TN 37902–1499. The Contractor Workforce Management Software (Elance) for contractor time and expense reporting records are located at Contractor Workforce Management, Procurement, Knoxville, TN 37902–1499.

For contractors requiring unescorted access, records are located at TVA Nuclear Access Service, Chattanooga, TN 37402.

TVA business organizations for records on individuals who provide services under a TVA contract with an organization are kept in the files of that organization.

Payment records are located at the TVA Controller office: Knoxville, TN 37902–1499.

Records related to personal service contractors employed under the Comprehensive Employment and Training Act of 1973, Pub. L. 93–203, are located at the National Personnel Records Center, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who perform work for and/or provide services to TVA and who are not TVA employees or volunteers. These individuals generally are the employees of a TVA supplier of services and are obtained through a contract with the supplier, but in some cases may be retained directly through a contract between TVA and the individual.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each organization maintains its contracts, records of the qualifications,

performance, and evaluation of the contractor, and related correspondence. For public service employment program participants, Human Resources maintains information related to job placement such as test scores, interest inventories, and supervisor's evaluations. Payment information is maintained by the Controller.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Comprehensive Employment and Training Act, Pub. L. 93–203, 87 Stat. 839; Executive Order 11222; Executive Order 10450; Executive Order 10577; provisions of 5 U.S.C. applicable to employment with TVA; Internal Revenue Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To transmit reports as requested to the Office of Personnel Management, pursuant to 5 U.S.C. 3323, Executive Orders 10577 and 10450, and other laws.

To report earnings information to the Internal Revenue Service and the Social Security Administration.

To respond to a request from a Member of Congress regarding the status of a contractor or consultant.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals if necessary to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To transmit to the appropriate State contracting agency reports of hours worked by participants in the public service employment program, and to request reimbursement.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information to a prospective employer of a TVA or former TVA consultant or personal service contractor: Job descriptions, dates of employment, and reason for separation.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are indexed by name, social security number, or contract number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Manager, Contractor Workforce Management, Procurement, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know if records on them are maintained in the system should address inquiries to the system manager named above. Requests shall include the individual's full name, employing or contracting organization, and whether the individual was a participant in the public service employment program. Social security numbers are not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information on them in this system of records should contact the system manager named above. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; educational institutions, former employers, and other reference sources; State employment services; supervisors and other TVA personnel or personnel records; medical officers; other Federal agencies.

In addition to the above sources, security/suitability investigatory files contain information from law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity of fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k)(5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–21

SYSTEM NAME:

Nuclear Quality Assurance Personnel Records—TVA.

SYSTEM LOCATION:

Nuclear Assurance, TVA, Chattanooga, TN 37402–2801. Copies of records for Quality Assurance Auditors/Assessors are maintained in the office of Manager, Corporate Nuclear Assurance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees involved in quality assurance work.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to the qualifications of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233 as implemented at Nuclear Regulatory Commission Regulatory Guides 1.58.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Nuclear Regulatory Commission or its authorized representatives for inspection or evaluation of TVA Quality Assurance procedures.

To respond to a request from a Member of Congress regarding the status of an employee.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals if necessary to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and electronic files.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Corporate Nuclear Assurance, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Inquiries should include the individual's full name and employing organization.

RECORD ACCESS PROCEDURE:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; TVA personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from subsection (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an

implied promise that the identity of the source would be held in confidence. The exemption is pursuant to 5 U.S.C. 552a(k)(5) and TVA regulations at 18 CFR 1301.24.

TVA–22

SYSTEM NAME:

Questionnaire-Land Use Surveys in Vicinity of Proposed or Licensed Nuclear Power Plant—TVA.

SYSTEM LOCATION:

Environmental Radiological Monitoring and Instrumentation, Radiological and Chemistry Services, Engineering and Technical Services, TVA, Muscle Shoals, AL 35662–1010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals from whom TVA purchases land for proposed nuclear plant sites, individuals having vegetable gardens, irrigated land, dairy cows, and milk goats within a five-mile radius of a proposed or licensed plant site.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to agriculture, milk consumption, water resources, and farm product value.

This information is not used for making determinations about the rights, benefits, or privileges of any individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; National Environmental Policy Act, Pub. L. 91–190, 83 Stat. 852; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records is used in developing environmental evaluations and impact statements. Certain relevant but nonsensitive information may be disclosed in these statements.

Information may also be used:

In administrative and licensing proceedings including the presentation of evidence and disclosure to opposing counsel in the course of discovery.

To disclose to any agency of the Federal Government having oversight or review authority with regards to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfilm, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by assigned number and aerial photo number and/or name of survey participant, plant site and year of survey.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Security is provided by physical, administrative and computer system safeguards. Files are kept in secured facilities not accessible to unauthorized individuals or are locked when unattended.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Technical Programs and Reliability, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals on whom information is maintained in this system are aware of that fact through response to the questionnaire. However, inquiries may be addressed to the system manager named above. Requests should include the individual's full name, address, and approximate date of survey.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above. Requests should include the individual's full name, address, and approximate date of survey.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains: The nearest resident, to a distance of 5 miles, in each of the 16 compass sectors around each TVA nuclear site; farms with dairy cows or milk goats within a five mile radius of each site and additional dairy farms used as control locations for environmental monitoring; and individuals within a five mile radius of each site with home gardens meeting the survey criteria.

TVA–23

SYSTEM NAME:

Radiation Dosimetry Personnel Monitoring Records—TVA.

SYSTEM LOCATION:

Nuclear Support, TVA, Chattanooga, TN 37402–2801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, and visitors who might be exposed or are exposed to radiation while in TVA installations.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Information on the magnitude of exposure at TVA installations, exposure prior to employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233; 10 CFR parts 19, 20.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Nuclear Regulatory Commission for its use in evaluating TVA radiological control measures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of

discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

Radiation dosimetry records may be used for employee population health monitoring which includes routine clinical and epidemiological investigations. Such studies may require the transfer of selected items of radiation dosimetry data to health-related agencies, organizations, or professionals for the purpose of compiling vital health statistics, or conducting biomedical investigations.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfilm, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by individual name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Security is provided by physical, administrative and computer system safeguards. Files are kept in secured facilities not accessible to unauthorized individuals or are locked when unattended.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Radiological Protection, Nuclear Support, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals should address inquiries to the system manager named above, or if a current employee, to the Radiological Control office at the TVA facility where employed. Requests should include the individual's full name, social security number and date of birth.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above, or if a current employee, to the Radiological Control office at the TVA facility where employed. Requests should include the individual's full name, social security number and date of birth.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the subject individual; previous licensees where the individual was monitored for radiation exposure; and TVA personnel conducting radiation monitoring programs.

TVA–26

SYSTEM NAME:

Retirement System Records—TVA.

SYSTEM LOCATION:

Retirement Services, TVA, 400 W. Summit Hill Drive, Knoxville, TN 37902–1499.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active, retired, and former members of the TVA Retirement System; TVA employees and former employees who are members of the Civil Service Retirement System and the Federal Employees Retirement System; designated beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information; retirement, benefit, and investment information; related correspondence; and legal documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Internal Revenue Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To report earnings to the Internal Revenue Service.

To disclose information to actuarial firms for valuation and projecting benefits.

To disclose information to the Medical Board of the TVA Retirement System for determinations related to disability retirement.

To certify insurance status to the Office of Personnel Management and the Office of Federal Employees' Group Life Insurance.

To respond to a request from a Member of Congress regarding the status of a system member.

To disclose information to auditing firms for use in auditing benefit calculations and financial statements.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information; and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision within the purpose of this system of records.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the issuance of any benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of

authority of a court of competent jurisdiction.

To provide the following information on retirees to the TVA Retirees Association: Names, unique identification numbers assigned by the TVA Retirement System to each retiree, addresses, dates of birth, dates of termination of employment with TVA, retirement class (member, beneficiary, Civil Service, deferred), last official station, and dates of death (if applicable).

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To Contractors and subcontractors of TVA or the Retirement System who are provided records maintenance or other similar support service to the Retirement System.

Retirement records may be used for employee population health monitoring which includes routine clinical and epidemiological investigations. Such studies may require the transfer of selected items to health-related agencies, organizations, or professionals for the purpose of compiling vital health statistics, or conducting biomedical investigations.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an electronic document management system.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to the electronic document management system requires a password and is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are scheduled for disposal in accordance with an approved TVA retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Retirement Services, TVA, 400 W. Summit Hill Drive, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Inquiries should include the individual's full name, date of birth, and social security number.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained on them in this system should address inquiries to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; TVA personnel and payroll records.

TVA–28

SYSTEM NAME:

Woodland Resource Analysis Program Input Data—TVA.

SYSTEM LOCATION:

Secured off-site storage facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Private landowners, agencies, and corporations owning woodlands in Valley region and participating in TVA woodland resource management demonstration program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal, financial, and land resource information pertinent to woodland resource planning. The information in this system is not used by TVA in the determination about the rights, benefits, or privileges of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Evaluated information is supplied to State forestry personnel for use in assisting the landowner.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on microfiche.

RETRIEVABILITY:

Records are indexed by State.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Environmental Stewardship & Policy, TVA, Knoxville, TN 37902.

NOTIFICATION PROCEDURE:

Individuals on whom information is maintained are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager named above. Individuals should provide their full name, State of residence, and the calendar year(s) of participation in the program.

RECORD ACCESS PROCEDURE:

Individuals on whom records are maintained have been provided copies of all information in that record. However, requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains provides the information to State forestry personnel. The information is evaluated by TVA and returned to the State forestry personnel who utilize the information in evaluated form to assist the landowner.

TVA–29

SYSTEM NAME:

Energy Program Participant Records—TVA.

SYSTEM LOCATION:

TVA Customer Resources, P.O. Box 292409, Nashville, TN 37229–2409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals participating in the energy right program and energy saturation surveys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer name, address, account number, meter number, telephone number, characteristics of their dwelling, including type of heating and cooling systems and number and kind of appliances; and other characteristics of study participants relevant to patterns of residential electrical use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To power distributors participating in the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in automated data storage devices and in file folders and locked file cabinets.

RETRIEVABILITY:

Records are indexed and retrieved by name and address.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Residential Products and Services, Customer Resources, TVA, P.O. Box 292409, Nashville, TN 37229–2409.

NOTIFICATION PROCEDURE:

Individuals about whom information is maintained in this system of records are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager named above. Request should include the individual's full name and address.

RECORD ACCESS PROCEDURES:

Requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORDS SOURCE CATEGORIES:

The information in this system is solicited from the individual to whom the record pertains.

TVA–31

SYSTEM NAME:

OIG Investigative Records—TVA.

SYSTEM LOCATION:

Office of the Inspector General, TVA, Knoxville, TN 37902–1499. Duplicate copies of certain documents may also be located in the files of other offices and divisions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations by the Office of the Inspector General (OIG), or who provide information in connection with such investigations, including but not limited to: Employees; former employees; current or former contractors and subcontractors and their employees; consultants; and other individuals and entities which have or are seeking to obtain business or other relations with TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including information provided by known or anonymous complainants; information provided by the subjects of investigations; information provided by individuals or entities with whom the subjects are associated (e.g., coworkers, business associates, relatives); information provided by Federal, State, or local investigatory, law enforcement, or other Government or non-Government agencies; information provided by witnesses and confidential sources; information from public source materials; information from commercial data bases or information resources; investigative notes; summaries of telephone calls; correspondence; investigative reports or prosecutive referrals; and information about referrals for criminal prosecutions, civil proceedings, and administrative actions taken with respect to the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 10450; Executive Order 11222; Hatch Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535; Proposed Plan for the Creation, Structure, Authority, and Function of the Office of Inspector General, Tennessee Valley Authority, approved by the TVA Board of Directors on October 18, 1985; TVA Code XIII INSPECTOR GENERAL, approved by the TVA Board of Directors on February 19, 1987; Inspector General Act Amendments of 1988, Pub. L. 100–504, 102 Stat. 2515, and 2000 amendments to the Inspector General Act, Pub. L. 106–422, 114 Stat. 1872.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal, State, or local entity (1) in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant to a decision on such matters, or (2) in connection with any other matter properly within the jurisdiction of such other entity and related to its prosecutive, investigatory, regulatory, administrative, or other responsibilities.

To the appropriate entity, whether Federal, State, or local, in connection with its oversight or review responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding an individual, or to report to a Member on the results of investigations, audits, or other activities of OIG.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the subjects of an investigation and their representatives in the course of a TVA investigation of misconduct; to any other person or entity that has or may have information relevant to the investigation to the extent necessary to assist in the conduct of the investigation, such as to request information.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To a consultant, private firm, or individual who contracts or subcontracts with TVA, to the extent necessary to the performance of the contract.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant or potentially relevant information; and to request information from private individuals or entities, if necessary, to acquire information pertinent to the hiring, retention, or promotion of an employee; the issuance of a security clearance; the conduct of a background or other investigation; or other matter within the purposes of this system of records.

To the public when: (1) The matter under investigation has become public knowledge, or (2) when the Inspector General determines that such disclosure is necessary (a) to preserve confidence in the integrity of the OIG investigative process, or (b) to demonstrate the accountability of TVA officers, or employees, or other individuals covered by this system; unless the Inspector General determines that disclosure of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

To the news media and public when there exists a legitimate public interest (e.g., to provide information on events in the criminal process, such as indictments), or when necessary for protection from imminent threat to life or property.

To members of the President's Council on Integrity and Efficiency, for the preparation of reports to the President and Congress on the activities of the Inspectors General.

To members of the President's Council on Integrity and Efficiency, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of conducting qualitative assessment reviews of the investigative operations of TVA OIG to ensure that adequate internal safeguards and management procedures are maintained.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by individual name or case file number.

SAFEGUARDS:

Access to and use of records is limited to authorized staff in OIG and to other authorized officials and employees of TVA on a need-to-know basis as determined by OIG management. Security will be provided by physical, administrative, and computer system safeguards. Files will be kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3); (d); (e)(1); (e)(4)(G); (e)(4)(H); (e)(4)(I); and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

TVA–32

SYSTEM NAME:

Call Detail Records—TVA.

SYSTEM LOCATION:

Data Center, TVA, Chattanooga, TN 37402–2801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees, contractor personnel, and other individuals who make telephone calls from or charge telephone calls to TVA telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of TVA telephones; records relating to long distance telephone calls charged to TVA; records relating to cellular telephone calls charged to TVA; records indicating assignment of telephone numbers and authorization numbers; records relating to locations of TVA telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding an individual.

To provide to the appropriate entity, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To a telecommunications company as well as to other TVA contractors providing telecommunications support to permit servicing the account.

To TVA contractors engaged at TVA's direction in investigations of abuse of TVA telephone service or other related issues.

To TVA contractors and contractor personnel to determine individual responsibility for telephone calls.

To TVA contractors in connection with amounts due TVA for telecommunications services provided to them.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are retrieved by name, authorization number, or telephone number.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Files are kept in secured facilities. Automated data is secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, IS Infrastructure Support, TVA, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the system manager named above. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

TVA Telecommunication Control System; telecommunications companies with which TVA contracts for telephone service; telephone and authorization number assignment records; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

TVA–34

SYSTEM NAME:

Project/Tract Files—TVA.

SYSTEM LOCATION:

Realty Services, TVA, Chattanooga, TN 37402–2801, and secured off-site storage facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or business entities from/to whom TVA is in the process of or has (1) acquired, transferred, or sold land or landrights, (2) made payment for construction, maintenance, or other damage to real property, or (3) made payment for relocation assistance. A project/tract file may name more than one individual and/or business entity involved in a transaction. (The system records that pertain to individuals and reflect personal information are subject to the Privacy Act. Noncovered records include public information and records on corporations and other business entities.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Maps, property descriptions, appraisal reports, and title documents on real property; reports on contracts and transaction progress; contracts and options; records of investigations,

claims, and/or payments related to land transactions, damage restitution, and relocation assistance; related correspondence and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Pub. L. 87–852, 76 Stat. 1129; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding an individual.

To lienholders as necessary to secure subordinations or releases of liens or to protect lienholders rights.

To county clerk and register of deeds offices to document and put on record the title acquired by TVA.

To landowners, prospective landowners, claimants, or trespassers to establish or cure titles, to resolve encroachments, to resolve boundary disputes, or to resolve questions about easement rights or the application of Section 26a of the TVA Act 16 U.S.C. 831y–1.

To contractors to secure appraisals and title abstracts.

To request information from a Federal, State, or local agency or from private individuals, as necessary, to obtain information relevant to a TVA decision to acquire or dispose of property or to pay claims or make payments related to land transactions, damage restitution, and relocation assistance.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To provide to the appropriate entity, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To report any required information to Federal, State, and local taxing authorities as required by law.

To genealogical researchers, relevant portions of maps, descriptions, appraisals, and title documents on real property, after 20 years, to establish historical records.

To archaeological researchers, relevant portions of maps, descriptions, appraisals, and title documents on real property, after 20 years, to reconstruct historical settings.

To respond to a request from a Member of Congress regarding the status of a matter relating to a specific project or tract.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on registers, aperture cards, microfilm, in file folders, and/or on automated data storage devices.

RETRIEVABILITY:

Records are primarily indexed by tract number and project symbol. Records may also be retrieved by cross-index reference to individual and business entity names.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Files are kept in secured facilities. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Realty Services, TVA, 1101 Market Street, SP 3L, Chattanooga, TN 37402–2801.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and, to the extent known, any project/tract identifying information such as the project name, tract number, address, or related data.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the system manager named above. Requests should include the individual's full name, and to the extent known, any project/tract identifying information such as project name, tract number, address, or related data. Access will be granted only to individually segregable personal information about the requester and to segregable nonpersonal information in accordance with TVA regulations on release of records relating to negotiations in progress involving contracts or agreements for the acquisition or disposal of real or personal property by TVA prior to the conclusion of such negotiations.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their requests to the system manager named above.

RECORD SOURCE CATEGORIES:

Public records and directories, landowners, tenants, and other individuals and business entities (including financial institutions) having an interest in or knowledge related to land ownership, appraisal, or title history; TVA personnel and contractors including independent appraisers and commercial title companies.

