

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Channel 239A, Sterling.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91-22705 Filed 9-19-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 580**

[Docket No. 87-09 Notice 15]

RIN 2127-AC42

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the odometer regulations in 49 CFR part 580 to implement the 1990 amendments to the Federal odometer law relating to the use of powers of attorney (Pub. L. 101-641). The notice defines "original secure power of attorney," provides that a transferee who exercises a power of attorney may submit a copy of the title to the State (without having to submit an application for a new title) along with the original power of attorney, provides that the State shall retain the documents, and establishes a process for the States to petition for approval of alternative procedures. It also addresses the use of reassignment documents and makes additional clarifying amendments.

DATES: This final rule is effective as of October 21, 1991, except that the amendment to § 580.5 is effective as of June 22, 1992.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan Condray, Office of the Chief Counsel, room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:
Background

This notice issues a final rule to implement the latest in a series of amendments to the Federal odometer law, enacted as part of an ongoing effort

to accommodate the commercial needs of the automobile industry and the administrative needs of the State titling agencies without compromising the consumer protection afforded by the law.

These legislative adjustments reflect circumstances arising after the Truth in Mileage Act of 1986 (Pub. L. 99-579) (TIMA), a law that amended the odometer law (Pub. L. 92-513, 15 U.S.C. 1981-1991) to require each person selling a motor vehicle to disclose the odometer reading on the vehicle's title, rather than using a separate statement. The law directed the States to conform their titles and titling procedures to enable the titles to be used for odometer disclosure. Although most States had already begun to use the title for odometer disclosure, the final rule issued by NHTSA to implement the law (53 FR 29464, August 5, 1988) required a number of adjustments in State procedures as well as in commercial practices.

The adjustment in commercial practice that met the strongest opposition from the motor vehicle industry was the rule's prohibition of the use of powers of attorney (POA) for odometer disclosure. The agency considered the vehicle title to be of paramount importance in retaining odometer information necessary for enforcement purposes, and regarded the POA as a document that could be used to avoid disclosure on the title. The industry, in contrast, saw the POA as essential in transactions where the title was lost or in the hands of a bank or other lienholder and was therefore not available to the owner at the time of the sale. Without a POA authorizing the purchaser to execute the odometer disclosure on the title, it was argued, the purchaser would have to have the seller return to complete the transaction—a situation that could lead to costly delays for commercial purchasers.

In response to the industry's concerns, Congress amended TIMA in 1988 (Pub. L. 100-561) to permit the use of a secure power of attorney in circumstances where the title was not present at the time of sale, on condition that the transferor keep a copy of the POA and that the transferee return the original POA to the State after executing the disclosure on the title. The amendment directed NHTSA to establish reasonable conditions for the use of the POA.

In an interim final rule to implement the amendment (54 FR 9809, March 8, 1989), the agency permitted the use of a secure POA when the title is held by a lienholder and stipulated that the person receiving the POA must return the original POA to the State, along with the

title showing the executed odometer statement and an application for a new title.

In response to comments that the POA procedures were too restrictive, NHTSA issued a final rule (54 FR 35879, August 30, 1989) modifying the procedure by permitting the use of a POA when the title has been lost or misplaced as well as when it is held by a lienholder, but adopting the requirement for the transferee to submit a title application with the POA. The latter requirement prompted four petitions for reconsideration, which the agency denied on February 22, 1990 (55 FR 6257).

The denial of the petitions for reconsideration did not quiet the controversy about the requirement that a title application be submitted with the POA. The dealers associations argued that the requirement disregarded the commercial reality of the used car business, in which a significant percentage of vehicles acquired by trade or purchase are not sold directly to a retail consumer but are wholesaled. In the typical wholesale transaction, it was argued, the selling dealer would never obtain title himself but would simply execute the reassignment form on the title to the wholesale purchaser. A requirement to obtain a title would thus create delays and add cost to many transactions, without benefit to consumers.

In the midst of these objections, the agency received a petition from the State of Florida which seemed to offer a suitable alternative. Under the Florida proposal, the transferee would use its authority under a POA to execute the odometer disclosure on the title, but instead of submitting an application for title to the State with the original POA, would submit only a copy of the title showing the executed odometer statement. The State would thereupon file both documents and would have them available for any investigation of alleged odometer fraud. The transferee could proceed to use the original title to reassign ownership to a wholesaler, without delay or hindrance. NHTSA granted the Florida petition on July 23, 1990, and subsequently issued a notice of proposed rulemaking (55 FR 34941, August 27, 1990).

During the pendency of the rulemaking on the Florida petition, another amendment to TIMA was enacted (Pub. L. 101-641, November 28, 1990), which bars the agency from requiring a new title to be issued by the State which issued the power of attorney. This amendment effectively directs NHTSA to terminate its

requirement that the transferee submit an application for title with the original POA. At the same time, the amendment authorizes the agency to require the State to retain the power of attorney or to adopt alternative measures consistent with the purposes of the act. The amendment thus authorizes the agency to adopt a procedure resembling that proposed in response to the Florida petition.