TVA–36

SYSTEM NAME:

Section 26a Permit Application Records—TVA.

SYSTEM LOCATION:

For applications involving private facilities located on TVA reservoirs, such as boathouses, piers, docks, launching ramps, marine railways, beaches, utilities, and ground improvements, the records are maintained in the following locations:

Manager, Holston-Cherokee-Douglas Watershed Team, TVA, (Cherokee, Douglas, and Nolichucky Reservoirs)—3726 E. Morris Boulevard, Morristown, TN 37813–1270; (Boone, Fort Patrick Henry, Bristol Project, South Holston, Watauga, and Wilber Reservoirs)—106 Tri-Cities Business Park Drive, Gray, TN 37615.

Manager, Watts Bar-Clinch Watershed Team, TVA, (Great Falls, Melton Hill, Norris, and Watts Bar Reservoirs)—260 Interchange Park Dr., Lenoir City, TN 37772–5664.

Manager, Little Tennessee Watershed Team, TVA, (Fontana, Fort Loudoun, and Tellico Reservoirs)—260 Interchange Park Dr., Lenoir City, TN 37772–5664.

Manager, Chickamauga-Hiwassee Watershed Team, TVA, (Chickamauga and Nickajack Reservoirs)—1101 Market St., Chattanooga, TN 37402–2801; (Apalachia, Blue Ridge, Chatuge, Hiwassee, Ocoees, and Nottely Reservoirs)—221 Old Ranger Rd., Murphy, NC 28906.

Manager, Guntersville-Tims Ford Watershed Team, TVA, (Guntersville, Normandy, and Tims Ford Reservoirs)—3696 Alabama Highway 69, Guntersville, AL 35976–7196.

Manager, Pickwick-Wheeler Watershed Team, TVA, (Bear Creek, Cedar Creek, Little Bear Creek, Project, Pickwick, Upper Bear Creek, Wheeler, and Wilson Reservoirs)—P.O. Box 1010, Muscle Shoals, AL 35662–1010.

Manager, Kentucky Watershed Team, TVA, (Beech River Project, Kentucky Reservoir)—2835–A East Wood Street, Paris, TN 38242–5948.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system includes individuals who have filed a Section 26a application for approval of construction of such structures as boat ramps, docks, bridges, and dams located along, across, or in the Tennessee River and its tributaries. Also included in this system may be individuals whose structures do not have Section 26a permits, or whose approved structures have deteriorated so as to pose a threat to navigation, flood control, public lands or reservations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Section 26a permit applications made by individuals, businesses and industries, utilities, and Federal, State, county and city Government agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee.

PURPOSE(S):

Section 26a of the Tennessee Valley Authority Act of 1933, as amended, requires that TVA review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information collected is used to assess the impact of the proposed project on the statutory TVA programs and the environment and determine if the project can be approved. Rules on the application for review and approval of such plans are published in 18 CFR part 1304, Approval of Construction in the Tennessee River System and Regulation of Structures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To State or other Federal agencies for use in program evaluation, providing assistance to program participants, or engaged at TVA's direction in providing support services to the program, to the extent necessary to the performance of those services.

To TVA consultants, contractors, subcontractors or individuals who contract or subcontract with TVA, who are engaged in studies and evaluation of TVA's administration or other matters involving its Section 26a program or who are providing support services to the program, to the extent necessary to the performance of the contract.

To provide information to a Federal, State, or local entity in response to its request, in connection with the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant and necessary to the requesting agency's decision on such matters.

To respond to a request from a Member of Congress regarding the status of a specific application.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, on microfilm, and in hard copy files.

RETRIEVABILITY:

Records may be retrieved by personal identifier (name of applicant), land tract number, or Section 26a application number, stream location, reservoir, county, or subdivision. Records in field offices are interfiled with land tract records and are retrieved by land tract number.

SAFEGUARDS:

Access to and use of these records are limited through physical, administrative, and computer system safeguards to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Environmental Stewardship and Policy, TVA, 400 West Summit Hill Drive, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name. A land tract number, Section 26a permit application number, stream location or legal property description is not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Information in this system is solicited from the individual to whom the record pertains. Information may also be obtained from other Federal, State, county or city Government agencies; public records and directories; landowners, tenants, and other individuals and business entities, including financial institutions, having an interest in or knowledge related to land ownership, appraisal, or title history; and TVA personnel and contractors including independent appraisers and commercial title companies.

TVA–37

SYSTEM NAME:

U.S. TVA Police Records—TVA.

SYSTEM LOCATION:

U.S. TVA Police, TVA, 400 West Summit Hill Drive, WT–2D, Knoxville, Tennessee 37902–1499. Duplicate copies of certain documents may also be located in the field offices of the various U.S. TVA Police Districts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who relate in any manner to official U.S. TVA Police investigations into incidents or events occurring within the jurisdiction of TVA, including but not limited to suspects, victims, witnesses, close relatives, medical personnel, and associates who have relevant information to an investigation.

B. Individuals who are the subject of unsolicited information or who offer unsolicited information, and law enforcement personnel who request assistance and/or make inquiries concerning records.

C. Individuals including, but not limited to, current or former employees; current or former contractor and subcontractor personnel; visitors and other individuals that have or are seeking to obtain business or other relations with TVA; individuals who have requested and/or have been granted access to TVA buildings or property, or secured areas within a building or property.

D. Individuals who are the subject of research studies including, but not limited to, crime profiles, scholarly journals, and news media references.

E. Individuals who respond to emergency situations at TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to case investigation reports on all forms of incidents or events, visitor and employee registers, TVA forms authorizing access for individuals into TVA buildings or secured areas within a building, and historical information on an individual's building access or denial of access; U.S. TVA Police Uniform Incident Reports (UIRs) on incidents or events; visitor and employee registers, TVA forms, or permits authorizing access for individuals into TVA buildings, property, or secured areas within buildings or property, and historical information on an individual's access or denial of access within buildings or property; the U.S. TVA Police confrontational data base; emergency personnel information data bases; permit applications under the Archaeological Resources Protection Act (ARPA); risk, security, emergency preparedness, and fire protection assessments conducted by the U.S. TVA Police on facilities, property, or officials; research studies, scholarly journal articles, textbooks, training materials, and news media references of interest to U.S. TVA Police personnel; an index of all detected trends, patterns, profiles and methods of operation of known and unknown criminals whose records are maintained in the system; an index of the names, address, and contact telephone numbers of professional individuals and organizations who are in a position to furnish assistance to the U.S. TVA Police; an index of public record sources for historical, statistical, geographic, and demographic data; and an alphabetical name index of all individuals whose records are maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; 5 U.S.C. 552a; and 28 U.S.C. 534.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the appropriate official agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

In litigation where TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, information may be disclosed to respond to process issued under color of authority of a court of competent jurisdiction.

To provide information to a Federal, State, or local entity in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter, or in connection with any other matter properly within the jurisdiction of such other agency and related to its responsibilities to prosecute, investigate, regulate, and administrate, or other responsibilities.

To any Federal, State, local or foreign Government agency directly engaged in the criminal justice process where access is directly related to a law enforcement function of the recipient agency in connection with the tracking, identification, and apprehension of persons believed to be engaged in criminal activity.

To an organization or individual in both the public or private sector pursuant to an appropriate legal proceeding or if deemed necessary, to elicit information or cooperation from the recipient for use by TVA in the performance of an authorized activity.

To an organization or individual in the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy and to the extent the information is relevant to the protection of life or property.

To the news media and general public where there exists a legitimate public interest such as obtaining public or media assistance in the tracking, identifying, and apprehending of persons believed to be engaged in repeated acts of criminal behavior; notifying the public and/or media of

arrests; protecting the public from imminent threat to life or property where necessary; and disseminating information to the public and/or media to obtain cooperation with research, evaluation, and statistical programs.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To appropriately respond to congressional inquiries on behalf of constituents.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in locked file cabinets, either in hard copy or on microfilm at the U.S. TVA Police offices in Knoxville, TN. The active main files are maintained in hard copy form and some inactive records are maintained on microfilm. In addition, some of the information is stored in computerized data storage devices at the U.S. TVA Police offices in Knoxville, TN. Investigative information which is maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on computer printed listings.

RETRIEVABILITY:

On-line computer access to U.S. TVA Police files is achieved by using the following search descriptors:

A. The names of individuals, their birth dates, physical descriptions, social security numbers, and other identification numbers, such as Uniform Incident Report numbers.

B. As previously described, summary variables contained on Uniform Incident Reports submitted to the U.S. TVA Police.

C. Key word citations to research studies, scholarly journals, textbooks, training materials, and news media references.

SAFEGUARDS:

Records are maintained in restricted areas and are accessed only by U.S. TVA Police employees. Security is provided by a comprehensive program of physical, administrative, personnel, and computer system safeguards. Access to and use of records is limited to authorized U.S. TVA Police personnel and to other authorized officials and employees of TVA on a need-to-know basis. Sensitive or classified information in electronic form is encrypted prior to transmission to ensure confidentiality, security, and to prevent interception and interpretation.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established TVA records retention schedules. U.S. TVA Police will conduct periodic reviews to determine if these records are historical and should be placed in permanent files after established retention periods and administrative needs of the U.S. TVA Police have elapsed. As deemed necessary, certain records may be subject to restricted examinations by 44 U.S.C. 2104.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. TVA Police, TVA, 400 West Summit Hill Drive, WT–2D, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD SOURCE CATEGORIES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24. This system of records is exempt from subsections (c)(3); (d); (e)(1); (e)(2); (e)(3); (e)(4)(G), (H), and (I); (e)(5); (e)(8); and (g) pursuant to 5 U.S.C. 552(j)(2) and TVA regulations at 18 CFR 1301.24.)

TVA–38

SYSTEM NAME:

Wholesale, Retail, and Emergency Data System—TVA.

SYSTEM LOCATION:

Customer Resources, Nashville, TN 37229–2409, and Customer Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA wholesale and retail customers' key personnel and governing bodies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, emergency numbers, interests, key dates, associates, immediate family members, and credentials of TVA's wholesale and retail customers and their officers and other personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To respond to a referral from a Member of Congress.

To contact customer personnel during system emergencies.

To appropriate agencies, entities, and persons when (1) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) TVA has determined

that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices. Hard copies of power distributor managers' key information are given to TVA staff working with distributor managers.

RETRIEVABILITY:

Records are organized by wholesale and retail customer name and indexed by individual's name.

SAFEGUARDS:

Access to and use of these records is limited to persons whose official duties require such access. Files are kept in a secured database. Access requires a login ID and password.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Customer Service Support, TVA, P.O. Box 292409, Nashville, TN 37229–2409.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and employer.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The information for this system is obtained from TVA's wholesale and retail customers and their personnel.

E. Wayne Robertson,

Vice President, Information Services.

[FR Doc. E8–24713 Filed 10–20–08; 8:45 am]

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Federal Register

Tuesday,
October 21, 2008

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Wintering Population of the Piping Plover (Charadrius melodus) in North Carolina; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2008–0041; 92210–1117–0000–B4]

RIN 1018–AU48

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Wintering Population of the Piping Plover (Charadrius melodus) in North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate revised critical habitat for the wintering population of the piping plover (*Charadrius melodus*) in North Carolina under the Endangered Species Act of 1973, as amended (Act). In total, approximately 2,043 acres (ac) (827 hectares (ha)), in Dare and Hyde Counties, North Carolina, fall within the boundaries of the revised critical habitat designation.

DATES: This final rule becomes effective on November 20, 2008.

ADDRESSES: This final rule and final economic analysis are available on the Internet at *http://www.regulations.gov* and at *http://www.fws.gov/raleigh/es_piplch.html*. Supporting documentation we used in preparing this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office, 551–F Pylon Drive, Raleigh, NC 27606; telephone 919–856–4520; facsimile 919–856–4556.

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, Field Supervisor, Raleigh Ecological Services Field Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the development and designation of revised critical habitat in this final rule. For more information on the biology and ecology of the wintering population of the piping plover, refer to the final listing rule published in the **Federal Register** on December 11, 1985 (50 FR 50726). For information on piping plover wintering critical habitat, refer to the final rule designating critical habitat for the wintering populations of the piping plover published in the **Federal Register** on July 10, 2001 (66 FR 36038), the proposed rule to designate revised critical habitat for the wintering population of the piping plover in North Carolina published in the **Federal Register** on June 12, 2006 (71 FR 33703), and the revised proposed rule published in the **Federal Register** on May 15, 2008 (73 FR 28084). Information on the associated draft economic analysis and draft environmental assessment for the proposed rule to designate revised critical habitat was published in the **Federal Register** on May 31, 2007 (72 FR 30326) and revised on May 15, 2008 (73 FR 28084).

Previous Federal Actions

We first designated critical habitat for the wintering population of the piping plover in 142 areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas on July 10, 2001 (66 FR 36038). In February 2003, two North Carolina counties (Dare and Hyde) and a beach access group (Cape Hatteras Access Preservation Alliance) filed a lawsuit challenging our designation of four units of critical habitat on the Cape Hatteras National Seashore (CAHA), North Carolina (Units NC–1, NC–2, NC–4, and NC–5). In 2004, the U.S. District Court for the District of Columbia remanded to us the 2001 designation of the four units (*Cape Hatteras Access Preservation Alliance* v. *U.S. Department of the Interior,* 344 F. Supp 2d 108). In response to the court's order, on June 12, 2006, we published a proposed rule to designate critical habitat for the wintering population of the piping plover in North Carolina (71 FR 33703). That proposed rule described four coastal areas (units renamed NC–1, NC–2, NC–4, and NC–5), totaling approximately 1,827 acres (ac) (739 hectares (ha)) entirely within CAHA. On May 31, 2007, we announced in the **Federal Register** the availability of a draft economic analysis and environmental assessment for the June 12, 2006, proposed rule (72 FR 30326). On May 15, 2008, we announced a revision to the proposed critical habitat unit NC–1, to include the islands DR–005–05 and DR–005–06 (Dare County), owned by the State of North Carolina, and portions of Pea Island National Wildlife Refuge (PINWR; Dare County), and to proposed critical habitat unit NC–4, to include island DR–009–03/04 (Dare and Hyde Counties), owned by the State of North Carolina (73 FR 28084). The revised critical habitat units for the proposed rule total approximately 2,043 ac (827 ha) in Dare and Hyde Counties.

On October 18, 2007, an action was filed against the National Park Service (NPS) in the United States District Court for the Eastern District of North Carolina, alleging that the management of off-road vehicles at CAHA, which includes the proposed critical habitat areas, was inadequate (*Defenders of Wildlife et al.* v. *National Park Service et al.,* No 2:07–CV–45–BO (E.D.N.C.)). On April 16, 2008, all parties filed with the court a proposed Consent Decree. The Consent Decree, approved April 30, 2008, continues management described in the NPS's Interim Protected Species Management Strategy (hereafter referred to as Interim Strategy), but also requires pre-nesting areas for piping plover as well as other shorebirds to be closed to vehicles and pedestrians at historic nesting areas at Bodie Island spit, Cape Point, Hatteras spit, and the north and south ends of Ocracoke Island. It also includes expanded buffers around breeding sites with nests and chicks that vary depending on the sensitivity or vulnerability of the particular species. These closures are a result of agency actions affecting the species and reports on species protected by the Migratory Bird Treaty Act (16 U.S.C. 703–712) and would occur regardless of our proposed critical habitat designation.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the piping plover during three comment periods. The first comment period, associated with the publication of the proposed rule (71 FR 33703), opened on June 12, 2006, and closed on August 11, 2006. We also requested comments on the proposed critical habitat designation, associated draft economic analysis, and draft environmental assessment during a second comment period which opened May 31, 2007, and closed on July 30, 2007 (72 FR 30326). During this comment period, we held a public hearing on June 20, 2007. Finally, we requested comments on the revised proposed critical habitat designation, revised associated draft economic analysis, and revised draft environmental assessment during a third comment period which opened May 15, 2008, and closed June 16, 2008 (73 FR 28084). During these three comment periods we also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule

and/or draft economic analysis and draft environmental assessment.

During the first comment period, we received 84 comments directly addressing the proposed critical habitat designation. During the second comment period, we received 1,441 comments directly addressing the proposed critical habitat designation and the draft economic analysis and environmental assessment. Of the comments received during the second comment period, approximately 800 were submitted as two different form letters from individuals or organizations. During the June 20, 2007, public hearing, 36 individuals or organizations made comments on the designation of critical habitat for the wintering piping plover. During the third comment period, we received 489 comments directly addressing the proposed critical habitat designation. Comments received were grouped into nine general issues specifically relating to the proposed critical habitat designation for the wintering piping plover, and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from eight knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from four of the eight peer reviewers. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer stated that the data used in the 2006 proposed rule to evaluate the distribution and abundance of piping plover along the Outer Banks was satisfactory to determine key locations where wintering piping plover had been observed, but expressed concern that such data were generally not the results of thorough and complete censuses of all beach, island, and intertidal habitats. The reviewer also expressed concern for the absence of reference to studies, such as Nicholls and Baldassarre 1990 [Nicholls, J.L., and G.A. Baldassarre. 1990. Winter distribution of piping plovers along the Atlantic and Gulf coasts of the United States. 102:400–412 and Nicholls, J.L., and G.A. Baldassarre. 1990. Habitat associations of piping plover wintering in the United States. Wilson Bulletin 102:581–590] and Dinsmore *et al.* 1998 [Dinsmore, S.J., J.A. Collazo, and J.R. Walters. 1998. Seasonal numbers and distribution of shorebirds on North Carolina's Outer Banks. Wilson Bulletin 110:171–181] that provide information on the distribution and abundance of piping plovers.

Our Response: We reviewed and cited the two studies by J.L. Nicholls and G.A. Baldassarre in our July 10, 2001, designation of critical habitat for the wintering population of the piping plover (66 FR 36038). Although we did not specifically cite the Dinsmore *et al.* 1998 study in the June 12, 2006, proposed rule or May 15, 2008, revised proposed rule, we did review and cite more recent data that incorporate the data of Dinsmore and others on the abundance and distribution of piping plovers. The data reviewed and referenced in this rule are cited as unpublished and were extracted from the North Carolina Wildlife Resources Commission's (NCWRC) statewide database on the occurrence of piping plovers. Because we were reevaluating only the issues addressed by the courts and only for the four units (Units NC–1, NC–2, NC–4, and NC–5) vacated and remanded back to us (*Cape Hatteras Access Preservation Alliance* v. *U.S. Department of the Interior*, 344 F. Supp 2d 108), we did not repeat the analysis on the abundance or distribution of piping plovers in these four areas to the extent that they were analyzed in the July 10, 2001, rule.

(2) *Comment:* Several peer reviewers noted that certain activities that may adversely affect piping plover habitat that were known to be occurring within the proposed critical habitat areas, such artificial dune building and the destruction of wrack (marine vegetation) from recreational activities, were not specifically identified in the June 12, 2006, proposed rule.

Our Response: In the June 12, 2006, proposed rule (71 FR 33703) and May 15, 2008, revised proposed rule (73 FR 28084), we referenced the July 10, 2001, rule (66 FR 36038), which stated the activities that may destroy or adversely modify critical habitat by altering the primary constituent elements (PCEs) to an extent that the value of critical habitat for both the survival and recovery of the piping plover would be appreciably reduced. While we did not specifically address artificial dune building or the destruction of wrack as examples that may destroy the piping plover's habitat, we did cite "Beach nourishment, cleaning, and stabilization (e.g., construction and maintenance of jetties and groins, planting of vegetation, and placement of dune fences)" and "Certain types and levels of recreational activities, such as vehicular activity that impact the substrate, resulting in reduced prey or disturbance to the species." We believe these actions are representative in their effects to the piping plover's habitat of artificial dune building and the destruction of wrack from recreational activities.

(3) *Comment:* Several peer reviewers noted that areas, such as portions of Pea Island National Wildlife Refuge (PINWR) and several sound-side and inlet channel islands, that provide the physical and biological features necessary for the survival and recovery of the piping plover were absent from the June 12, 2006, proposed rule. Several of the peer reviewers provided data or referenced studies that supported their assertion of the importance of these sites. They also stated that the management plans identified in support of our exclusion of these sites in the June 12, 2006, proposed rule (i.e., PINWR's Comprehensive Conservation Plan and the NCWRC's Wildlife Action Plan) were insufficient to protect habitats for the wintering population of the piping plover.

Our Response: In our May 15, 2008, revised proposed rule (73 FR 28084), we modified two of the four units (Unit NC–1, Oregon Inlet and NC–4, Hatteras Inlet) described in the June 12, 2006, rule (71 FR 33703). In the June 12, 2006, rule, we had determined that the islands DR–005–05 and DR–005–06 (Dare County) and DR–009–03/04 (Dare and Hyde Counties) owned by the State of North Carolina, and about 137 ac (96 ha) of PINWR (Dare County) did not meet the definition of critical habitat under section 3(5)(A) of the Act. However, we reconsidered our preliminary analysis of section 3(5)(A) of the Act and special management or protection needs of the PCEs on these lands and determined that these areas should be proposed as critical habitat. That determination was based on *Center for Biological Diversity* v. *Norton*, 240 F. Supp 2d 1090, 1099 (D. Ariz. 2003), which held that if a habitat is already under some sort of management for its conservation, that particular habitat required special management considerations or protection and, therefore, meets the definition of critical habitat. These additional areas of the revised units are located within the range of the population, were occupied at the time of

listing and are considered currently occupied, and contain habitat features essential for the conservation of the wintering population of piping plover, as described in the "Primary Constituent Elements" section of our June 12, 2006, rule.

(4) *Comment:* One peer reviewer stated that piping plovers regularly use a portion of the beach habitat just west of the proposed critical habitat area at Unit 4 (Hatteras Inlet) on Ocracoke Island, and that the area had many features that make it attractive for piping plovers. The reviewer also suggested that we include an additional ½ mile of beach habitat west of the proposed critical habitat area (Unit 4, Hatteras Inlet) on Ocracoke Island described in our June 12, 2006, proposed rule.

Our Response: We agree that the area in question may provide features that are attractive to piping plovers, including containing PCEs, and that the area is used by piping plovers. However, in the course of our analysis we did not find sufficient information to conclude that the half-mile of beach habitat suggested for inclusion as designated critical habitat meets the definition of critical habitat (i.e., occurrence data or observations indicated a consistent use by piping plovers) as described in our July 10, 2001, final rule (66 FR 36038) or our June 12, 2006, proposed rule (71 FR 33703). In fact, there are many areas of coastal habitats throughout the species' range that are not designated as critical habitat that are occupied by piping plovers under specific conditions and during various times of the year and that have features that are attractive to piping plovers. Not including these areas as critical habitat does not imply that the areas are not important for the recovery of the species, or that these areas do not provide important biological and physical conditions for wintering piping plovers. Rather, these areas have not been included because they do not meet the definition of critical habitat as defined in section 3 of the Act (see "Critical Habitat" section below).

(5) *Comment:* One peer reviewer questioned the accuracy over time of the use of GIS technology to define areas as critical habitat since the coastal areas proposed as critical habitat in our June 12, 2006, proposed rule were extremely dynamic and regularly erode and accrete. They also noted that the exclusion of areas that did not provide the PCEs was appropriate, but questioned the status of the areas proposed as critical habitat should these structures be removed and/or the PCEs form in their place. A similar comment made by another peer reviewer questioned the exclusion of suitable unoccupied habitats, and suggested that we review and update critical habitat areas on a frequency consistent with the formation and destruction of the PCEs.

Our Response: As required by section 4(b) of the Act and stated in the "Methods" section of the June 12, 2006, proposed rule, we use the best scientific data available in determining areas that contain the physical and biological features that are essential to the conservation of the wintering population of the piping plover. As noted by several of the reviewers, designating specific locations of critical habitat for the wintering piping plovers is difficult because the coastal areas they use are constantly changing due to storm surges, flood events, and other natural geo-physical alterations of beaches and shoreline. Thus, to best insure that areas containing features considered essential to the piping plover were included in the proposed designation, we developed textual unit descriptions that would constitute the definitive determination if an area is within the critical habitat boundary. Our textual unit descriptions describe the geography of the area using reference points, including the areas from the landward boundaries to the mean lower low water (which encompasses intertidal areas that are essential foraging areas for piping plovers), and describe areas within the unit that are utilized by the piping plover and contain the PCEs (e.g., upland areas used for roosting and wind tidal flats used for foraging). Our textual descriptions also exclude features and structures (e.g., buildings, roads, etc.) that are not or do not contain PCEs. This method accounts for normal erosion and accretion processes occurring within the boundaries of the critical habitat unit description.

(6) *Comment:* One peer reviewer questioned a statement in the methodology of our June 12, 2006, proposed rule that areas may be excluded from consideration as critical habitat if "the area was small, highly fragmented, or isolated and may provide little or no long-term conservation value." The peer reviewer requested clarification of this statement.

Our Response: In the "Criteria Used To Identify Critical Habitat" section of our June 12, 2006, proposed rule, we listed the conditions under which critical habitat was identified and considered. The identification of areas that were "small, highly fragmented, or isolated and may provide little or no long-term conversation value" was one of several criteria used in the decision process. Not including such areas as critical habitat does not imply that these areas are not important for the long-term conservation of the species, or that the areas do not provide important biological and physical conditions for wintering piping plovers. Rather, such areas area not included as critical habitat because they do not meet the definition of critical habitat as defined in section 3 of the Act (see "Critical Habitat" section below).

(7) *Comment:* One peer reviewer stated that the sentence "managing access might also improve the available habitats for the conservation of piping plovers" in our June 12, 2006, proposed rule was lacking and understated. The reviewer provided references to six additional studies that support the premise that managing access, and particularly off-road vehicle use, improves habitat quality for the piping plover.

Our Response: While we were not able to review all of the studies referenced by the reviewer because those documents were not readily available to us, we did find the information published in the referenced scientific peer-reviewed journals or papers (3 of the 6 referenced by the peer reviewer) to be supportive of our statement and that managing access can improve habitat quality for the piping plover. Our comment in the June 12, 2006, proposed rule was intended to indicate that managing access is one way to improve habitats for the conservation of piping plovers at the individual areas identified as proposed revised critical habitat.

Comments From States

Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition." Comments received from the State regarding the proposal to designate critical habitat for the wintering piping plover are addressed below.

(8) *Comment:* The NCWRC expressed concern that certain areas, such as the north end of PINWR and several sound-side and inlet islands, that provide the physical and biological features necessary for the survival and recovery of the piping plover were absent from the June 12, 2006, proposed rule. The State agency provided data and referenced studies and reports that supported their assertion of the importance of these sites. They also stated that the management plans identified in support of our exclusion of these sites in the June 12, 2006, proposed rule (i.e., PINWR's

Comprehensive Conservation Plan and the NCWRC's Wildlife Action Plan) were insufficient to protect habitats for the wintering population of the piping plover.

Our Response: See our response to comment 3.

(9) *Comment:* The NCWRC asked for clarification of the ownership of "emergent sandbars" within the inlet channels as described in our June 12, 2006, proposed rule. Specifically, the agency asked for a description of the extent of the proposed critical habitat south and west of Oregon Inlet. The agency also recommended that all emergent sandbars be included as critical habitat.

Our Response: In our June 12, 2006, proposed rule and May 15, 2008, revised proposed rule, we identified specific islands as critical habitat and acknowledged their ownership. These islands were identified as DR–005–05 and DR–005–06 (Dare County) and DR–009–03/04 (Dare and Hyde Counties) owned by the State of North Carolina, and Green Island (Dare County), owned by NPS. Our textual unit descriptions describe the geography of the area using reference points, and describe areas within the unit that are utilized by the piping plover and contain the PCEs. Future islands and/or emergent sandbars created or formed within the boundary limits of critical habitat identified in this designation will be considered critical habitat if they contain the habitat features essential for the conservation of the wintering population of piping plover, regardless of their ownership. The designation of critical habitat does not affect, and is not affected by, the ownership of the property.

Public Comments

General Biological Comments

(10) *Comment:* Several commenters questioned differences in the status of the piping plover recognized under the Act and by other organizations, stating that the species was listed only as "Near Threatened" by Birdlife International. One commenter also appeared confused by its listing status under the Act and its ability to migrate between its breeding grounds and its wintering grounds, stating the piping plover is "not an endangered species, but a migratory species."

Our Response: The listed status of a species may vary among organizations based on their individual listing categorizations and/or criteria for listing a species and may depend on many factors important solely for the designating organization (*e.g.*, local and/or regional population size, geographical range and conditions, threats, and the probability of extinction/extirpation). The Act is the only Federal law that designates a species as endangered or threatened with a regulation to provide specific Federal protections for the species.

The "Near Threatened" status assigned to the piping plover by Birdlife International is based on the International Union for Conservation of Nature (IUCN) Red List Category and Criteria (ver. 3.1 (2001)), which defines Near Threatened species as "a taxon [that] has been evaluated against the criteria but does not qualify for Critically Endangered, Endangered or Vulnerable now, but is close to qualifying for or is likely to qualify for a threatened category in the near future." Birdlife International provides the following justification for the Near Threatened status for the piping plover: "This species has a small population which has declined significantly since the 1950s. However, there have been overall population increases since 1991 as a result of intensive conservation management, so the species is listed as Near Threatened. It is still dependent on intensive conservation efforts, so if these cease, or if trends reverse, then it would warrant immediate uplisting again."

Under the Act, species are listed as endangered or threatened. A species is added to the list when it is determined to be endangered or threatened because of any of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) the natural or manmade factors affecting its survival. Using these criteria, we published a final rule listing the piping plover as endangered in the Great Lakes watershed and threatened elsewhere within its range on December 11, 1985 (50 FR 50726). All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are considered threatened under Federal law. The ability of a species to migrate between breeding grounds and wintering grounds does not affect its listing status under the Act.

(11) *Comment:* Several commenters stated that CAHA does not provide much environmental value for the piping plover or is not essential to the existence of the species because CAHA is on the fringe of the species' wintering and breeding grounds. Many of these commenters argued that for these reasons critical habitat should not be designated at CAHA.

Our Response: For sites that were occupied at the time a species is listed, as these sites were, the criterion for designating sites as critical habitat is not whether sites are essential to prevent extinction; it is whether the sites provide the features essential for the conservation of the species and may require special management consideration or protection. The areas we have designated as critical habitat are areas which contain the physical and biological features essential to the conservation of the species. These areas contain sufficient features to support piping plover life processes and, therefore, provide environmental value for the piping plover. The designation of critical habitat for the wintering population of the piping plover includes habitats important for both wintering and migrating piping plovers.

Although CAHA is on the fringe of the species' wintering and breeding grounds, it is regularly used by piping plovers. We note that few piping plovers use the areas during the winter months (i.e., most sites have fewer that 20 birds during these months); however, these sites are very important for migrating piping plovers. As many as 100 birds have been recorded at sites designated as critical habitat on a single day during the migratory period.

(12) *Comment:* One commenter stated that the decline in the piping plover can be attributed to extinction and that extinction was a natural selection process at work. However, the commenter provided no data or other documentation that suggested the decline in piping plovers was attributed to extinction.

Our Response: Extinction is a natural process. Normally, new species develop through a process known as speciation at about the same rate that other species become extinct. However, because of air and water pollution, over-hunting, extensive deforestation, the loss of wetlands, and other human-induced impacts, extinctions are now occurring at a rate that far exceeds the speciation rate. Congress, on behalf of the American people, passed the Act to prevent extinctions facing many species of fish, wildlife, and plants. The purpose of the Act is to conserve endangered and threatened species and the ecosystems on which they depend as key components of America's heritage.

We published a final rule listing the piping plover as endangered and threatened under the Act on December 11, 1985 (50 FR 50726). While hunting is thought to have been a major factor

contributing to the decline of the piping plover in the late 19th and 20th centuries, shooting of the piping plover and other migratory birds has been prohibited since 1918 under the provisions of the Migratory Bird Treaty Act. Habitat loss and degradation, disturbance by humans and pets, and increased predation were cited as important causes of the downward trend that started in the late 1940s (50 FR 50726) and continues to the present time in some portions of the species' range. Several factors continue to contribute to the decline of the piping plover along the Atlantic Coast. These factors include:

- Commercial, residential, and recreational development, which have decreased the amount of coastal habitat available for piping plovers to nest and feed.
- Human disturbance, which often curtails breeding success. Foot and vehicular traffic may crush nests or young. Excessive disturbance may cause the parents to desert the nest, exposing eggs or chicks to the summer sun and predators. Interruption of feeding may stress juvenile birds during critical periods in their development or wintering birds trying to obtain food resources for energy reserves to complete long migrations.
- Pets, especially dogs, which may harass the birds.
- Developments near beaches, which provide food that attracts increased numbers of predators such as raccoons, skunks, and foxes. Domestic and feral cats are also very efficient predators of plover eggs and chicks.
- Storm-tides, which may inundate nests.

(13) *Comment:* Many commenters stated that it is not necessary to designate critical habitat at CAHA because populations of the piping plover have been stable or increasing in CAHA and overall for the last 20 years. Many argued that no more than 15 breeding pairs have been recorded at CAHA and less than 1 percent of the total population of piping plovers can be found using CAHA at any time. Many wondered how habitat can be critical to a species' survival when less than 1 percent of the population will ever nest, breed, feed, or rest at CAHA.

Our Response: In general, the breeding population of the piping plover at CAHA has declined since the species was listed under the Act; however, the breeding population has increased in recent years from the lowest number of breeding pairs recorded in 2002 and 2003 (two pairs each year). It is more difficult to ascertain the exact number of piping plovers using CAHA during the migration and wintering periods because regular and comprehensive surveys are not conducted during these times. However, CAHA is geographically important for piping plovers. Many of the piping plovers nesting north of CAHA along the Atlantic Coast will migrate through CAHA to the wintering grounds. Likewise, those same birds may use the habitats at CAHA during their return migration north to the breeding grounds. Piping plovers from the Great Lakes and possibly the Great Plains populations also use CAHA during these migrations (Pompei and Cuthbert 2004). One-day bird counts have recorded as many as 100 piping plovers at a single location within CAHA (NCWRC unpublished data).

In this designation, we identified areas along the coast that contain the PCEs and where occurrence data indicate a consistent use by wintering piping plovers. The essential features found on the designated areas may require special management consideration or protection. We believe that the designated areas are sufficient, and are needed to support piping plovers for recovery.

(14) *Comment*: One commenter asked about the need for further closures since piping plover numbers have more than doubled at CAHA since 2004. Another commenter stated that under the existing NPS management plan, piping plovers are witnessing an increase in number and moving toward the goal of recovery.

Our Response: We assume that the commenters are referring to increases in the number of breeding pairs of piping plovers at CAHA. Though this increase is real and represents positive and encouraging progress toward piping plover recovery, we note that this rule identifies and designates critical habitat for wintering piping plovers. As such, it is not intended to address issues related to the breeding season. We also note that closures are implemented by NPS under the Interim Strategy and Consent Decree; any additional closures are at the discretion of NPS.

(15) *Comment*: One commenter asked why the Service does not raise piping plovers in captivity like the bald eagle. Another commenter asked why the Service does not move the piping plover to PINWR since that area was established for wildlife.

Our Response: Piping plovers exhibit relatively high site fidelity, returning year after year to the same wintering sites on both the Atlantic and Gulf Coasts (*e.g.* , Johnson and Baldassarre 1988; USFWS 1996; Zonick and Ryan 1993). Furthermore, the purpose of the Act is to provide a means to protect the ecosystems upon which endangered and threatened species depend. Captive propagation is used in certain rare cases in which populations of the species in question are at extremely low numbers such that the species is very close to extinction and where the species' life history lends itself to captive propagation. Neither is the case with the piping plover. Instead, our general strategy for endangered species conservation is to work with others to ensure that the ecosystems upon which listed species depend are healthy enough to support recovered populations. We note again that this critical habitat designation is intended to address habitat for wintering piping plovers. As such, the reproductive capacity of the piping plover populations was not a factor in evaluating which areas we would designate as critical habitat.

(16) *Comment*: Three commenters asked the Service to consider closing areas once nests have been identified rather than closing the entire seashore.