On February 28, 1991, NHTSA issued a notice withdrawing the August 1990 NPRM and proposing rulemaking to implement the provisions of the new amendment (56 FR 8313), and has completed its review of the comments submitted in response to that notice. It is the agency's hope that the following discussion of the provisions adopted in the final rule will resolve the issues surrounding the use of the POA and other documents used for the disclosure of odometer information.

Definitions

In the February 28 notice, NHTSA proposed to amend § 580.3 to define "original power of attorney" as the secure document issued by the State and any attached copies which are also printed on secure paper.

Only two commenters, the National Automobile Dealers Association (NADA) and the National Auto Auction Association (NAAA), addressed this definition. NADA supported the definition, stating that the proposed amendment "will facilitate commerce in instances where the State that issued the power of attorney is not the same as the State that will issue the new title." NAAA, however, opposed the definition as too narrow and proposed instead to allow any copy, whether or not on secure paper, to be an "original." The adoption of such a definition would thwart Congress' intent that the secure document be transferred back to the issuing State. By specifying that the secure power of attorney form be set forth by means of a secure printing process or other secure process, it seems clear that Congress intended the distinguishing feature between an "original" and a "copy" be the secure nature of the "original."

NAAA also suggested that the making of secure copies might be technically unfeasible. Although NHTSA does not require more than one secure document, there is nothing in the rulemaking record to indicate that a multi-copy form with more than one secure copy could not be readily produced. Neither the American Association of Motor Vehicle Administrators (AAMVA), nor any other commenter, suggested this would be technically unfeasible and NAAA did

not provide any data or information to support its position. Rather, the Texas State Department of Highways and Public Transportation suggested that such secure copy forms could be made available. Thus, the NAAA suggestion will not be adopted and the definition of "original power of attorney" will remain as proposed.

The proposed definition of original power of attorney raised another issue. AAMVA, NADA, NAAA, the Texas State Department of Highways and Public Transportation and the California Department of Transportation each suggested that the original POA should be passed on with the title instead of being returned to the issuing state. These commenters argue that by keeping the original title and POA together, any alterations on the title or POA would be easier to detect when they are eventually submitted to the State in which the car is next titled.

Although there may be merit in having the original POA accompany the title, the agency has no discretion to permit this procedure as an alternative to returning the POA with the title. The statute states that "the person granted such power of attorney . . . shall submit the original back to the State". In view of this statutory requirement, the final rule requires the original POA to be returned to the State of issuance. However, to address the concerns of those who believe that the POA should accompany the title, the agency notes that the definition of "original power of attorney" permits a secure copy of the POA to be considered an "original." As NADA stated in support of our definition, "allowing for multicopy originals will allow an 'original' to be sent to the State that issued the power of attorney as well as one to be sent forward with the title," as the States would like.

Submission of the Power of Attorney and Title to the State

The Pennsylvania Department of Transportation (PennDOT) noted that the language in the rule requiring the person exercising the power of attorney to submit it to the issuing state "with a copy of the transferor's title" could, "[u]nder strict interpretation, . . . require a copy of the title even in circumstances where the power of attorney was being submitted with the actual title for processing of a [new title application]." NHTSA did not intend to require a copy of the title in addition to the actual title document in such cases, nor does the agency believe that Congress intended such a result. Accordingly, NHTSA adopts, with minor editorial adjustment, PennDOT's

suggestion to amend the language of § 580.13(f) to specify that the transferee exercising a power of attorney shall submit to the issuing State the original power of attorney with either a copy of the transferor's title or the actual title if the transferee is submitting a title application at the same time.

Another clarifying amendment was suggested by the Missouri Department of Revenue. Missouri recommended that § 580.13(f) of the rule state specifically that the transferee submit a copy of the "front and back" of the transferor's title when returning the executed power of attorney to the issuing state. We appreciate Missouri's concern but do not think it is necessary to add such language to the regulatory text. We think it is clear that the term title refers to the entire document, front and back, and that anything less than the whole of the title is not the "title," but a portion of the title. The transferee will need to submit a copy of both sides of the title in order to comply with the requirements of § 580.13(f).

The Washington State Department of Licensing commented that returning the power of attorney and a copy of the title to the issuing state will create problems because the power of attorney and the title may not have been issued by the same State and, therefore, the documents would have to be returned to different States. Such is not the case. The regulation specifies that "[t]he transferee shall submit the original power of attorney form to the State that issued it, with a copy of the transferor's title." Consequently, the "issuing" State to which both documents must be returned is the State that issued the power of attorney. There is no requirement for submitting any document to the State that issued the original title.

Retention of Powers of Attorney by the State

The new law expressly prohibits NHTSA from requiring title applications to be filed with powers of attorney (POA), and expressly grants NHTSA the authority to require the States to retain submitted powers of attorney. The agency therefore proposed to amend § 580.13(f) to eliminate the requirement that title applications accompany the powers of attorney submitted back to the State by the persons exercising them. The agency received no comments regarding this proposed amendment and adopts it without change.