Our Response: As stated above, this critical habitat designation is for the wintering population of the piping plover. These designations will have no effect on actions on CAHA, PINWR, or the State-owned islands related to the management of breeding piping plovers. Decisions regarding the management of areas used by breeding piping plovers on CAHA are under the exclusive purview of the NPS.

(17) *Comment*: A few commenters suggested that we consider controlling predators such as foxes, feral cats, and weasels that destroy piping plover eggs and chicks.

Our Response: See our response to comment 16 above.

(18) *Comment*: One commenter stated that storms have a significant impact on piping plover habitat and questioned why we did not consider the effect of large storms in our designation. The commenter referenced a decline in the breeding piping plover population at CAHA during the late 1990s when a series of large storm events affected the North Carolina coastline and an increase in breeding piping plovers since 2005 when no major storm events were recorded.

Our Response: This critical habitat designation is for the wintering population of the piping plover. The effect of storms on breeding piping plover numbers at CAHA was not a point considered in the designation of critical habitat for the wintering population of piping plovers.

Site-Specific Biological Comments

(19) *Comment*: We received numerous comments requesting that CAHA be excluded from critical habitat on the basis that PINWR was excluded in our June 12, 2006, proposed rule.

Our Response: In our May 15, 2008 revised proposed rule, we revised Unit 1 to include PINWR as proposed critical habitat (See our response to comment 3). We have determined that all areas identified as critical habitat on CAHA meet the definition of critical habitat and have designated it as such in this final rule. All areas of the revised units are located within the range of the population, were occupied at the time of listing and are considered currently occupied, and contain habitat features essential for the conservation of the wintering population of piping plover that require special management, as described in the "Primary Constituent Elements" section of our June 12, 2006, rule and the "Special Management Considerations or Protections" section of this rule.

(20) *Comment*: Several commenters stated that we failed to provide evidence that the increase in park visitation and ORV use was the reason for a decline in the piping plover population at CAHA.

Our Response: In our proposed designation, we made a correlation between increasing park visitation and ORV use and piping plover habitat use and population numbers at CAHA. Our use of these data in this context is intended to indicate that the critical habitat areas contain the physical and biological features essential to the conservation of the species and that the features may require special management and protections.

(21) *Comment*: With regard to pedestrian disturbances to piping plover, one commenter wrote that piping plovers are recovering nicely at Nantucket, Massachusetts, where the beach is closed to vehicles only, but not to pedestrians. Another commenter asked that the areas remain open to pedestrians, while one additional commenter stated that the literature on pedestrian disturbance lacks any statistics on mortality.

Our Response: As stated above, this critical habitat designation is for the wintering population of the piping plover. It will have no effect on actions on CAHA, PINWR, or the State-owned islands related to the management of breeding piping plovers. Furthermore, the designation of critical habitat for wintering piping plovers does not establish closures, refuges, or other restrictions on use or access to the designated areas. Decisions regarding pedestrian and vehicle access to portions of CAHA are under the purview of the NPS. We note that the Service and NPS previously conferred on the effects of the Interim Strategy on the proposed critical habitat units and determined that the Interim Strategy would not result in adverse modification of wintering piping plover critical habitat.

Section 7 Consultation

(22) *Comment*: Many commenters expressed concern or raised questions regarding the effects of critical habitat designation on the consultation process under section 7 of the Act, specifically the effect of designation on the replacement of the Herbert C. Bonner Bridge over Oregon Inlet and the repair of the North Carolina Highway 12 transportation corridor. Many also expressed concern for implementation of emergency services (*e.g.* , ferry service, power/electrical systems services from Hatteras Island to Ocracoke Island) to the islands.

Our Response: With regard to the replacement of the Herbert C. Bonner Bridge over Oregon Inlet, we prepared a biological and conference opinion that concludes replacement of the bridge and the transportation corridor is not likely to destroy or adversely modify proposed critical habitat for the wintering population of the piping plover. We also note that critical habitat for wintering piping plovers has been designated and in place at 119 units along the Atlantic and Gulf coasts since 2001 (n.b., 142 units designated before courts vacated 4 units in North Carolina in 2004, and 19 units in Texas in 2006). During that time, to the best of our knowledge, no Federal projects have been delayed or substantially altered by the presence of designated critical habitat.

With regard to emergency situations, the Service has provisions under the Act that recognize that an emergency (natural disaster or other calamity) may require expedited coordination and/or consultation. Where emergency actions are required that may affect listed species and/or critical habitats, consultations are handled with as much understanding of the action agency's critical mission as possible while ensuring that anticipated actions will not violate the Act. Emergency consultation procedures allow action agencies to incorporate endangered species concerns into their actions during the response to an emergency. For example, the initial stages of emergency consultations usually are done by telephone or facsimile, followed by written correspondence from the Service. During this initial contact, or soon thereafter, the Service offers recommendations to minimize the effects of the emergency response action on listed species or their critical habitat. This written record provides the requesting agency with a formal document reminding them of the commitments made during the initial step in emergency consultation. As soon as practicable after the emergency is under control, the action agency initiates formal consultation with the Service if listed species or critical habitat have been adversely affected. This process is designed to provide protective measures for listed species and their habitats and will not prevent necessary action when human life is at stake.

(23) *Comment:* Many commenters referenced the inclusion of emergent sandbars in the designation of critical habitat and are concerned that they have the potential to stop or delay dredging to maintain critical channels in Oregon, Hatteras, and Ocracoke Inlets. They stated that closed channels would affect commercial fishing vessels, charter fishing vessels, and recreational use at these three inlets, as well as ferry traffic to Ocracoke Island. One commenter specifically asked the Service to consider the impact of new inlets, erosion, and sand shifting relative to their impacts on commerce and safety and suggested that any new rules should not significantly delay the maintenance of current inlets and channels used by commercial fishermen or the ferry system.

Our Response: The U.S. Army Corps of Engineers (Corps) is the Federal agency responsible for maintaining navigational channels, and as such, they are required to ensure that their actions do not jeopardize the continued existence of listed species or adversely modify critical habitat for listed species. Should channels be obstructed by sediment or emergent sandbars, the Corps may consult with the Service in order to determine how best to provide access to these areas while minimizing effects to piping plovers or their critical habitat. Again, we note that critical habitat for wintering piping plovers has been designated and in place for 119 units since 2001, and that during that time, to the best of our knowledge, no Federal projects have been delayed or substantially altered by the presence of designated critical habitat.

Public Involvement/Coordination

(24) *Comment:* Several commenters stated that the June 20, 2007, public hearing was poorly advertised and unknown to a majority of the affected public entities and local businesses.

One organization requested a second public hearing on Ocracoke Island.

Our Response: The June 20, 2007, public hearing was announced in a press release and in the notice of availability published in the **Federal Register** on May 31, 2007 (72 FR 30326). The press release was submitted to 14 newspapers in North Carolina and Virginia, Federal and State representatives, Dare and Hyde County commissioners, other Federal and State agencies, conservation organizations and other non-governmental organizations, special interest groups, and other interested parties. The Service also purchased advertisements 10 days prior to the public hearing in the following newspapers: *Outer Banks Sentinel, Coastland Times,* and *News and Observer.* In addition, the announcement for the public hearing was provided on the Service's Raleigh Ecological Services Field Office Web site beginning May 31, 2007.

Section 4(b)(5) of the Endangered Species Act states, "[w]ith respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3) [proposed or final rule to list a species as endangered or threatened, or proposed or final rule to designate any habitat of such species to be critical habitat], the Secretary shall * * * promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice." We have met this requirement.

(25) *Comment:* Over the course of the rulemaking process and the three public comment periods, a few commenters wrote to request that each public comment period be extended for an additional 6 months.

Our Response: We requested written comments from the public on the proposed designation of critical habitat for the wintering population of the piping plover during three comment periods totaling 150 days. The first comment period, associated with the publication of the proposed rule (71 FR 33703), opened on June 12, 2006, and closed on August 11, 2006. We also requested comments on the proposed critical habitat designation, associated draft economic analysis, and draft environmental assessment during a comment period that opened May 31, 2007, and closed on July 30, 2007 (72 FR 30326). During this comment period, we also held a public hearing on June 20, 2007. Finally, we requested comments on the revised proposed critical habitat designation and associated revised draft economic analysis and environmental assessment during a comment period that opened May 15, 2008, and closed June 16, 2008 (73 FR 28084). We have provided ample time for the public to comment on the proposed rules and associated draft economic analysis and draft environmental assessment.

(26) *Comment:* A few commenters wrote with regard to the public review process. Specifically, during the 2006 public comment period, a commenter asked for information about submitting comments on the proposed designation electronically. Another commenter requested the Service provide access to reports and other information about the critical habitat designation in both electronic (online) and printed forms. One other commenter requested copies of all public comments received.

Our Response: During the first two comment periods (2006 and 2007), the Service accepted comments in either hard copy or electronic format. During the 2008 comment period, commenters were allowed to provide comments electronically through the Web site *http://www.regulations.gov.* Information regarding the submission of public comments was provided in the **Federal Register** at the opening of each comment period. All documents associated with the designation of critical habitat were posted on the Service's Raleigh Ecological Services Field Office Web site. A complete copy of the supporting record, including reports used to make our decisions, public comments received, and other information relevant to this critical habitat designation, are on file in the Raleigh Ecological Services Field Office and available for public review by appointment.

Best Information/Science

(27) *Comment:* Several commenters were concerned that the Service was designating critical habitat without using the current and best available science, stating that insufficient justification was provided in the documents, that no current scientific information was provided which proves that the proposed areas are essential to the recovery of the piping plover, and that we ignored some current studies which suggest that the piping plover has made significant strides towards recovery. One commenter specifically wrote that recent studies were ill conceived and did not take long range numbers into respect. Another commenter wrote that critical habitat designation is not needed and that the Service failed to justify the designation with contemporary peer-reviewed science.

Our Response: The commenters did not provide any additional scientific information on which they based their comments. As required by the Act, we used the best available scientific information on which to base our decision. In this way, we identified areas that contain the PCEs, where occurrence data indicate a consistent use by piping plovers, and where the essential features of the areas may require special management consideration or protection to ensure their contribution to the species' recovery. Thus, we believe that the designated areas are sufficient, are needed to support the conservation and recovery of the piping plover, are based on the best available science, and meet the definition of occupied critical habitat. As a result, we have not designated areas which were not occupied at the time of listing and thus would have required a determination that designation of those areas is essential to the conservation of the species.

(28) *Comment:* Many commenters urged the implementation of a balanced process for critical habitat designation that takes recreational anglers, ORV users, and local sport fishing and related businesses into consideration. They further stated that it is important that the process of piping plover critical habitat designation rely on a balanced mix of biological and economic information and provide solid evidence of a conservation benefit.

Our Response: Section 4(b)(2) of the Act states that critical habitat shall be designated and revised on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of including that area in critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion as to which factors and how much weight will be given to any factor.

With regard to economic impacts, the primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the wintering population of the piping plover. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding

particular areas from the designation outweigh the benefits of including those areas in the designation and assessing whether the effects of the designation might unduly burden a particular group or economic sector. Under section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. This process ensures a balanced approach to the designation of critical habitat. In other words, in designating critical habitat we were required to consider economic and other relevant impacts, and we did so (see "Application of Section 4(b)(2)" below). As a result, we did not exclude any areas under section 4(b)(2) of the Act in this final rule.

Definition of Critical Habitat

(29) *Comment:* Several commenters questioned why critical habitat is designated in otherwise protected areas, such as State lands, national seashores, or refuges. We also received many comments questioning the need for the critical habitat designation given the protections to the piping plover provided by the NPS's Interim Strategy and the on-going Off-Road (ORV) Vehicle Management Plan rulemaking process. Conversely, several commenters expressed concern over the adequacy of such plans in protecting the piping plover and its habitats.

Our Response: Although lands managed by the State, the NPS, and the Service have management plans in place to protect the piping plover and its habitat, we have determined, as stated several times within this rule, that the essential features require special management and, therefore, meet the definition of critical habitat.

(30) *Comment:* Several commenters stated that the piping plover already receives substantial protections, such as under sections 7 and 9 of the Act, and questioned why additional protection was necessary.

Our Response: Section 4(a)(3) of the Act requires that critical habitat be designated for species listed as threatened or endangered unless such designation would not be prudent. In our proposed rule (71 FR 33703) we published our determination that designating critical habitat would be prudent in that it would not increase the degree of threat from human activity and that it would benefit the species. Therefore, we are proceeding with the designation.

Effects of Designation

(31) *Comment:* Most of the comments that we received in opposition to the designation of critical habitat were based on the desire for the beaches to remain open to ORV and pedestrian use for the purposes of fishing, collecting seashells, sunbathing, and other forms of beach-related recreation. Some commenters said that CAHA was designated as a "Recreational Area" and, therefore, should remain open for recreational use. One commenter believes that if the beaches are closed to ORVs, then tourists will park in front of driveways, use private boardwalks, trespass on private property, and walk across dunes, destroying them. Another commenter suggested that the Service or the NPS continue fencing individual nests as they have done in the past.

Our Response: The closing of the beaches to ORV and pedestrian use is part of the NPS's Interim Strategy and the April 30, 2008, Consent Decree. The breeding and wintering closures implemented under the Interim Strategy and Consent Decree are based on the location of nesting sites and location of chicks (breeding closures) and foraging areas (wintering closures). Critical habitat is based on areas which the Service determined to contain physical or biological habitat features needed for the conservation of the piping plover. Closures associated with implementation of the Interim Strategy or the Consent Decree would occur regardless of our critical habitat designation. The designation of critical habitat for wintering piping plovers does not establish closures, refuges, or other restrictions on use or access to the designated areas.

Decisions regarding pedestrian and vehicle access to portions of CAHA and other management strategies are under the purview of the NPS. We note that the Service and NPS previously conferred on the effects of the Interim Strategy on the proposed critical habitat units and determined that the Interim Strategy would not result in adverse modification of wintering piping plover critical habitat.

(32) *Comment:* Many comments we received recommended the Service find a balance between piping plover protection and recreational access. One commenter wrote that the use of ORV corridors has worked in the past and continues to be a viable option for coexistence between man and nature.

Our Response: We agree that piping plovers and people can co-exist in wintering areas. The NPS is responsible for the management of endangered and threatened wildlife on CAHA, and makes decisions regarding the protection of the wildlife and their habitats necessary for their survival and recovery. The Service has provided and will continue to provide technical assistance to the NPS in such matters of endangered and threatened wildlife and habitat management. However, as explained in this final rule, the Act requires that we designate critical habitat for listed species unless we find that designating critical habitat is not prudent or determinable. In addition, the fact that people use areas used by plovers does not provide sufficient justification for not designating critical habitat.

Economics

(33) *Comment:* Many of the public comments raised issues related to management measures that are not directly related to the current critical habitat designation (e.g., NPS Interim Strategy and the Consent Decree). For example, one commenter noted that the Consent Decree has caused layoffs and trip cancellations which have resulted in economic impacts to local residents that are not considered in the draft economic analysis (DEA).

Our Response: The Service recognizes that a high level of public concern exists regarding future ORV management at CAHA, including recent changes to that management under the Consent Decree. However, it is the role of this economic analysis to distinguish between economic impacts resulting from ongoing events and those that may occur due to critical habitat (see section 1.4 of the final economic analysis (FEA)). That is, this analysis focuses on the incremental impact of the designation-impacts that would not occur absent critical habitat. As stated in section 2.3.3 of the FEA, which discusses the low-end scenario, the NPS does not anticipate changing its management of CAHA due to the designation. Additional discussion of the Consent Decree can be found in section 2.2.1.2 of the FEA.

(34) *Comment:* One commenter stated that the potential benefits of the critical habitat designation should be quantified.

Our Response: Section 1.5 of the FEA discusses possible benefits of the designation. Based on the best information available, it is not possible to estimate a potential increase in other types of visitation that might result from a decrease in ORV traffic (i.e., there are no available data models to predict how non-ORV visitation will change in response to changes in ORV visitation). The NPS has not observed significant trends in visitation related to past management closures, and the NPS does not anticipate substantially increased visitation to the park resulting from management closures (see section 2.3.1.2 of the FEA).

(35) *Comment:* Several commenters believed that the 20-year timeframe used in the draft economic analysis (DEA) is too long, stating that it is impossible to estimate impacts out over 20 years.

Our Response: To produce credible results, the FEA must consider impacts that are reasonably foreseeable. Based on available data, the Service believes that the impacts presented are reasonably foreseeable (see section 1.6 of the FEA).

(36) *Comment:* One commenter stated that the DEA does not accurately apply a baseline approach and instead includes all impacts of conservation activities since the listing of the species in 1985.

Our Response: The commenter appears to refer to section 1.6, which states that the DEA "estimates economic impacts to activities from 1985 (year of the species' final listing) to 2026." However, the results presented in section 2 of the FEA do not include any past impacts resulting from wintering piping plover conservation activities, stating "this analysis does not attribute the impacts of past closures to critical habitat." Section 3 does report some past administrative costs based on the assumption that, due to the previous critical habitat, NPS either was required, or believed it would be required, to conduct a consultation under section 7 of the Act on its management activities.

(37) *Comment:* Several commenters stated that the DEA failed to conduct a survey of local businesses.

Our Response: A survey regarding the specific potential effects of management closures on individual businesses is beyond the scope of this analysis. The DEA used best available data on such factors as the size and annual sales of businesses collected by Dun & Bradstreet.

(38) *Comment:* Several commenters noted the high level of uncertainty inherent in both estimated impacts and forecasts of future management. Several commenters stated that the designation of critical habitat will not necessarily lead to a total closure of designated areas, and that closure of certain sections of the beach is likely to simply shift ORV activity to other open areas. Other commenters stated that management of ORV use is likely to change in the future due to changes in NPS staff.

Our Response: The FEA acknowledges uncertainty by providing a range of impacts based on two scenarios (see section 2.3.1). The low-end scenario assumes that no trips will be lost either because NPS will not close additional areas of the beach to ORV use, or because ORV users will move their recreational activities to other areas of the park without diminishing the value they hold for trips to the park. The high-end scenario assumes that all ORV trips to the designated areas are lost, and that the value of these lost trips is a cost of the rulemaking.