The Pennsylvania Department of Transportation requested an amendment stating that the "State issuing the original power of attorney

form MAY choose whether to accept a copy of the transferor's title or require the original title document to be submitted with the secure power of attorney." As with other discretionary provisions in TIMA, the Federal law will not require any transferee to retitle a vehicle in connection with the use of a secure power of attorney, but the Federal law does not prohibit a State from adopting such a requirement if it so chooses.

NHTSA further proposed to amend § 580.13(f) to require a State which receives an executed power of attorney and transferor's title in accordance with that section, to retain those documents for five years. The five year retention period was intended to parallel the record retention requirement imposed on dealers, distributors and lessors.

The Washington State Department of Licensing was the only commenter who objected to any State record retention requirement. Although it did not actually suggest that the proposed retention requirement be withdrawn, it did state that "NHTSA cannot expect States to keep the original secure POA and title copy documents (even in microfilm form) of vehicles which have left their jurisdictions to be titled in another jurisdiction." Washington provided no evidence to support its claim that the mere retention of records would be impossible. While the State did note a trend toward "paper elimination," States are not limited to retaining the records in paper form. Furthermore, none of the other States who commented, nor AAMVA in any way suggested that the very concept of retaining these records is impracticable. Finally, elimination of this requirement would hamper enforcement efforts and thwart the intent of Congress.

Several commenters urged NHTSA to decrease the retention period, recommending instead a one year retention requirement or a retention period equal to the State's current titling record retention period. The California Department of Motor Vehicles (CaDMV) and the AAMVA for example, each noted that most fraud is detected within 12 months of titling, making the first year of retention most crucial. The Texas State Department of Highways and Public Transportation indicated that, once retitled, the new titling state will have a copy of the requisite records. AAMVA, NADA, CaDMV and the Iowa Department of Transportation all commented that five years is longer than most current State titling record retention periods and that a five year period will require additional handling,

resulting in additional costs to the States.

Upon reviewing these comments, the agency has concluded that a fixed five-year retention period would be unduly burdensome to the States. NHTSA does not favor an across-the-board one year retention period. While most fraud may be detected within the first 12 months after titling, a significant amount of fraud is not detected within that time. Consequently, a period longer than twelve months is preferable. Under § 580.13(f) as originally adopted, a power of attorney form submitted to the State with a title application would be retained for a period equal to the State's standard titling record retention period, which would not necessarily be five years (but, given current State practice, would exceed one year). In light of this and of the cost concerns of the commenters, the agency agrees that its enforcement concerns can be met without mandating a five year retention period and therefore adopts the suggestion of several commenters that the powers of attorney be retained by the State for a period of three years or at least equal to the State's titling record retention period, whichever is shorter. As stated in the NPRM, the State may retain either the original copies it receives or a photostat, carbon or other facsimile copy, including any media by which such information may be stored, provided there is no loss of information.

Approval of Alternate Requirements

The TIMA contemplates the administrative approval by NHTSA of alternative methods of odometer disclosure, provided those alternate methods are consistent with the purposes of the Act. At the time the 1990 amendment was enacted, the agency had issued a rulemaking notice proposing a mechanism in § 580.11 whereby the agency could grant a State's request for approval of an alternative to the requirements of § 580.13(f) regarding the disposition of POAs. Although that notice was withdrawn, the proposal was reissued with the NPRM. Under that proposal, a State could submit a petition to NHTSA's Chief Counsel setting forth the requirements in effect in the petitioning State, including a copy of the applicable State law or regulation and an explanation of how the requirements are consistent with the Act. Notice of grant or denial of the petition would be issued by the Chief Counsel to the petitioner without further notice in the **Federal Register**.

Three commenters, NAAA, NADA and the Oregon Department of Transportation (ODOT), expressed an

opinion on this proposal. NAAA opposed the proposal while NADA and ODOT supported it with suggestions for further improvement.

As an initial matter, NAAA questioned NHTSA's authority to approve alternate State procedures for submission of odometer disclosure documents. To substantiate its claim, NAAA argued that the section of TIMA dealing with approval of alternate requirements does not address the procedure by which disclosure documents shall be submitted to the State. It is the agency's view that TIMA authorizes the agency to approve procedural alternatives as well as disclosure format alternatives. House Report 99-833, discussing *inter alia*, the requirements contained in TIMA, explains the intended reach of the alternate requirement approval requirement: "[this provision] states that the requirements of subsections (d) and (e)(1) [which concern the use of secure titles containing mileage disclosure statements and require lessees to provide mileage statements to their lessors upon the lessors' transfers of their vehicles] shall apply in a state unless the State has in effect alternate motor vehicle mileage requirements approved by the Secretary of Transportation." This language does not imply that Congress intended to limit the agency's authority to approve alternate disclosure formats only.