(39) *Comment:* One commenter stated that ORV driving at CAHA is currently "illegal," and thus no impacts associated with ORV recreational activity should be forecast.

Our Response: Whether or not ORV activity is legal, there is no question that it currently takes place at CAHA. Moreover, the court in Cape Hatteras Access Preservation Alliance ordered the Service to analyze the possible economic impacts of designation on ORV recreation. Accordingly, the DEA and FEA both address these impacts.

(40) *Comment:* Several commenters noted that the total park acreage is not accessible to ORV use. Rather only 10 percent of the park is open to ORV use due to various seasonal, safety, and species-related closures.

Our Response: Based on discussions with NPS, the total area available for ORV use appears to be highly variable and dependent on a number of factors, including weather events and species movement (see section 2.3.1.2 of the FEA). Given this high of level of variability, it is difficult to estimate the acreage available for ORV use at any given time. Therefore, in the absence of fixed closures, the FEA assumes that any acre of the park may be available for ORV use at any given time.

(41) *Comment:* Many of the commenters stated that the August 2003 Vogelsong visitor use study, conducted for CAHA and cited in the DEA, does not provide a scientific basis for estimating the level of ORV use in CAHA. The commenters are concerned that critical habitat designation will reduce public access to CAHA beaches, affecting ORV use and overall beach visitation, and that the Vogelsong study understates such visitation. Several commenters stated that they believe the Vogelsong visitor use study used in section 2 of the DEA was inaccurate and provided low estimates of ORV visitors to the park. The commenters suggested an estimate of ORV-related trips based on a one-time count of 3,000 ORV users over the Memorial Day weekend.

Our Response: The weaknesses of the Vogelsong visitor use study are discussed in section 2.3.1 of the FEA. The Vogelsong study also recently underwent peer review. This review found that there was "insufficient detail provided on the sampling method and analysis to * * * reliably determine the extent to which CAHA is used by ORVs." However, one peer reviewer stated that, "if the Vogelsong data are to be used to estimate annual ORV use and the economic impact of ORV use at CAHA * * * a matrix of estimates of total park visitation and ORV use should be presented to reflect the imprecise nature of these estimates," which the FEA does in section 2.3.2. A 2005 study by Neal was also peer-reviewed, and found to suffer from a number of other flaws (for example, "quality control in the survey sample was lacking, and coverage of relevant populations fell short of that needed to understand the effects of limiting ORV traffic"), which implies it was deemed equally problematic. Despite the issues raised in the peer review, the Service believes that the results contained in the Vogelsong study represent the best available information to support an understanding of the potential economic impacts of this proposed designation, and that the manner in which the information from this study are applied (i.e., use of ranges) represents a reasonable application of the study consistent with the concerns raised in the peer review process.

(42) *Comment:* Several commenters noted that the DEA did not include the 29 percent of visitors to CAHA who said they would not return to the park if the beaches were closed to ORV use.

Our Response: This percentage was inadvertently left out of the DEA. The FEA estimates high-end impacts based on an assumption that as many as 61.4 percent of ORV trips to designated areas may be lost (see section 2.3.1.2 of the DEA).

(43) *Comment:* One commenter suggested that the DEA does not explain the assumption that 32.4 percent of all trips to designated areas would be lost. In addition, the commenter stated that this percentage appears to overestimate lost visitation given that it was based on users' reactions to a total closure of all beaches.

Our Response: The Vogelsong study reports that 32.4 percent of all visitors would visit less often if ORVs were not allowed on the beach and that 29.0 percent would not visit at all. In the absence of a site-specific model to predict how users will react to changes in ORV management, this analysis assumes that these expressed opinions reflect how users would react to potential closures. Because this percentage may represent an overestimate given that areas of the park will remain open to ORV use, the FEA presents a possible range of impacts.

(44) *Comment:* One commenter noted that Vogelsong states that ORV visitors

represent 7.3 to 11 percent of all visitors to CAHA while the DEA uses an estimate of 2.7 to 4.0 percent.

Our Response: As discussed in section 2.3 of the DEA, the DEA develops its estimated impacts based on the number of actual ORVs and not based on the number of visitors participating in ORV recreation. The 7.3 to 11.0 percent cited in the comment estimates the number of ORV visitors (i.e., the number of ORVs multiplied by an average number of 2.5 people per vehicle), while the 2.7 to 4.0 percent used in the DEA measures the number of actual ORVs.

(45) *Comment:* One commenter noted that the Vogelsong study was conducted from 2001 to 2002, and thus the percentage of ORV visitors to CAHA should be based on visitation during that period rather than visitation for 2003.

Our Response: According to CAHA statistics, average visitation between 2001 and 2002 is estimated at 2,758,392. Using that visitation estimate and Vogelsong's estimated 73,526 to 110,288 ORVs, ORVs represent approximately 2.7 to 4.0 percent of all visitors to the park. This is clarified in the FEA (section 2.3.1.1) to reference the correct study years.

(46) *Comment:* One commenter suggested that using an estimated number of ORVs per acre is a "strange metric" on which to base estimated losses in ORV user days.

Our Response: Without a site-specific model, the DEA assumes that visitation is a function of the area available for recreation. Specifically, as outlined in section 2, the FEA assumes that the reduction in visitation is directly proportional to the percentage reduction in area available for recreation. The DEA thus distributes total annual ORV visits to the park across the total acreage of CAHA to develop an estimated number of ORV visits to each of the designated areas.

(47) *Comment:* One commenter suggested that projecting visitation rates based on North Carolina population trends may over-estimate the number of future visitors.

Our Response: The DEA projects visitation forward using the slope of annual park visitation from 1990–2000. That is, it assumes CAHA visitation will continue to grow at the same rate over the next 20 years as it did from 1990 to 2000 (see section 2.3.1.1 of the DEA). To determine if this assumption is reasonable, the DEA also examines population trends in North Carolina for the same periods (i.e., 1990 to 2000 and the next 20 years). Given that the North Carolina population growth rates were similar for the two periods and that the majority of visitors live in North Carolina, the DEA assumes that it is reasonable to project future visitation based on past visitation trends.

(48) *Comment:* One commenter stated that the DEA does not anticipate additional closures because of the Consent Decree.

Our Response: The FEA includes a discussion of the Consent Decree in section 2.2.1.2. Due to uncertainty about future management including the impact of the Consent Decree, the FEA provides a range of estimated impacts based on two scenarios. In the first scenario, it estimates the additional area that may be subject to closure, and estimates the number of trips to these areas that may potentially be lost (see section 2.3.2). In the second scenario, it assumes that either no additional beach closures are implemented, or that additional beach closures do not result in lost trips to CAHA (see section 2.3.3).

(49) *Comment:* One commenter stated that it is inappropriate to connect increased park visitation and ORV use with decreased population.

Our Response: As shown in exhibit 2–4 of the FEA, the population of North Carolina is projected to increase, and the DEA assumes that this increased population will result in an increase in visitation to the park (see section 2.3.1.1).

(50) *Comment:* One commenter stated that estimates of ORVs per acre within CAHA used in the DEA are based on unsubstantiated assumptions, assumptions for which there is no statistical support. Specifically, the commenter noted that the DEA assumes there is a direct relationship between the number of ORV trips and the level of park visitation. However, the DEA does not provide a coefficient of correlation or the results of a regression analysis to demonstrate that such a direct relationship exists.

Our Response: The commenter is correct in noting that the DEA assumes a linear relationship between park visitation and ORV use, and that there is no statistical model on which this assumption is based (see section 2.3.1.1). ORV users are a subset of visitors to the park. The DEA assumes, based on visitor use studies, that ORV use represents a fairly constant percentage of visitation to the park (see section 2.3.1.1 of the FEA). Data to develop a formal statistical relationship between overall visitation and ORV use are not available.

(51) *Comment:* One commenter stated that a reduction in accessible areas increases congestion in open areas, and thus also may affect the welfare of visitors to those open areas. Therefore, a 15 percent reduction in available area may result in a more than 15 percent decrease in visitors.

Our Response: As outlined in section 2.3.1 of the FEA, the analysis assumes that the reduction in visitation is directly proportional to the percentage reduction in area available for recreation. A literature review undertaken for another species suggests that this is a reasonable approach to estimating impacts associated with a partial site closure (see J.R. DeShazo, "The Effects of Closing a Portion of a Recreational Site on Visitation and Social Welfare: A Literature Review"). This approach is further outlined in section 2.2.2 of the FEA.

(52) *Comment:* One commenter suggested that it may not be reasonable to assume that most fishermen access fishing sites via ORVs, and therefore welfare losses associated with recreational fishing should not be included in the DEA.

Our Response: Based on discussions with NPS and other public comments received, many fishermen use ORVs as a means of accessing popular fishing sites. Therefore, the DEA estimates potential welfare losses associated with a decrease in recreational fishing opportunities due to a loss of access, as discussed in section 2.3.1.3 of the DEA.

(53) *Comment:* One commenter stated that the DEA failed to consider potential impacts on recreational fishing.

Our Response: As stated in section 2.3.1.3, the DEA includes potential welfare losses associated with losses in recreational fishing opportunities, estimating the welfare value of a recreational fishing day at $212.20. This welfare value is used to develop an estimate of total welfare losses that may result from the critical habitat designation.

(54) *Comment:* Several commenters stated that the DEA does not consider the potential effects of critical habitat designation on the Bonner Bridge replacement project.

Our Response: See our response to comment 22. The anticipated administrative costs of consulting on the Bonner Bridge project are included in section 4 of the FEA.

(55) *Comment:* One commenter raised the concern that the DEA does not consider the potential effects of critical habitat designation on the dredging of sandbars, and the subsequent impact of this change in dredging on ferry service. The commenter stated that if ferry service to Ocracoke Island were to stop, there would be significant economic impacts to its residents.

Our Response: Section 3.1 of the DEA discusses potential impacts on dredging. As noted in that section of the DEA, dredging activity is not anticipated to be affected by the designation; therefore, ferry service also would not be affected. However, there may be an increased rate of consultation for dredging projects, which is considered in section 4 of the FEA.

(56) *Comment:* One commenter stated that it seems that the designation of critical habitat for the piping plover would eventually lead to a direct conflict with erosion control efforts, and that potential impacts on erosion control are not considered in the DEA.

Our Response: As discussed in section 3.3 of the FEA, other activities, including erosion control, taking place within CAHA are managed under the Interim Strategy and the Consent Decree. No changes to this management are anticipated as a result of the critical habitat designation; therefore, no incremental impacts associated with erosion control are estimated.

(57) *Comment:* One commenter was concerned that the DEA underestimated the economic impacts of critical habitat designation by not considering impacts to Federal agencies. Specifically, the commenter stated that the DEA does not include the costs to the NPS of reinitiating a 2006 formal consultation following critical habitat designation.

Our Response: Impacts to Federal agencies resulting from the critical habitat designation are expected to consist primarily of an increased rate of consultation under section 7 of the Act (see section 4 of the DEA). Administrative costs associated with this increased rate of consultation are estimated in that section of the analysis. This analysis assumes that the frequency of section 7 consultations related to the plover will increase in the future, and estimates future administrative costs based on that assumed increase in consultation rate (see exhibit 4–2). The possible reinitiatation of the 2006 formal consultation, as well as possible consultations on the future ORV management plan, are included in this projected increase. See also our responses to comments 22 and 23 above.

(58) *Comment:* Several commenters suggested that the estimated trip expenditures used in the DEA seemed low.

Our Response: The trip expenditures used in the DEA were obtained from the Vogelsong visitor use study and appear to be reasonably in line with other available estimates of beach trip expenditures, as discussed in section 2.3.1.3 of the DEA. Nonetheless, the FEA includes additional detail on a range of possible expenditures based on the comments received.

(59) *Comment:* Several commenters stated that the DEA does not consider the closure of additional beaches due to the Consent Decree. The commenters are concerned that additional beach closures will reduce the number of visitors and thus reduce the amount of expenditures on vacation rentals and other services.

Our Response: Discussion of the Consent Decree can be found in section 2.2.1.2 of the FEA. These additional closures are being implemented by NPS pursuant to the Consent Decree; that is, these closures are considered baseline to this analysis in that they would be expected to occur regardless of the designation. In fact, actions taken under the Consent Decree may lead to a reduction in the area that could become subject to closure under the critical habitat designation, and thereby reduce impacts to less than those forecast in the DEA. That is, to the extent that actions taken by the NPS under the Consent Decree lead to beach closures, the extent of closures due solely to the designation of critical habitat may be reduced. Note that, given the high level of uncertainty regarding the long-term impact of the Consent Decree, this analysis continues to consider the potential impact of closures to these areas.

(60) *Comment:* Several commenters stated that potential impacts to small businesses resulting from possible closures could be greater than discussed in appendix A of the DEA. Specifically, one commenter stated that the DEA does not consider impacts to businesses on Ocracoke Island. These businesses are reporting income reductions of 30 to 50 percent following management changes taken by the NPS in response to the Consent Decree.

Our Response: As noted above, it is important to distinguish between impacts resulting from actions taken pursuant to the Consent Decree, which are considered as baseline to this analysis, because these impacts are assumed to occur absent a designation of critical habitat. While direct impacts of actions taken pursuant to the Consent Decree are not estimated in this analysis, income reductions that have been experienced following these management changes may provide information regarding how small businesses may be affected in the event of additional beach closures. A revised appendix A includes a discussion of these reductions in income and potential factors that may cause these reductions (see section A.1.1). It assumes that these impacts would be spread across a variety of industries and a number of businesses. A survey of specific potential effects of management closures on individual businesses is beyond the scope of this analysis.

(61) *Comment:* One commenter noted that the majority of business in the Outer Banks is conducted during the summer peak season and is not spread out evenly throughout the year.

Our Response: The DEA takes into account the seasonality of visitation when forecasting the number of trips (see section 2.3.1.2 of the DEA). However, sales data are not available at a sufficient level of detail to allow for the development of the estimated impact on small businesses by season, nor were such data received during the public comment period.

(62) *Comment:* One commenter stated that the small business analysis is insufficient. Specifically, this commenter believes that impacts to small businesses will occur within a smaller geographic area, and, therefore, a smaller number of businesses would be affected (approximately 370 businesses across eight zip codes rather than the approximately 700 businesses in two counties considered in the DEA).

Our Response: To estimate the number of small businesses, appendix A of the FEA uses best available data on such factors as the size and annual sales of businesses in the area, as collected by Dun & Bradstreet. These data are available on a county-wide basis. In total, the analysis considers impacts on more than 700 small entities. Depending on where visitors to the park spend money on goods and services, it is possible that the projected impacts could be felt over a smaller geographic area, as suggested in the comments. To address this concern, the FEA incorporates an analysis of the 370 businesses cited in the comment, and estimates the magnitude of potential impacts on these businesses.

Other Comments

(63) *Comment:* Several commenters suggested that recreational access to CAHA via ORVs be authorized using a permit and education program. Similarly, at least one commenter suggested that information on proper beach etiquette be provided when a fishing license is purchased. One commenter expanded on that idea by suggesting that the NCWRC should withhold saltwater fishing licenses to those who violate habitat restrictions.

Our Response: Decisions regarding the management of recreational activities at CAHA are the exclusive purview of the NPS. Similarly, any program associated with the issuance of

a saltwater fishing license or the potential revocation of such a license would require the authorization of the NCWRC. The Service is willing to provide technical assistance on matters associated with the implementation of an education and permit program as it relates to endangered and threatened species and their habitats, but we are not authorized to implement or enforce such programs at CAHA or in association with the State of North Carolina's saltwater fishing license program.

(64) *Comment:* One commenter suggested that the Service start a volunteer corps to monitor bird nesting areas and to ensure that the piping plovers are protected from other animals and humans.

Our Response: The NPS is responsible for the management of endangered and threatened wildlife parks and seashores throughout the United States. At CAHA, biologists currently monitor nesting and wintering shorebirds, including the piping plover, and make decisions regarding the protection of the birds and the habitat necessary for their survival and recovery. Outside of CAHA and Cape Lookout National Seashore, the NCWRC manages sites for endangered and threatened species and other imperiled shorebird and waterbird species. The Service works closely with these agencies in the management and protection of these species, including assisting the agencies with funds, volunteers, and information. We recommend that anyone interested in volunteering to assist in the protection of endangered or threatened species contact the appropriate landmanager for additional information and opportunities. For NPS properties, send inquiries on volunteering to: Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, NC 27954; or Cape Lookout National Seashore, 131 Charles Street, Harkers Island, NC 28531. For endangered and threatened species volunteering opportunities throughout the rest of the State of North Carolina, we recommend sending inquiries to: North Carolina Wildlife Resources Commission, NCSU Centennial Campus, 1751 Varsity Drive, Raleigh, NC 27606.

(65) *Comment:* One commenter wrote "the real threat to the piping plover is people and developers. Real estate developers are putting people on the sand where the plovers used to live." Another person wrote that construction and development on those islands has a bigger impact on the environment than the fishermen.

Our Response: We have noted these comments.

Summary of Changes From Proposed Rule

In preparing the final critical habitat designation for the wintering population of the piping plover in North Carolina, we reviewed and considered comments from the public and peer reviewers on the June 12, 2006, proposed designation of critical habitat (71 FR 33703) and the May 31, 2007, draft economic analysis and environmental assessment (72 FR 30326), as well as the May 15, 2008, revised critical habitat proposal and associated draft economic analysis and environmental assessment (73 FR 28084). As a result, our final designation includes all areas proposed (and revised) as critical habitat for the wintering population of the piping plover in North Carolina (i.e., units NC–1, NC–2, NC–4, and NC–5), totaling approximately 2,043 acres (ac) (827 hectares (ha)).

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

(a) Essential to the conservation of the species and

(b) 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, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain the physical and biological features that are essential to the conservation of the species, and be included only if those features may require special management consideration or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found those physical and biological features essential to the conservation of the species). Under the Act, we can designate critical habitat in areas outside of the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources

may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the Federal agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to designate as critical habitat, we consider those physical and biological features essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species.

These PCEs include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We derive the specific PCEs required for the wintering population of the piping plover from the biological needs of the piping plover as described in the Critical Habitat section of the original rule to designate critical habitat for the wintering population of the piping plover published in the **Federal Register** on July 10, 2001 (66 FR 36038). In its November 1, 2004, opinion (*Cape Hatteras Access Preservation Alliance* v. *U.S. Department of Interior* (344 F. Supp. 2d 108 (D.D.C. 2004)), the court did not invalidate the PCEs identified in our original rule. In this final rule, the PCEs differ in format from the PCEs identified in the proposed revised critical habitat designation we published on June 12, 2006 (71 FR 33703), but match the format of the PCEs identified in the proposed revised critical habitat designation for the wintering population of the piping plover in Texas, which we published on May 20, 2008 (73 FR 29293). We reformatted the PCEs to provide additional clarity and did not alter the content of the PCEs identified in our original rule (66 FR 36038).

Under the Act and its implementing regulations, we are required to identify the known physical and biological features within the geographical area known to be occupied at the time of listing that are essential to the conservation of the piping plover and which may require special management considerations or protections. The physical and biological features are those PCEs laid out in a specific spatial arrangement and quantity to be essential to the conservation of the species. All areas designated as critical habitat for the wintering population of the piping plover are occupied, are within the species' historic geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that wintering piping plover's PCEs are the habitat components that support foraging, roosting, and sheltering and the physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements are:

(1) Intertidal sand beaches (including sand flats) or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation for feeding. In some cases, these flats may be covered or partially covered by a mat of blue-green algae.

(2) Unvegetated or sparsely vegetated sand, mud, or algal flats above annual high tide for roosting. Such sites may have debris or detritus and may have micro-topographic relief (less than 20 in (50 cm) above substrate surface) offering refuge from high winds and cold weather.

(3) Surf-cast algae for feeding.

(4) Sparsely vegetated backbeach, which is the beach area above mean high tide seaward of the dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road. Backbeach is used by plovers for roosting and refuge during storms.

(5) Spits, especially sand, running into water for foraging and roosting.

(6) Salterns, or bare sand flats in the center of mangrove ecosystems that are found above mean high water and are only irregularly flushed with sea water.

(7) Unvegetated washover areas with little or no topographic relief for feeding and roosting. Washover areas are formed and maintained by the action of hurricanes, storm surges, or other extreme wave actions.

(8) Natural conditions of sparse vegetation and little or no topographic relief mimicked in artificial habitat types (e.g., dredge spoil sites).

This final designation is designed for the conservation of PCEs necessary to support the life history functions that were the basis for the proposal and the areas containing those PCEs in the appropriate quantity and spatial arrangement essential for the conservation of the species. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas occupied by the species at the time of listing contain the features that are essential to the conservation of the species, and whether these features may require special management consideration or protections. As stated in the July 10, 2001, final listing rule (66 FR 36038), activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the value of critical habitat for both the survival and recovery of the piping plover is appreciably reduced. More specifically,

such activities could eliminate or reduce the habitat necessary for foraging by eliminating or reducing the piping plovers' prey base; destroying or removing available upland habitats necessary for protection of the birds during storms or other harsh environmental conditions; increasing the amount of vegetation to levels that make foraging or roosting habitats unsuitable; increasing recreational activities to such an extent that the amount of available undisturbed foraging or rooting habitat is reduced, with direct or cumulative adverse effects to individuals and completion of their life cycles. Examples of actions that have effects on wintering piping plover habitats include, but are not limited to:

(1) Dredging and dredge spoil placement, and associated activities including staging of equipment and materials;

(2) Seismic exploration;

(3) Construction and installation of facilities, pipelines, and roads associated with oil and gas development;

(4) Oil and other hazardous material spills and cleanup;

(5) Construction of dwellings, roads, marinas, and other structures, and associated activities including staging of equipment and materials;

(6) Beach nourishment, cleaning, and stabilization (e.g., construction and maintenance of jetties and groins, planting of vegetation, and placement of dune fences);

(7) Certain types and levels of recreational activities, such as vehicular activity that impact the substrate, resulting in reduced prey or disturbance to the species;

(8) Stormwater and wastewater discharge from communities;

(9) Sale, exchange, or lease that may result in the habitat being altered or degraded of Federal land that contains suitable habitat;

(10) Marsh and coastal restoration, particularly restoration of barrier islands and other barrier shorelines;

(11) Military missions; and

(12) Bridge or culvert construction, reconstruction, and stabilization.

These activities may destroy or adversely modify critical habitat by:

(1) Significantly and detrimentally altering the hydrology of tidal flats;

(2) Significantly and detrimentally altering inputs of sediment and nutrients necessary for the maintenance of geomorphic and biologic processes that insure appropriately configured and productive systems;

(3) Introducing significant amounts of emergent vegetation (either through actions such as marsh restoration on naturally unvegetated sites, or through changes in hydrology such as severe rutting or changes in storm or wastewater discharges);

(4) Significantly and detrimentally altering the topography of a site (such alteration may affect the hydrology of an area or may render an area unsuitable for roosting);

(5) Reducing the value of a site by significantly disturbing plovers from activities such as foraging and roosting (including levels of human presence significantly greater than those currently experienced);

(6) Significantly and detrimentally altering water quality, which may lead to decreased diversity or productivity of prey organisms or may have direct detrimental effects on piping plovers (as in the case of an oil spill); and

(7) Impeding natural processes that create and maintain washover passes and sparsely vegetated intertidal feeding habitats.

As described in more detail in the unit descriptions below, we find that the PCEs within each unit may require special management considerations or protection due to threats to the wintering population of the piping plover or its habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of the wintering population of the piping plover. The methodology used to identify features essential to the wintering population of the piping plover are described in the final rule to designate critical habitat published in the **Federal Register** on July 10, 2001 (66 FR 36038). We are designating critical habitat on lands that were occupied at the time of listing (66 FR 36038) and that contain sufficient PCEs to support life history functions essential for the conservation of the species. The methodology used to identify the critical habitat areas are described in the proposed rule to designate revised critical habitat published in the **Federal Register** on June 12, 2006 (71 FR 33703), and modified on May 15, 2008 (73 FR 28084).

We reviewed available information pertaining to the habitat requirements of this species. The material reviewed included data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits, research published in peer-reviewed articles and presented in academic theses and agency reports, and recovery plans. To determine the most current distribution of piping plover in North Carolina, these areas were further evaluated using wintering piping plover occurrence data from the NCWRC, the North Carolina Natural Heritage Program, and three international piping plover winter population censuses. We considered these data along with other occurrence data (including presence/absence survey data), research published in peer-reviewed articles and presented in academic theses and agency reports, and information received during the development of the July 10, 2001, designation of critical habitat for wintering piping plovers (66 FR 36038), the June 12, 2006, proposed rule (71 FR 33703), and the May 15, 2008, revised proposed rule (73 FR 28084) to designate critical habitat for wintering piping plovers in North Carolina. To map areas containing the physical and biological features determined to be essential to the conservation of the species (see June 12, 2006, proposed rule (71 FR 33703)), we used data on known piping plover wintering locations, regional Geographic Information Systems (GIS) coverages, digital aerial photographs, and regional shoreline-defining electronic files.

We have included those areas containing essential features along the coast for which occurrence data indicate a consistent use (observations over two or more wintering seasons) by piping plovers within this designation. Delineating specific locations for designation as critical habitat for the piping plovers was difficult because the coastal areas they use are constantly changing due to storm surges, flood events, and other natural geophysical alterations of beaches and shoreline. Thus, to best ensure that areas containing features considered essential to the piping plover are included in this designation, the textual unit descriptions of the units in the regulation constitute the definitive determination as to whether an area is within the critical habitat boundary. Our textual legal descriptions describe the area using reference points, including the areas from the landward boundaries to the mean of the lower low water (MLLW) (which encompasses intertidal areas with the features that are essential foraging areas for piping plovers), and describe areas within the unit that are utilized by the piping plover and contain the PCEs (e.g., upland areas used for roosting and wind tidal flats used for foraging). Our textual legal descriptions also exclude features

and structures (e.g., buildings, roads) that are not or do not contain PCEs.

In order to capture the dynamic nature of the coastal habitat, and the intertidal areas used by the piping plover, we have textually described each unit as including the area from the MLLW height of each tidal day, as observed over the National Tidal Datum Epoch, landward to a point where PCEs no longer occur. The landward edge of the PCEs is generally demarcated by stable, densely-vegetated dune habitat which nonetheless may shift gradually over time.

Global Positioning System (GPS) data were gathered using a mobile handheld mapping unit with settings to allow for post processing or Wide Area Augmentation System (WAAS) enabled correction. A minimum of five positions were captured for each point location. Data were processed using mapping software, and the points were output to a shapefile format. The point shapefile was checked for attribute accuracy and additional data fields were added to assign feature type. GIS point data were used to create lines. The lines were overlaid on National Oceanic and Atmospheric Administration digital ortho-photographs and U.S. Geological Survey digital ortho-photographs. These lines were refined to create the landward edge of the critical habitat polygons. To complete the polygons, a boundary was drawn in the ocean or sound to demarcate the MLLW. The line was drawn using 20-foot Light Detection and Ranging (LIDAR) and contours to estimate the location of MLLW.

When determining critical habitat boundaries, we made every effort to avoid including within the boundaries of the maps contained within this final rule developed areas such as buildings, paved areas, and other structures that lack PCEs for the wintering piping plover in North Carolina. The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or PCEs in adjacent critical habitat.

Units are designated based on sufficient PCEs being present to support wintering piping plover life processes. Some units contain all PCEs and support multiple life processes. Some units contain only a portion of the PCEs necessary to support the wintering piping plover's particular use of that habitat. Where a subset of the PCEs is present (such as water temperature during migration flows), it has been noted that only PCEs present at designation will be protected.

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Critical Habitat Designation

We are designating four units as critical habitat for the wintering population of the piping plover in North Carolina. The critical habitat units described below constitute our current best assessment of areas that meet the definition of critical habitat for wintering piping plover in North Carolina. Table 1 shows the units that were occupied at the time of listing, the threats requiring special management or protections, land ownership, and approximate area encompassed within each unit.

TABLE 1—CRITICAL HABITAT UNITS FOR THE WINTERING PIPING PLOVER

Geographical area/unit	Threats requiring special management or protections	Land ownership	Total hectares (acres)
Unit NC–1: Oregon Inlet	Dredge and sediment disposal; Recreational use	Federal, State	196 (485)
Unit NC–2: Cape Hatteras Point	Recreational use	Federal	262 (646)
Unit NC–4: Hatteras Inlet	Dredge and sediment disposal; Recreational use	Federal, State	166 (410)
Unit NC–5: Ocracoke Island	Recreational use	Federal	203 (502)
Total			827 (2,043)

The four areas designated as critical habitat are: (1) Unit NC–1, Oregon Inlet; (2) Unit NC–2, Cape Hatteras Point; (3) Unit NC–4, Hatteras Inlet; and (4) Unit NC–5, Ocracoke Island.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the wintering population of the piping plover, below.

Unit NC–1: Oregon Inlet

Unit NC–1 is approximately 8.0 km (5.0 mi) long, and consists of about 196 ha (485 ac) of sandy beach and inlet spit habitat on Bodie Island and Pea Island in Dare County, North Carolina. This is the northernmost critical habitat unit within the wintering range of the piping plover. Oregon Inlet is the northernmost inlet in coastal North Carolina, approximately 19.0 km (12.0 mi) southeast of the Town of Manteo, the county seat of Dare County. The unit is bounded by the Atlantic Ocean on the east and Pamlico Sound on the west and includes lands from the mean lower low water (MLLW) on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by piping plovers and where the PCEs do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. The unit begins at Ramp 4 near the Oregon Inlet Fishing Center on Bodie Island and extends approximately 8.0 km (5.0 mi) south to the intersection of NC Highway 12 and Salt Flats Wildlife Trail (near Mile Marker 30, NC Highway 12), approximately 5.0 km (3.0 mi) from the groin, on Pea Island, and includes Green Island and any emergent sandbars south and west of Oregon Inlet, and the lands owned by the State of North Carolina, specifically islands DR–005–05 and DR–005–06. However, this unit does not include the Oregon Inlet Fishing Center, NC Highway 12, the Bonner Bridge and its associated structures, the terminal groin, the historic Pea Island Life-Saving Station, or any of their ancillary facilities (e.g., parking lots, out buildings). This unit contains the PCEs essential to the conservation of the species, including a contiguous mix of intertidal beaches and sand or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation, and adjacent areas of unvegetated or sparsely vegetated

dune systems and sand or mud flats above annual high tide.

Oregon Inlet has reported consistent use by wintering piping plovers dating from the mid-1960s. As many as 100 piping plovers have been reported from a single day survey during the fall migration (NCWRC unpublished data). Christmas bird counts regularly recorded 20 to 30 plovers using the area. Recent surveys have also recorded consistent and repeated use of the area by banded piping plovers from the endangered Great Lakes breeding population (Stucker and Cuthbert 2006). The overall number of piping plovers reported using the area has declined since the species was listed in 1986 (NCWRC unpublished data), which corresponds to increases in the number of human users (NPS 2005) and off-road vehicles (Davis and Truett 2000).

Oregon Inlet is one of the first beach access points for off-road vehicles within Cape Hatteras National Seashore when traveling from the developed coastal communities of Nags Head, Kill Devil Hills, Kitty Hawk, and Manteo. As such, the inlet spit is a popular area for off-road vehicle users to congregate. The majority of the Cape Hatteras National Seashore users in this area are off-road vehicle owners and recreational fishermen. In fact, a recent visitor use study of Cape Hatteras National Seashore reported that Oregon Inlet is the second most popular off-road vehicle use area in the park (Vogelsong 2003). Furthermore, the adjacent islands are easily accessed by boat, which can be launched from the nearby Oregon Inlet Fishing Center. Pea Island National Wildlife Refuge (PINWR) does not allow off-road vehicle use; however, Pea Island regularly receives dredged sediments from the maintenance dredging of Oregon Inlet by the Corps. The disposal of dredged sediments on PINWR has the potential to disturb foraging and roosting plovers and their habitats. As a result, the sandy beach and mud and sand flat habitats in this unit may require special management considerations or protection, as discussed in "Special Management Considerations or Protections" above.

Unit NC–2: Cape Hatteras Point

Unit NC–2 consists of 262 ha (646 ac) of sandy beach and sand and mud flat habitat in Dare County, North Carolina. Cape Hatteras Point (also known as Cape Point or Hatteras Cove) is located south of the Cape Hatteras Lighthouse. The unit extends south approximately 2.8 mi (4.5 km) from the ocean groin near the old location of the Cape Hatteras Lighthouse to the point of Cape Hatteras, and then extends west 4.7 mi (7.6 km) along Hatteras Cove shoreline (South Beach) to the edge of Ramp 49 near the Frisco Campground. This unit includes lands from the MLLW on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by piping plovers and where PCEs do not occur). This unit contains the PCEs essential to the conservation of the species, including a contiguous mix of intertidal beaches and sand or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation, and adjacent areas of unvegetated or sparsely vegetated dune systems and sand or mud flats above annual high tide. This unit does not include the ocean groin.

Consistent use by wintering piping plover has been reported at Cape Hatteras Point since the early 1980s, but the specific area of use was not consistently recorded in earlier reports. Often piping plovers found at Cape Hatteras Point, Cape Hatteras Cove, and Hatteras Inlet were reported as a collective group. However, more recent surveys report plover use at Cape Hatteras Point independently from Hatteras Inlet. These single day surveys have recorded as many as 13 piping plovers a day during migration (NCWRC unpublished data). Christmas bird counts regularly recorded 2 to 11 plovers using the area. Cape Hatteras Point is located near the Town of Buxton, the largest community on Hatteras Island. For that reason, Cape Hatteras Point is a popular area for ORV use and recreational fishing. A recent visitor use study of the park found that Cape Hatteras Point had the most ORV use within the park (Vogelsong 2003). As a result, the sandy beach and mud and sand flat habitats in this unit may require special management considerations or protection, as discussed in "Special Management Considerations or Protections" above.

Unit NC–4: Hatteras Inlet

Unit NC–4 is approximately 8.0 km (5.0 mi) long, and consists of 166 ha (410 ac) of sandy beach and inlet spit habitat on the western end of Hatteras Island and the eastern end of Ocracoke Island in Dare and Hyde Counties, North Carolina. The unit begins at the first beach access point at Ramp 55 at the end of NC Highway 12 near the Graveyard of the Atlantic Museum on the western end of Hatteras Island and continues southwest to the beach access at the ocean-side parking lot near Ramp 59 on the northeastern end of Ocracoke Island. This unit includes lands from the MLLW on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which itself is not used by the piping plover and where PCEs do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. The Hatteras Inlet unit includes all emergent sandbars within Hatteras Inlet including lands owned by the State of North Carolina, specifically Island DR–009–03/04. The unit is adjacent to, but does not include, the Graveyard of the Atlantic Museum, the ferry terminal, the groin on Ocracoke Island, NC Highway 12, or their ancillary facilities (e.g., parking lots, out buildings). This unit contains the PCEs essential to the conservation of the species, including a contiguous mix of intertidal beaches and sand or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation, and adjacent areas of unvegetated or sparsely vegetated dune systems and sand or mud flats above annual high tide.

Hatteras Inlet has reported consistent use by wintering piping plovers since the early 1980s, but the specific area of use was not consistently recorded in earlier reports. Often piping plovers found at Cape Hatteras Point, Cape Hatteras Cove, and Hatteras Inlet were reported as a collective group. However, more recent surveys report plover use at Hatteras Inlet independently from Cape Hatteras Point. These single-day surveys have recorded as many as 40 piping plovers a day during migration (NCWRC unpublished data). Christmas bird counts regularly recorded 2 to 11 plovers using the area. Recent surveys have also recorded consistent and repeated use of the area by banded piping plovers from the endangered Great Lakes breeding population (Stucker and Cuthbert 2006). The overall numbers of piping plovers reported using the area has declined in the last 10 years (NCWRC unpublished data), corresponding with increases in the number of human users (NPS 2005) and off-road vehicles (Davis and Truett 2000).