While the agency believes that the "alternate requirements" section of TIMA alone provides statutory authority to NHTSA to create the approval mechanism we have proposed, the subsequent amendments provide further authority. For example, 1988 and 1990 amendments each specifically discuss the disposition of the secure power of attorney and neither suggests that the agency's authority to approve alternatives is circumscribed.

NAAA's substantive opposition to the proposal centers around a concern that the creation of such an approval mechanism will foster non-uniformity and will "exacerbate * * * confusion * * * in interstate titling procedures." We appreciate NAAA's concern and agree that greater uniformity among State titling laws and procedures would be desirable. However, Congress never intended to preempt all State vehicle registration, titling and sales laws. In fact, as noted in House Report 99-833, Congress provided in the law for approval of alternate requirements to "give States maximum flexibility in implementing odometer disclosure provisions." NHTSA has attempted to follow this approach throughout the

rulemaking process. We have tried, where possible, to preserve State discretion. Where we have limited that discretion, it is because Congressional intent and the needs of the Act demand it.

Moreover, NHTSA does not share NAAA's belief that the creation of a mechanism to approve alternate procedures for the disposition of secure powers of attorney will, in fact, result in "fifty or more different procedures." The creation of a mechanism does not automatically result in the exercise of that mechanism. Since its original effective date of April 29, 1989, § 580.11 has contained a procedure for the approval of disclosures other than those specified in the regulation and the agency has yet to receive a petition under that section. Furthermore, the need for alternate secure power of attorney disposition methods should be diminished because the retitling requirement has been eliminated. However, the agency still believes that it is important to have the ability to assess alternate methods should a State develop a system that will meet enforcement needs while better meeting some State-specific need of its own.

We also disagree with NAAA's charges that we failed to consider whether the proposed rule will undercut fraud prevention and what the consequences will be for interstate transactions. As noted in the NPRM, any State requesting approval of an alternate system will have to demonstrate specifically how its proposal is consistent with the purposes of the Act, including an analysis of what effect the proposed alternative will have on combating odometer fraud. With respect to NAAA's concern about the effects on interstate transactions, the agency notes that the States have maintained their own vehicle registration, titling and sales laws since long before the introduction of Federal odometer laws. Many of the problems currently encountered by the auctions stem from differences in State laws not affected by the odometer law. Moreover, to the extent that problems have arisen due to varying State implementation of odometer matters within their discretion, NHTSA encourages the States to work together to ameliorate such differences.

Finally, NAAA notes that the proposal that petitions be reviewed and acted upon without notice in the **Federal Register** will add to the confusion of title clerks and others who already have to master many different State practices. NADA also suggested that a brief period of public notice and comment would be

appropriate. Upon reflection, we agree that a notice and comment period and public notice of the disposition of the petition would benefit all concerned. Accordingly, the final rule provides that upon submission of a petition under this section, NHTSA will publish a **Federal Register** notice describing the State proposal and indicating an initial determination, pending a 30-day comment period. Notice of the final action on the petition will also be published in the **Federal Register**.

The Oregon DOT supported the alternative procedures proposal, but requested that the "criteria for approving alternate programs be expanded" because the proposal, as written, allows for "very little in the way of 'alternatives'." Since the only criterion for approving petitions submitted under the proposal is that the State alternative be consistent with the purposes of the Act, and since we do not have the authority to approve alternatives that are not consistent with the purposes of the Act, we believe that the language is sufficiently broad. Accordingly, we are adopting the changes to § 580.11, as proposed, with the addition of the comment period.

Use of Reassignment Forms By Titled Owners

A number of commenters objected to a proposed amendment to § 580.5 that would require a titled owner to make his or her odometer disclosure on the vehicle's title, and not on a reassignment document. It is apparent from the comments that the purpose and scope of the proposed amendment were not clearly understood.

The purpose of the proposed amendment was to prevent a titled owner who sells a vehicle from using a document other than the title or a secure power of attorney to make the odometer disclosure required by law. The central purpose of TIMA had been to make the title document the sole vehicle for odometer disclosure, thereby completing a years-long movement among the States toward the use of the title for disclosure. The practice of using a separate document for odometer disclosure, which had been common in the early days of the Federal odometer law, had been shown to be too vulnerable to abuse. Although the 1988 and 1990 amendments had recognized the necessity of using a power of attorney in some circumstances, the Congress had placed strict controls on the circumstances in which a POA could be used. These controls reflect Congress's reluctance to allow the use of any document other than the title document for odometer disclosure.

In proposing to prohibit titled owners from using reassignment forms for odometer disclosure, the agency acted in the belief that the reassignment forms would be subject to the same abuses that had compromised the effectiveness of the older, separate disclosure statements. Unlike the POA, which has a legitimate purpose if the title is lost or held by a lienholder, a separate reassignment form has no commercial purpose at the time of the first transfer by a titled owner. In most cases, the title itself would be available to the owner. Alternatively, if a lienholder has the title, the owner could execute a POA authorizing the transferee to complete the odometer disclosure on the title.

The limited scope of the proposal needs to be stressed: it would prohibit reassignment forms only for the titled owner. States may continue to provide supplementary reassignment forms. Thus, the proposal would not interfere with dealer-to-dealer reassignments, all of which could take place as they do now.

The commenter expressing the strongest objection to the proposal was the State of Arkansas, which had been under the impression that NHTSA had previously approved the State's reassignment form. The South Carolina Department of Highways and Public Transportation and the NADA shared Arkansas' belief that NHTSA had approved the Arkansas reassignment form. In reviewing the communications between Arkansas and NHTSA, we note that we approved the information content of the form, but that we were not asked to approve the use of the form and did not approve its use as a substitute for TIMA disclosure. Moreover, NHTSA specifically advised AAMVA that although Arkansas' proposed form allowing transfer by titled owners as well as dealers would appear not to be prohibited under the rules, NHTSA could not endorse such a use because it is at odds with the use of the secure power of attorney and its attendant protection against fraud. This position has been repeated by the agency, both orally and in writing, including admonitions that the agency would address this issue by rule if necessary. At this time, we believe it is necessary to promulgate a rule expressly prohibiting the use of the reassignment form by titled owners.

In reaffirming its position, the agency acknowledges that there may be circumstances under which a document other than the title itself or a secure POA could be used for odometer disclosure. At the least, however, such a document would have to be used in a

way that would ensure the retention of the odometer information and enable law enforcement agencies to use it in investigating odometer fraud. This is the case with the POA procedure, which contains a number of safeguards. The appropriate procedure for considering such an alternative would be the petition process established in § 580.11 for considering alternative odometer disclosures.

Upon reviewing all of the comments on the proposed amendment to § 580.5, NHTSA has decided to adopt the amendment as proposed, to prohibit a titled owner from using a reassignment form for his or her odometer disclosure. This amendment has an effective date of June 22, 1991, rather than October 21, 1991. NHTSA has chosen a later effective date for this amendment to allow States the opportunity to deplete form supplies, make necessary alterations to existing forms and/or pursue the alternate disclosure petition process, as they may wish. NHTSA believes a nine month lead time will be sufficient to accommodate the needs of the States.

Clarification of Section 580.11(c)

In reviewing § 580.11, the agency tentatively determined that the language of paragraph (c) of that section was unclear. Specifically, the use of the term "extension" in the sentence "The effect of a grant of a petition is to relieve a State from responsibility to conform the State motor vehicle titles with §§ 580.5 and 580.7 of this part during the time of the extension." could cause some confusion. The effect of a grant of such a petition would be to relieve a State from responsibility to conform its titles with §§ 580.5 and 580.7 for as long as the approved alternate disclosure requirements were in effect in that State, but the term "extension" in that sentence could be confused with the extension given a State to bring its title into conformance with the requirements of this part.

To avoid any confusion, NHTSA proposed to amend that sentence to read as follows: "The effect of the grant of a petition is to relieve a State from responsibility to conform the State disclosure requirements with §§ 580.5, 580.7 or 580.13(f) for as long as the approved alternate disclosure requirements remain in effect in that State." The agency received no comments on this proposal and is, accordingly, adopting it as proposed.

Extension of Implementation Dates

AAMVA requested that NHTSA include in the final rule a provision allowing State* to "petition for an

extension of any established implementation date based upon which existing statutes and regulations must be amended to comply with the provisions of this new rule, as well as allowing States to exhaust currently existing forms and other documents which may need to be changed."

Since the NPRM had not proposed a new implementation extension process, the agency would not be able to grant AAMVA's request without first seeking additional comment. Based on its initial review, NHTSA does not believe that such an extension is necessary or advisable.

Neither the statute nor the rule requires States to make secure powers of attorney available. Consequently, there is no "deadline" by which a State must change any statutes or regulations regarding the use of such powers of attorney. Nor does this rulemaking action require the alteration of any forms. Accordingly, there is no need for any implementation extension and, therefore, no need for any new procedure by which to request such an extension. With respect to the implementation dates regarding the availability of Federally conforming title documents, nothing in this rulemaking affects those documents and, therefore, there is no need to alter the existing extension petition procedure. In the interests of achieving full implementation, we would not want to take any action, especially unnecessary action, which would encourage further delays.

Odometer Disclosure by Power of Attorney

We received one comment suggesting a technical amendment to § 580.13(b). The commenter, Joanne S. Faulkner, Esq., suggests that this section should be amended to require that, if a power of attorney is to be used, such power of attorney/odometer disclosure statement should be completed "before executing any transfer of ownership documents." Ms. Faulkner argues that this restriction should replace the "in connection with" language that generally controls the time frame in which disclosures are to be made as a means of reducing the possibility of abuse inherent in a flexible time frame.