Hatteras Inlet is located near the Village of Hatteras, Dare County, and is the southernmost point of Cape Hatteras National Seashore that can be reached without having to take a ferry. As such, the inlet is a popular off-road vehicle and recreational fishing area. In fact, a recent visitor use study of the park found Hatteras Inlet the fourth most used area by off-road vehicles in the park (Vogelsong 2003). Furthermore, the adjacent islands are easily accessed by

boat, which can be launched from the nearby marinas of Hatteras Village. As a result, the sandy beach and mud and sand flat habitats in this unit may require special management considerations or protection, as discussed in "Special Management Considerations or Protections" above.

Unit NC–5: Ocracoke Island

This unit consists of 203 ha (502 ac) of sandy beach and mud and sand flat habitat in Hyde County, North Carolina. The unit includes the western portion of Ocracoke Island beginning at the beach access point at the edge of Ramp 72 (South Point Road), extending west approximately 2.1 mi (3.4 km) to Ocracoke Inlet, and then back east on the Pamlico Sound side to a point where stable, densely vegetated dune habitat meets the water. This unit includes lands from the MLLW on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by the piping plover and where PCEs do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. The unit includes all emergent sandbars within Ocracoke Inlet. This unit contains the PCEs essential to the conservation of the species, including a contiguous mix of intertidal beaches and sand or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation, and adjacent areas of unvegetated or sparsely vegetated dune systems and sand or mud flats above annual high tide. The unit is adjacent to but does not include NC Highway 12, any portion of the maintained South Point Road at Ramp 72, or any of their ancillary facilities.

Ocracoke Island had inconsistent recorded use by wintering piping plovers in the early 1980s, and Christmas bird counts recorded only 1 to 6 plovers using the area throughout the early 1990s. However, since the late 1990s when regular and consistent surveys of the area were conducted, as many as 72 piping plovers have been recorded during migration, and 4 to 18 plovers have been regularly recorded during the overwinter period (NCWRC unpublished data). Recent surveys have also recorded consistent and repeated use of the area by banded piping plovers from the endangered Great Lakes breeding population (Stucker and Cuthbert 2006).

Ocracoke Inlet is located near the Village of Ocracoke, and is the southernmost point of the Cape Hatteras National Seashore. Ocracoke Island is only accessible by ferry. As such, the island is a popular destination for vacationers and locals interested in seclusion. The inlet is also a popular recreational fishing and ORV area. A recent visitor use study of the park reported Ocracoke Inlet was the third most popular ORV use area in the park (Vogelsong 2003). As a result, the primary threat to the wintering piping plover and its habitat within this unit is disturbance to and degradation of foraging and roosting areas by ORVs and by people and their pets. Therefore, sandy beach and mud and sand flat habitats in this unit may require special management considerations or protection, as discussed in "Special Management Considerations or Protections" above.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. Decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F. 3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

Under section 7(a)(2) of the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "Reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifiying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the piping plover or its designated critical habitat will require section 7(a)(2) consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) or a permit from us under section 10(a)(1)(B) of the Act) will also be subject to the

consultation process under section 7(a)(2) of the Act. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not Federally funded, authorized, or carried out, do not require section 7(a)(2) consultations.

Application of the "Adverse Modification Standard"

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the piping plover. Generally, the conservation role of piping plover critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for the piping plover are identified in our original rule designating critical habitat published in the **Federal Register** on July 10, 2001 (66 FR 36038). These activities include, but are not limited to:

(1) Actions that would significantly and detrimentally alter the hydrology of tidal flats.

(2) Actions that would significantly and detrimentally alter inputs of sediment and nutrients necessary for the maintenance of geomorphic and biologic processes that insure appropriately configured and productive systems.

(3) Actions that would introduce significant amounts of emergent vegetation (either through actions such as marsh restoration on naturally unvegetated sites, or through changes in hydrology such as severe rutting or changes in storm or wastewater discharges).

(4) Actions that would significantly and detrimentally alter the topography of a site (such alteration may affect the hydrology of an area or may render an area unsuitable for roosting).

(5) Actions that would reduce the value of a site by significantly disturbing piping plovers from activities such as foraging and roosting (including levels of human presence significantly greater than those currently experienced).

(6) Actions that would significantly and detrimentally alter water quality, which may lead to decreased diversity or productivity of prey organisms or may have direct detrimental effects on piping plovers (as in the case of an oil spill).

(7) Actions that would impede natural processes that create and maintain washover passes and sparsely vegetated intertidal feeding habitats.

We consider all of the units designated as critical habitat to contain features essential to the conservation of the wintering population of the piping plover in North Carolina. All units are within the geographic range of the species, all were occupied by the species at the time of listing, and all are likely to be used by the piping plover. Under section 7 of the Act, Federal agencies already consult with us on activities in areas currently occupied by the piping plover, or if the species may be affected by the action, the consultation is to ensure that their actions do not jeopardize the continued existence of the piping plover.

Exemptions and Exclusions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands with a completed INRMP within the critical habitat designation.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute, as well as the legislative history, is clear that the Secretary has discretion as to which factors to use and how much weight to give to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis we determine that the benefits of exclusion would outweigh the benefits of inclusion of an area, then we can exclude the area only if such exclusions would not result in the extinction of the species.

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. We consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned

or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether the landowners have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In this instance, we have determined that the lands designated as critical habitat for the wintering population of piping plover in North Carolina are not owned or managed by the Department of Defense, there are currently no habitat conservation plans, and the designation does not include any Tribal lands or trust resources. We anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this critical habitat designation. Therefore, there are no areas excluded from this final designation based on non-economic impacts.

Economic Analysis

Section 4(b)(2)of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic reasons if the Secretary determines that the benefits of such exclusion outweigh the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

In order to consider economic impacts, we prepared a draft economic analysis, which we made available for public review on May 31, 2007 (72 FR 30326), based on the June 12, 2006, proposed rule (71 FR 33703). We then made available for public review on May 15, 2008 (73 FR 28084), a revised draft economic analysis based on the May 15, 2008, revised proposed rule (73 FR 28084). We accepted comments on the draft analysis until July 30, 2007, and accepted comments on the revised draft economic analysis until June 16, 2008. Following the close of both comment periods, a final analysis of the potential economic effects of the designation was developed taking into consideration the public comments and any new information.

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the wintering population of the piping plover in North Carolina. It estimates costs that will likely be incurred regardless of whether we designate critical habitat (baseline). However, consistent with the court's order in *Cape Hatteras Access Preservation Alliance*, the FEA also estimates the foreseeable economic impacts of conservation measures associated with the revised designation of critical habitat for the wintering population of the piping plover in North Carolina on government agencies, private businesses, and individuals (incremental costs). Specifically, the analysis measures how management activities undertaken by the NPS, the Service, and the State of North Carolina to protect wintering piping plover habitat against the threat of off-road vehicle (ORV) use or other recreational use of the beach may affect the value of the beaches to ORV and other recreational users and the region. In this analysis, it is assumed that the primary management tool employed for wintering piping plover conservation in North Carolina could be the implementation of closures of certain portions of the beach. If implemented, these closures would reduce the opportunity for recreational activities, such as ORV use. The Service believes that additional beach closures due to the designation of critical habitat for wintering piping plovers are unlikely.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 1985 (year of the species' listing) (50 FR 50726), and considers those costs that may occur in the 19 years following the designation of critical habitat. Because the economic analysis considers the potential economic effects of all actions relating to the conservation of the wintering population of the piping plover in North Carolina, including costs associated with sections 4, 7, and 10 of the Act and those attributable to designation of critical habitat, the economic analysis may have overestimated the potential economic impacts of the revised critical habitat designation.

The economic analysis forecasts that costs associated with conservation activities for the wintering population of the piping plover in North Carolina would range from $0 to $11.9 million in lost consumer surplus and $0 to $20.2 million in lost trip expenditures, using a real rate of 7 percent over the next 20 years, with an additional $190,000 to $476,000 in administrative costs. This amounts to $0 to $985,000 in lost consumer surplus and $0 to $1.6 million in lost trip expenditures, annually. Using a real rate of 3 percent, discounted forecast impacts are estimated at $0 to $17.1 million in lost consumer surplus and $0 to $29.1 million in lost trip expenditures over the next 20 years, with an additional $141,000 to $354,000 in administrative costs. This amounts to $0 to $1.1 million in lost consumer surplus and $0 to $2.0 million in lost trip expenditures, annually. These costs are not related to, or the result of, the recently announced beach closures designed to protect breeding piping plovers and other seabirds resulting from the April 30, 2008, settlement agreement (see "Previous Federal Actions" above). Of the four units proposed as revised critical habitat, unit NC–2 is calculated to experience the highest estimated costs (about 40 percent) in both lost consumer surplus ($0 to $4.6 million, discounted at 7 percent) and lost trip expenditures ($0 to $8.0 million, discounted at 7 percent). Units NC–4, NC–5, and NC–1 account for about 26, 20, and 14 percent, respectively, of the total potential impacts.

This large range in forecast impacts is the result of two major uncertainties: (1) How NPS will manage beach access differently because of the critical habitat designation (e.g., whether any additional closures will be implemented); and (2) whether management activities, such as closures, will affect visitation levels or quality of visits for ORV users. Given these uncertainties, the FEA presents two scenarios to capture the potential range of impacts:

(1) A high-end estimate that describes the potential incremental impacts of additional beach closures as a result of critical habitat designation. This scenario assumes that additional closures will result in decreased trips to this area (i.e., closures in addition to

those in place under current NPS management).

(2) A low-end estimate that assumes that no trips will be lost either because NPS does not implement additional closures in response to the designation, or because the closures do not result in decreased levels of visitation or quality of ORV activities on the beach. Under this scenario, there are no lost trips in the future.

These scenarios define the range of incremental costs that may result from the designation of critical habitat, depending on the Service's and the NPS's future implementation of the regulation. It is important to note that the NPS anticipates that ORV access to the beach will not be affected by the designation of critical habitat. Furthermore, the economic analysis quotes the Service, stating that "it is highly unlikely that the Service would recommend any additional closures associated with wintering piping plover critical habitat given that the NPS will be protecting the essential resources that are needed during the wintering months." Therefore, the high bound estimate includes a scenario of hypothetical conservation actions (i.e., additional beach closures that decrease ORV use and visitation) that are highly improbable.

Because our economic analysis did not identify any disproportionate costs that are likely to result from the designation, we did not consider excluding any areas from this designation of critical habitat for the wintering population of piping plover in North Carolina based on economic impacts.

A copy of the final economic analysis with supporting documents may be obtained by contacting the Raleigh Ecological Services Field Office (see **ADDRESSES**) or for downloading from the Internet at http://www.regulations.gov and *http://www.fws.gov/raleigh/es_piplch.html*.

Required Determinations

Regulatory Planning and Review

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

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

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

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

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a certification statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the wintering population of the piping plover will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the piping plover. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see Application of the "Adverse Modification Standard" section).

In our FEA, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the wintering population of the piping plover in North Carolina and the designation of critical habitat. The analysis estimated prospective economic impacts due to the implementation of wintering piping plover conservation efforts in two categories: recreation (particularly ORV use) and section 7 consultation undertaken by the NPS, the Service, and the State of North Carolina. We

anticipate that impacts of designation on conservation activities will not have a significant economic impact on small entities because the costs of consultation are borne entirely by the NPS, the Service, and the State of North Carolina. The only impacts we expect small entities to bear are the costs associated with lost consumer surplus and lost trip expenditures. Lost trips would impact generated visitor expenditures on such items as food, lodging, shopping, transportation, entertainment, and recreation. See "Economics" section above and the FEA for a more detailed discussion of estimated discounted impacts.

Approximately 93 percent of businesses in affected industry sectors in both counties are small. Assuming that all expenditures are lost only by small businesses and that these expenditures are distributed equally across all small businesses in both counties, each small business may experience a reduction in annual sales of between $661 and $6,494, depending on a business's industry. Specifically, the entertainment industry may expect a loss of $661 if no trips are lost and $992 if trips are lost. The food industry may expect a loss of $808 and $1,213 for no trips lost and trips lost, respectively. The shopping industry may expect a loss of $1,383 and $2,077, and lodging may expect a loss of $3,660 to $5,495, for no trips lost and trips lost, respectively. The transportation industry may expect a loss of $4,325 if no trips are lost and $6,494 if trips are lost. If the small business is generating annual sales just under the SBA small business threshold for its industry, this loss represents between 0.01 and 0.08 percent of its annual sales (0.01 to 0.03 percent for food, shopping, and entertainment; 0.05 to 0.08 percent for transportation and lodging). The Service concludes that this is not a significant economic impact.

Assuming that each small business has annual sales just under its SBA industry small business threshold may underestimate lost expenditures as a percentage of annual sales. It is likely that most small businesses have annual sales well below the threshold. However, even if a business has annual sales below the small business threshold for its particular industry, it is probable that lost expenditures still are relatively small compared to annual sales. For example, if a small business has annual sales that are one-tenth of that industry's SBA small business threshold, potential losses still only represent between 0.10 and 0.85 percent of its annual sales.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we certify that this rule will not have a significant economic impact on a substantial number of small business entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include NPS management actions, U.S. Army Corps of Engineers permitted or implemented actions (e.g., dredging and disposal), permits we may issue under section 10(a)(1)(B) of the Act, and Federal Highways Administration funding for road improvements. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the final economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 (E.O. 13211; "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use") on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this E.O. that outlines nine outcomes that may constitute "a significant adverse effect" when compared without the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with wintering piping plover conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under section 7 of the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not result in the destruction or adverse modification of critical habitat. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal

agency for an action may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating 2,043 ac (827 ha) of lands in Dare and Hyde Counties, North Carolina, as critical habitat for the wintering population of the piping plover in a takings implication assessment. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in North Carolina. The designation of critical habitat in areas currently occupied by the wintering population of the piping plover may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of the wintering population of the piping plover.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, the 2004 court decision ordering us to revise the critical habitat designation also ordered us to prepare an environmental analysis of the proposed designation under the NEPA (*Cape Hatteras Access Preservation Alliance* v. *U.S. Department of Interior,* 344 F. Supp. 2d. 108, 136 (D.D.C. 2004)). To comply with the court's order, we prepared a draft environmental assessment under the requirements of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR 1500–1508) and according to the Department of the Interior's NEPA procedures. The draft environmental assessment was based on the June 12, 2006, proposed rule (71 FR 33703), and the revised proposed rule, dated May 15, 2008 (73 FR 28084). The environmental assessment included an evaluation of the impact of the proposed designation of the four revised critical habitat units (Units NC–1, NC–2, NC–4, and NC–5) for the wintering population of the piping plover in North Carolina. The draft environmental assessment presented the purpose of and need for critical habitat designation, the No Action and Preferred alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives. Within the analysis was the option to designate only some of the units or some portion of the units identified in the proposed and revised proposed rules. We notified the public of the availability of the draft environmental assessment for the proposed rule in the **Federal Register** on May 31, 2007 (72 FR 30326), and of the availability of the revised draft environmental assessment for the revised proposed rule in the **Federal Register** on May 15, 2008 (73 FR 28084).

The Service has prepared a final environmental assessment and a Finding of No Significant Impact (FONSI) on the designation of four critical habitat units (Units NC–1, NC02, NC–4, and NC–5) for the wintering population of the piping plover in North Carolina. Overall, the action is likely to have only a small impact on the human environment. The action does not produce a change in the existing environment, but merely seeks to maintain the natural characteristics of the barrier islands that are important for the wintering population of the piping plover in North Carolina. The designation of critical habitat is not likely to limit activities within CAHA, PINWR, or the State-owned islands; all activities within the CAHA, PINWR, and the State-owned islands are already managed by the NPS, the Service, and the NCWRC, respectively, with a goal of balancing recreational activities with the preservation of natural resources. The designation of critical habitat would require the NPS and the Service to consider the winter habitat requirements of the piping plover when proposing actions that influence the designated units; the NCWRC would be required to consider the winter habitat requirements of the piping plover only

when Federal authorization or funding is part of their proposed action. However, since the areas to be designated as critical habitat are known to be used by the piping plover, as well as other federally listed species, the additional environmental analysis required by the designation of critical habitat for the wintering population of the piping plover in North Carolina would represent only a small increase above that required by sections 7 and 9 of the Act. The final environmental assessment and FONSI are available upon request from the Field Supervisor, Raleigh Ecological Services Field Office (see **ADDRESSES**) or on our Web site at *http://www.fws.gov/raleigh/es_piplch.html*.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation and no Tribal lands that are unoccupied areas that are essential for the conservation of the wintering population of the piping plover in North Carolina. Therefore, critical habitat for the wintering population of the piping plover in North Carolina has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Raleigh Fish and Wildlife Office (see **ADDRESSES**). A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/raleigh/es_piplch.html*.

Author(s)

The primary authors of this rulemaking are staff members of the Raleigh Ecological Services Field Office, Raleigh, North Carolina.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for "Plover, Piping" under "BIRDS" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Plover, piping	*Charadrius melodus*	U.S.A. (Great Lakes, northern Great Plains, Atlantic and Gulf Coasts, PR, VI), Canada, Mexico, Bahamas, West Indies.	Great Lakes, watershed in States of IL, IN, MI, MN, NY, OH, PA, and WI and Canada (Ont.).	E	211	17.95(b)	NA
Plover, piping	*Charadrius melodus*	U.S.A. (Great Lakes, northern Great Plains, Atlantic and Gulf Coasts, PR, VI), Canada, Mexico, Bahamas, West Indies.	Entire, except those areas where listed as endangered above.	T	211	17.95(b)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95(b), amend the entry for "Piping Plover (*Charadrius melodus*) Wintering Habitat" as follows:

■ a. Revise paragraphs 1 and 2;

■ b. In paragraph 3 remove the words "*North Carolina* (Maps were digitized using 1993 DOQQs, except NC–3 (1993 DRG))" and add in their place a new header and parenthetical text as set forth below;

■ c. Revise the critical habitat description for Unit NC–1;

■ d. Revise the critical habitat description for Unit NC–2;

■ e. Revise the critical habitat description for Unit NC–4;

■ f. Revise the critical habitat description for Unit NC–5;

■ g. Remove the first map for "North Carolina Unit: 1" and add in its place a new map "North Carolina Unit: 1" as set forth below; and

■ h. Remove the second map for "North Carolina Units: 2, 3, 4, 5, & 6" and add

in its place a new map "North Carolina Units: 2, 3, 4, 5, & 6" as set forth below.