We decline to adopt Ms. Faulkner's suggestion. We note first that her suggestion lies outside the scope of the NPRM. Further, we do not think such a change is necessary. Ms. Faulkner notes that there is no reason why the parties to a vehicle transfer cannot complete the secure power of attorney at the time of transfer. We agree. However, it is because of this fact that we find her

suggested amendment unnecessary. The power of attorney is intended for use when the title is not present at the time of sale so the seller will not have to make a return trip to the dealership. Thus, there is every incentive for the parties to complete the power of attorney form at the time of sale, without the rule having to so specify. At this point we have no indication that parties using secure powers of attorney are completing them at any time other than the point of sale, or that the "flexible time frame" is being used to perpetrate fraud in the use of secure powers of attorney.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule may result in States adopting more costly new recordkeeping procedures; however, these costs could be offset by the lowered cost resulting from the issuance of fewer titles than the State would have to issue under the current rule.

Regulatory Impacts

A. Costs and Benefits to Dealers, States and Consumers

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. A regulatory evaluation has been prepared analyzing the impacts of the rule and has been placed in Docket 87-09, Notice 15. Any interested person may obtain a copy of this regulatory evaluation by writing to the NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949. Summarizing this evaluation, this rule does not impose any costs on dealers or distributors. Any costs to the States may be offset by savings the States will achieve from the issuance of fewer titles than are required under the current rule.

B. Small Business Impacts

The agency has also considered the impacts of this rule in relation to Regulatory Flexibility Act. For the reasons discussed above, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly,

no regulatory flexibility analysis has been prepared.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly, an environmental impact statement has not been prepared.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has already approved NHTSA's information collection requirements that require consumer, dealers, distributors, lessors and auction companies to disclose and/or retain mileage information. (OMB2127-0047). This rule does not propose any new information collection requirements as that term is defined by OMB in 5 CFR part 1320.

List of Subjects in 49 CFR Part 580

Odometers, Consumer protection.

In consideration of the foregoing, 49 CFR part 580 is amended as follows:

PART 580—[AMENDED]

The authority citation for 49 CFR part 580 continues to read as follows:

Authority: 15 U.S.C. 1988; delegation of authority at 49 CFR 1.50(f) and 501.8(e)(1).

1. In § 580.3 the following is added between the definitions of "mileage" and "secure printing process or other secure process:"

§ 580.3 Definitions.

* * * * *

Original power of attorney means, for single copy forms, the document set forth by secure process which is issued by the State, and, for multicopy forms, any and all copies set forth by secure process which are issued by the State.

2. In § 580.5, paragraph (c) introductory text is revised as follows:

§ 580.5 Disclosure of odometer information.

* * * * *

(c) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or, except as noted below, on the document being used to reassign the title. In the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on the title, and not on a reassignment document. This written disclosure must be signed by the transferor, including the printed name. In connection with the transfer of

ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the written disclosure. In addition to the signature and printed name of the transferor, the written disclosure must contain the following information:

* * * * *

3. In § 580.11, paragraphs (a) and (c) are revised as follows:

§ 580.11 Petition for approval of alternate disclosure requirements.

(a) A State may petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of §§ 580.5, 580.7, or 580.13(f) of this part.

* * * * *

(c) Notice of the petition and an initial determination pending a 30-day comment period will be published in the **Federal Register**. Notice of final grant or denial of a petition for approval of alternate motor vehicle disclosure requirements will be published in the **Federal Register**. The effect of the grant of a petition is to relieve a State from responsibility to conform the State disclosure requirements with §§ 580.5, 580.7, or 580.13(f), as applicable, for as long as the approved alternate disclosure requirements remain in effect in that State. The effect of a denial is to require a State to conform to the requirements of §§ 580.5, 580.7 or 580.13(f), as applicable, of this part until such time as the NHTSA approves any alternate motor vehicle disclosure requirements.

4. In § 580.13, paragraph (f) is revised as follows:

§ 580.13 Disclosure of odometer information by power of attorney.

* * * * *

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State that issued it, with a copy of the transferor's title or with the actual title when the transferee submits a new title application at the same time. The State shall retain the power of attorney form and title for three years or a period equal to the State titling record retention period, whichever is shorter. If the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title.

Issued on: September 13, 1991.

Jerry Ralph Curry,
Administrator, National Highway Traffic
Safety Administration.

[FR Doc. 91-22508 Filed 9-19-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN/1018-AB42

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Six Plants From the Island of Lanai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines six plants, *Abutilon eremitopetalum* (no common name (NCN)), *Cyanea macrostegia* subsp. *gibsonii* (NCN), *Gahnia lanaiensis* (NCN), *Phyllostegia glabra* var. *lanaiensis* (NCN), *Tetramolopium remyi* (NCN), and *Viola lanaiensis* (NCN), to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). Five of these taxa are known only from the Lanai area of Lanai Island, Hawaii, and the sixth from Auala Ridge in the northwestern part of the island. The six plants are threatened by one or more of the following: Habitat degradation and competition by naturalized, exotic vegetation; predation or habitat destruction by feral animals; and an increased potential for extinction resulting from stochastic events because of the small numbers of extant individuals and their restricted distribution. Potential threats include fire and destruction or damage to the taxa and their habitat as a secondary result of urbanization and development of the island. This rule implements the protection and recovery provisions afforded by the Act for these plants.

EFFECTIVE DATE: October 21, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Abutilon eremitopetalum, *Cyanea macrostegia* subsp. *gibsonii*, *Gahnia lanaiensis*, *Phyllostegia glabra* var. *lanaiensis*, and *Viola lanaiensis* are endemic to the island of Lanai; *Tetramolopium remyi* at one time also grew on West Maui, but presently is believed to be extinct on that island (Lowrey 1990). The island of Lanai is a small island totaling about 139 square miles (sq mi) (361 sq kilometers (km)) in area. Lanai is a shield volcano built by eruptions at its summit and along three rift zones; the principal rift zone runs in a northwesterly direction and forms a broad ridge whose highest point, Lanaihale, has an elevation of 3,370 feet (ft) (1,027 meters (m)). The entire ridge is commonly called Lanaihale, after its highest point. The only known extant populations of five of the six taxa in this rule are found on the summit, slopes, or valleys of Lanaihale; the sixth taxon is confined to Aualua Ridge in the northwestern part of the island. All six taxa are known only from privately-owned land. A Lowland Wet Forest community covers the summit and narrow valleys of Lanaihale. Lowland Wet Forest communities occur on the six largest Hawaiian Islands at about 300 to 4,000 ft (100 to 1,200 m) in elevation (Gagne and Cuddihy 1990). Although annual rainfall averages about 37 inches (in) (94 centimeters (cm)) in this vegetation type on Lanai, there is considerable cloud cover during most afternoons and nights, and fog drip nearly triples the annual precipitation (Ekern 1964). The substrate is primarily silty clay and clay (Foote et al. 1972). The vegetation is a mixture of native and exotic species with native 'ohi'a and uluhe fern (*Metrosideros polymorpha* and *Dicranopteris linearis*, respectively) being the dominant species. The known existing populations of *Cyanea macrostegia* subsp. *gibsonii*, *Gahnia lanaiensis*, *Phyllostegia glabra* var. *lanaiensis*, and *Viola lanaiensis* are members of this community.

Abutilon eremitopetalum, which grows on the dry leeward slopes and valleys of Lanaihale, and *Tetramolopium remyi*, which grows on Aualua Ridge on the northwestern part of the island, are members of the Lowland Dry Shrubland vegetation community. This vegetation type occurs in leeward situations on all of the main islands except Niihau and Kahoolawe, at about 330 to 1,970 ft (100 to 600 m) in elevation (Gagne and Cuddihy 1990). The land type is "Rock land;" "Very stony land, eroded;" and "Rock outcrop." The annual rainfall is about 10

to 25 in (25 to 64 cm), mostly falling between November and April (Foote et al. 1972). The vegetation comprises typical dry lowland plants such as lama (*Diospyros sandwicensis*), wiliwili (*Erythrina sandwicensis*), 'a'ali'i (*Dodonaea viscosa*), nehe (*Lipochaeta* spp.), and koa haole (*Leucaena leucocephala*).

Discussion of the Six Species

Abutilon eremitopetalum is based on a specimen collected by George C. Munro in Maunalei Valley, Lanai, in 1930 (Caum 1933; George Munro, in litt., 1951). Edward L. Caum described it as a new species, naming it *A. cryptopetalum* because its petals were small and completely enclosed by the calyx (Caum 1933). *Abutilon cryptopetalum* Caum, a later homonym as the name had previously been given to an Australian species of the genus, was renamed *A. eremitopetalum* by Caum, maintaining the meaning of its original specific epithet (Christophersen 1934). In 1932, Otto Degener discovered a shrub in the Waianae Mountains of Oahu, which resembled an *Abutilon* except that it had reduced or "aborted" petals completely enclosed by the calyx. He established a new genus, *Abortopetalum*, for his discovery, basing the genus upon its short, enclosed petals which he believed to be a unique feature (Degener 1932). Degener later transferred Caum's species to his new genus, giving rise to the epithet *Abortopetalum eremitopetalum* (Degener 1936). Erling Christophersen (1934) noted that all characters of the genus *Abortopetalum* are encompassed within the morphological range of *Abutilon* and reduced Degener's genus to synonymy, a course accepted by all botanists except Degener.

Abutilon eremitopetalum is a shrub in the mallow family (Malvaceae) with grayish-green, densely hairy, heart-shaped leaves; the leaves are 2.5 to 5 in (7 to 12 cm) long. One or two flowers on stems up to 1.5 in (4 cm) long are in the leaf axils. The calyx of the flowers is green, cup-shaped, and about 0.5 in (1.5 cm) long. The petals are shorter than the calyx and are bright green on the upper surface and reddish on the lower surface. The staminal column extends beyond the calyx and is white to yellow, with red style branches tipped with green stigmas. The fruit is a hairy, brown, dry, cylindrical capsule and about 0.3 in (1 cm) long. It is the only *Abutilon* on Lanai whose flowers have green petals hidden within the calyx (Bates 1990).