The revisions read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Piping Plover (*Charadrius melodus*) Wintering Habitat

1. The primary constituent elements of critical habitat for the wintering population of the piping plover are the habitat components that support foraging, roosting, and sheltering and the physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements are:

(1) Intertidal sand beaches (including sand flats) or mud flats (between annual low tide and annual high tide) with no or very sparse emergent vegetation for feeding. In some cases, these flats may be covered or partially covered by a mat of blue-green algae.

(2) Unvegetated or sparsely vegetated sand, mud, or algal flats above annual high tide for roosting. Such sites may have debris or detritus and may have micro-topographic relief (less than 20 in (50 cm) above substrate surface) offering refuge from high winds and cold weather.

(3) Surf-cast algae for feeding.

(4) Sparsely vegetated backbeach, which is the beach area above mean high tide seaward of the dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road. Backbeach is used by plovers for roosting and refuge during storms.

(5) Spits, especially sand, running into water for foraging and roosting.

(6) Salterns, or bare sand flats in the center of mangrove ecosystems that are found above mean high water and are only irregularly flushed with sea water.

(7) Unvegetated washover areas with little or no topographic relief for feeding and roosting. Washover areas are formed and maintained by the action of hurricanes, storm surges, or other extreme wave actions.

(8) Natural conditions of sparse vegetation and little or no topographic relief mimicked in artificial habitat types (e.g., dredge spoil sites).

2. Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

3. * * *

North Carolina (Data layers defining map units 1, 2, 4, and 5 were created from GPS data collected in the field in May and June of 2005, and modified to fit the 1:100,000 scale North Carolina county boundary with shoreline (cb100sl) data layer from the BasinPro 8 data set published by the North Carolina Center for Geographic Information and Analysis, which was compiled in 1990. Other map units were digitized using 1993 DOQQs, except NC–3 which utilized 1993 DRG.)

Unit NC–1: Oregon Inlet, 485.4 ac (196.4 ha) in Dare County, North Carolina

This unit extends from the southern portion of Bodie Island through Oregon Inlet to the northern portion of Pea Island. It begins at Ramp 4 near the Oregon Inlet Fishing Center on Bodie Island and extends approximately 4.7 mi (7.6 km) south to the intersection of NC Highway 12 and Salt Flats Wildlife Trail (near Mile Marker 30, NC Highway 12), approximately 2.9 mi (4.8 km) from the groin, on Pea Island. The unit is bounded by the Atlantic Ocean on the east and Pamlico Sound on the west and includes lands from the MLLW (mean lower low water) on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by piping plovers and where PCEs do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. Any emergent sandbars south and west of Oregon Inlet, including Green Island and lands owned by the State of North Carolina, such as island DR–005–05 and DR–005–06, are included (not shown on map). This unit does not include the Oregon Inlet Fishing Center, NC Highway 12 and the Bonner Bridge or its associated structures, the terminal groin, or the historic Pea Island Life-Saving Station, or any of their ancillary facilities (e.g., parking lots, out buildings).

Unit NC–2: Cape Hatteras Point, 645.8 ac (261.4 ha) in Dare County, North Carolina

This unit is entirely within Cape Hatteras National Seashore and encompasses the point of Cape Hatteras (Cape Point). The unit extends south approximately 4.5 km (2.8 miles) from the ocean groin near the old location of the Cape Hatteras Lighthouse to the point of Cape Hatteras, and then extends west 7.6 km (4.7 miles) (straight-line distances) along Hatteras Cove shoreline (South Beach) to the edge of Ramp 49 near the Frisco Campground. The unit includes lands from the MLLW on the Atlantic Ocean to the line of stable, densely vegetated dune habitat (which is not used by the piping plover and where PCEs do not occur). This unit does not include the ocean groin.

* * * * *

Unit NC–4: Hatteras Inlet, 410.0 ac (165.9 ha) in Dare and Hyde Counties, North Carolina

This unit extends from the western end of Hatteras Island to the eastern end of Ocracoke Island. The unit extends approximately 7.6 km (4.7 mi) southwest from the first beach access point at the edge of Ramp 55 at the end of NC Highway 12 near the Graveyard of the Atlantic Museum on the western end of Hatteras Island to the edge of the beach access at the ocean-side parking lot (approximately 0.1 mi south of Ramp 59) on NC Highway 12, approximately 1.25 km (0.78 mi) southwest (straightline distance) of the ferry terminal on the northeastern end of Ocracoke Island. The unit includes lands from the MLLW on the Atlantic Ocean shoreline to the line of stable, densely vegetated dune habitat (which is not used by the piping plover and where PCEs do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. All emergent sandbars within Hatteras Inlet between Hatteras Island and Ocracoke Island, including lands owned by the State of North Carolina such as Island DR–009–03/04 (not shown on map), are included. The unit is adjacent to but does not include the Graveyard of the Atlantic Museum, the ferry terminal, the groin on Ocracoke Island, NC Highway 12, or their ancillary facilities (e.g., parking lots, out buildings).

Unit NC–5: Ocracoke Island, 501.8 ac (203.0 ha) in Hyde County, North Carolina

This unit is entirely within Cape Hatteras National Seashore and includes the western portion of Ocracoke Island beginning at the beach access point at the edge of Ramp 72 (South Point Road), extending west approximately 3.4 km (2.1 mi) to Ocracoke Inlet, and then back east on the Pamlico Sound side to a point where stable, densely-vegetated dune habitat meets the water. This unit includes lands from the MLLW on the Atlantic Ocean shoreline to the line of stable, densely-vegetated dune habitat

(which is not used by the piping plover and where PCEs do not occur) and from the MLLW on the Pamlico Sound side to the line of stable, densely vegetated habitat, or (where a line of stable, densely vegetated dune habitat does not exist) lands from MLLW on the Atlantic Ocean shoreline to the MLLW on the Pamlico Sound side. All emergent sandbars within Ocracoke Inlet are also included. This unit does not include any portion of the maintained South Point Road, NC Highway 12, or any of their ancillary facilities.

* * * * *

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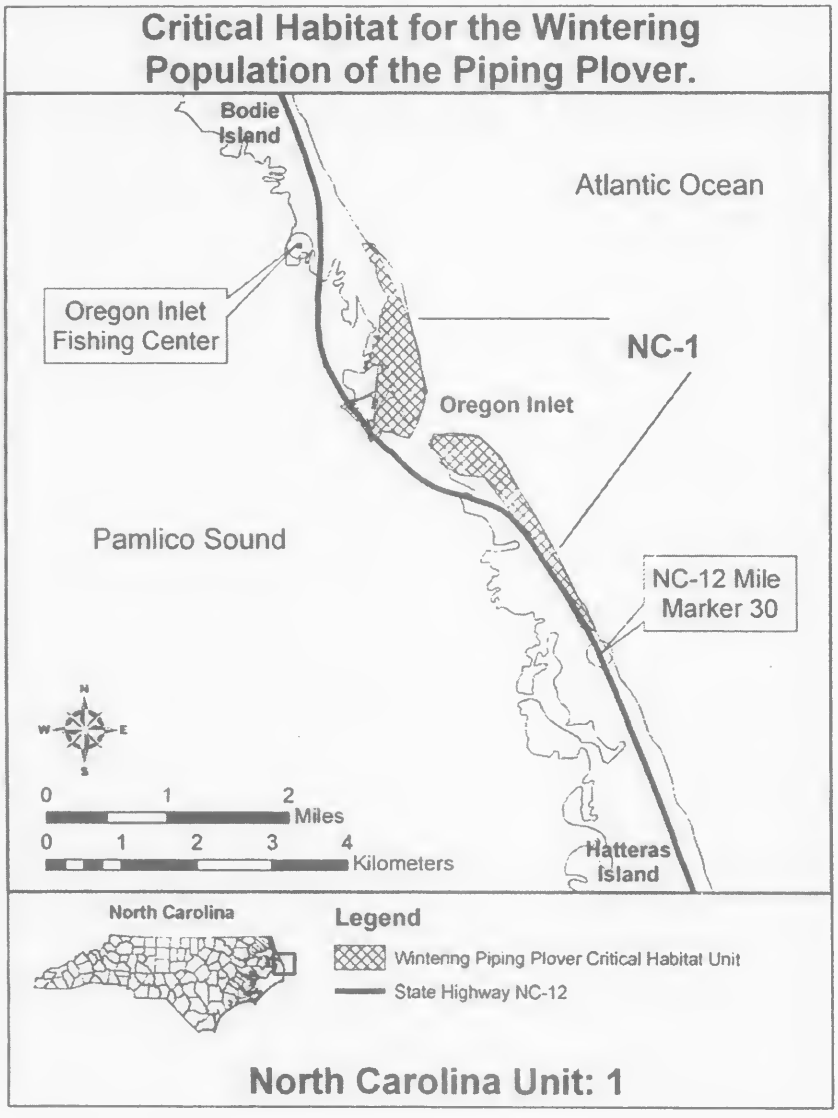

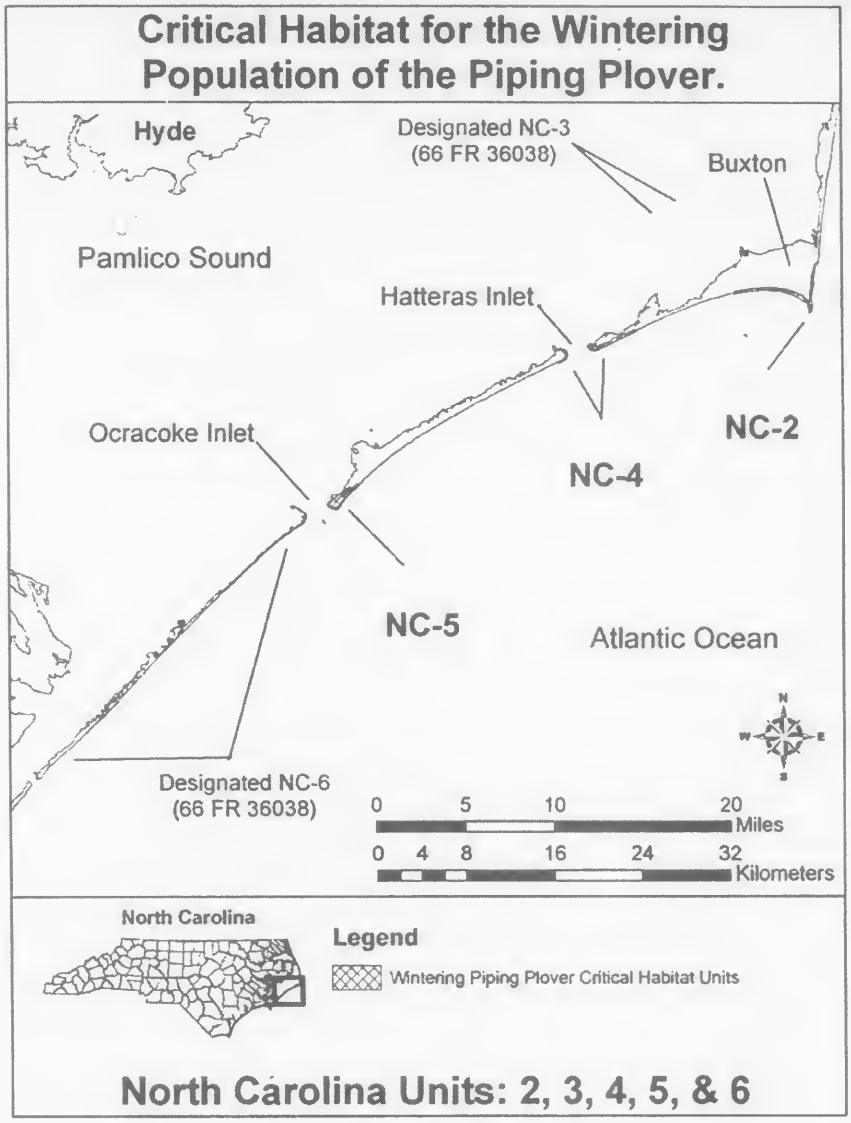

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Dated: September 24, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–23206 Filed 10–20–08; 8:45 am]

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Federal Register

Tuesday,
October 21, 2008

Part VI

The President

Memorandum of October 17, 2008—Designation of Officers of the Social Security Administration to Act as the Commissioner of Social Security

Federal Register
Vol. 73, No. 204
Tuesday, October 21, 2008

Presidential Documents

Title 3—

The President

Memorandum of October 17, 2008

Designation of Officers of the Social Security Administration to Act as the Commissioner of Social Security

Memorandum for the Commissioner of Social Security

October 17, 2008

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this memorandum, the following officials of the Social Security Administration, in the order listed, shall act as and perform the functions and duties of the office of the Commissioner of Social Security (Commissioner), during any period in which both the Commissioner and Deputy Commissioner have died, resigned, or become otherwise unable to perform the functions and duties of the office of the Commissioner, until such time as the Commissioner or Deputy Commissioner are able to perform the duties of that office:

(a) Chief of Staff;

(b) Deputy Commissioner for Operations;

(c) Deputy Commissioner for Budget, Finance and Management;

(d) Deputy Commissioner for Systems;

(e) Deputy Commissioner for Quality Performance;

(f) Regional Commissioner, Atlanta; and

(g) Regional Commissioner, Dallas.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Commissioner pursuant to this memorandum.

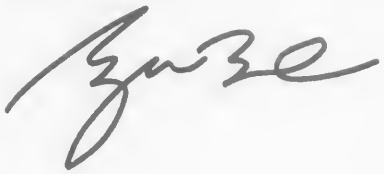
(b) No individual listed in section 1 shall act as Commissioner unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains the discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Commissioner.

Sec. 3. This memorandum supersedes the President's Memorandum of April 17, 2006 (Designation of Officers of the Social Security Administration).

Sec. 4. This memorandum is intended to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

Sec. 5. You are authorized and directed to publish this memorandum in the *Federal Register*.



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LIST OF PUBLIC LAWS

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H.R. 2095/P.L. 110–432

To amend title 49, United States Code, to prevent railroad fatalities, injuries, and hazardous materials releases, to authorize the Federal Railroad Safety Administration, and for other purposes. (Oct. 16, 2008; 122 Stat. 4848)

H.R. 6296/P.L. 110–433

To extend through 2013 the authority of the Federal Election Commission to impose civil money penalties on the basis of a schedule of penalties established and published by the Commission. (Oct. 16, 2008; 122 Stat. 4971)

H.R. 6531/P.L. 110–434

Vessel Hull Design Protection Amendments of 2008 (Oct. 16, 2008; 122 Stat. 4972)

H.R. 7084/P.L. 110–435

Webcaster Settlement Act of 2008 (Oct. 16, 2008; 122 Stat. 4974)

H.R. 7222/P.L. 110–436

To extend the Andean Trade Preference Act, and for other purposes. (Oct. 16, 2008; 122 Stat. 4976)

Last List October 20, 2008

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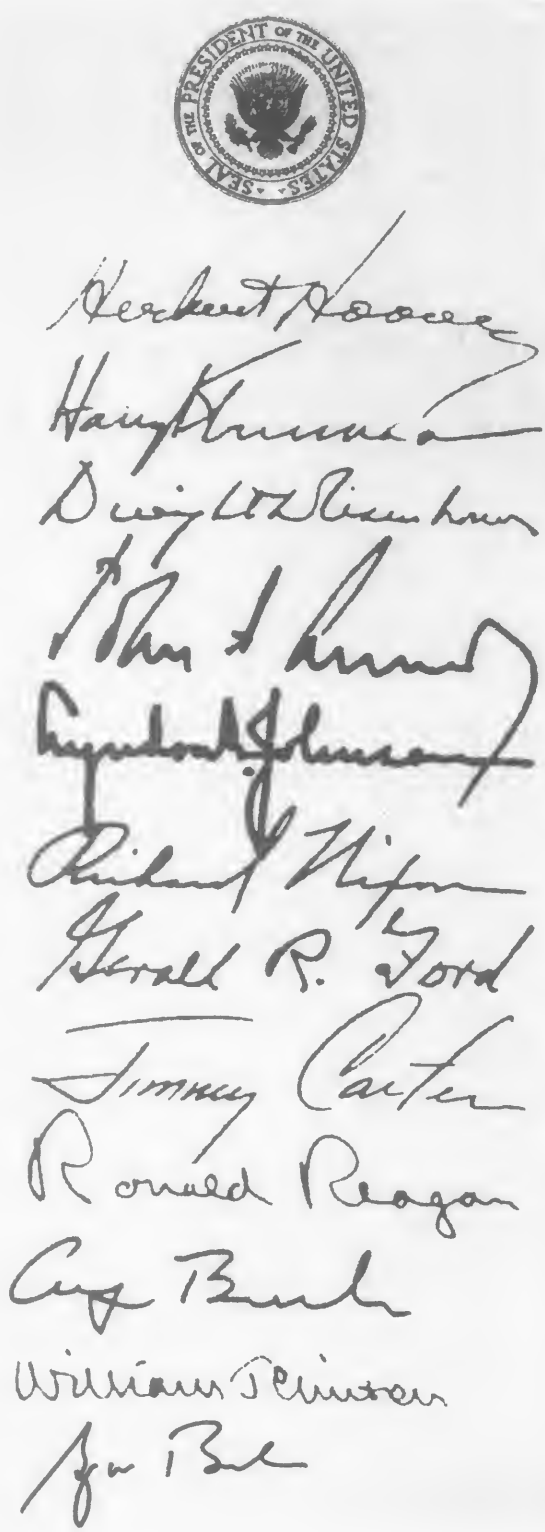

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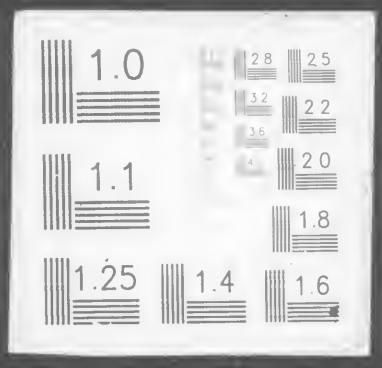
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