Historically, *Abutilon eremitopetalum* was found in small, widely scattered colonies at elevations of between 700

and 1,000 ft (215 and 305 m) in the ahupua'a (geographical areas) of Kalulu, Mahana, Maunalei, Mamaki, and Paawili on the northern, northeastern, and eastern parts of Lanai Island (Caum 1933; Hawaii Heritage Program (HHP) 1990b, 1990c; G. Munro, in litt., 1951). Today, about 30 (Hawaii Plant Conservation Center (HPCC) 1990a; Robert Hobdy, State Dept. of Land and Natural Resources, pers. comm., 1990) to 70 (HHP 1990a) individuals are known from a single population in Kahea Gulch on the northeastern part of the island. Habitat degradation and competition by encroaching exotic plant species such as lantana (*Lantana camara*), koa haole, and sourbush (*Pluchea carolinensis*) probably are the main threats to this species (HHP 1990a, HPCC 1990a). Browsing by axis deer (*Axis axis*) is another threat (HHP 1990a; HPCC 1990a; R. Hobdy, pers. comm., 1990). Although *Abutilon eremitopetalum* does not appear to be a preferred food of the deer, they will browse the species if other food sources become scarce. Grazing on grasses and forbs has the potential to promote soil erosion; this usually is limited to sheet erosion as the shrubs in the area prevent mass movement of the soil (R. Hobdy, pers. comm., 1990). Fire is another potential threat because the area is dry much of the year. The small number of extant individuals is in itself a considerable threat, as the limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could destroy the only known existing population. Cattle (*Bos taurus*) are known to have destroyed the plants in the past (G. Munro, in litt., 1951), but today are not a problem as the island is no longer a cattle ranch.

Cyanea macrostegia subsp. *gibsonii* was first collected by William Hillebrand in July, 1870, "on the highest wooded ridge" (Lanaihale) of the island of Lanai (Rock 1919). Hillebrand, a medical doctor and author of "Flora of the Hawaiian Islands," named his new species *Cyanea gibsonii* in honor of Walter Murray Gibson (Hillebrand 1888), a Mormon missionary who had established a settlement on the island and later became a notorious figure in Hawaiian politics. The type specimen was deposited in the Berlin Herbarium, which was destroyed in 1943; in 1988 an isotype in the National Herbarium of Victoria, Melbourne, Australia, was designated as the lectotype (Lammers 1988). In 1987, Harold St. John, questioning the validity of the characters used to delineate the genus *Cyanea*, transferred all species of *Cyanea* to the closely related genus *Delissea* (St. John 1987, St. John and

Takeuchi 1987). Few botanists have accepted St. John's taxonomy for this group; the majority continue to recognize the genus *Cyanea* (Lammers 1990). Several botanists noted the similarity between *C. gibsonii* and a Maui species of *Cyanea*, *C. macrostegia* (Rock 1919, Wimmer 1943), the Lanai plant differing only in that it has a curved (rather than suberect) corolla. Thomas Lammers, the latest monographer of the Hawaiian members of this family, believed that it would be more appropriate to treat the two as conspecific subspecies and published the new combination and status in 1988.

Cyanea macrostegia subsp. *gibsonii*, a member of the bellflower family (Campanulaceae), is a palm-like tree 3.2 to 23 ft (1 to 7 m) tall. The leaves are elliptic or oblong, about 8 to 31 in (20 to 80 cm) long and 2.5 to 8 in (6.5 to 20 cm) wide; the upper surface usually is smooth, while the lower is covered with fine hairs. The leaf stem often is covered with small prickles throughout its length. The inflorescences are horizontal and clustered among the leaves, each bearing 5 to 15 curved flowers which are blackish-purple externally and white or pale lilac within. The fruit is a yellowish-orange berry about 0.6 to 1.2 in (1.5 to 3 cm) long. The following combination of characters separates this taxon from the other members of the genus on Lanai: calyx lobes oblong, narrowly oblong, or ovate in shape; and the calyx and corolla both more than 0.2 in (0.5 cm) wide (Lammers 1990, Rock 1919, Wimmer 1943).

Cyanea macrostegia subsp. *gibsonii* historically is documented from the summit of Lanaihale and the upper parts of Mahana, Kaiholena, and Maunalei valleys of Lanai Island (Lammers 1990, Rock 1919). It presently is known from two gulches in upper Kaiholena Valley and one of the feeder gulches into Maunalei Valley. The Maunalei population was last seen in the late 1980's and, although its habitat showed signs of disturbance, was the healthiest of the three populations (R. Hobdy, pers. comm., 1990). In 1989, only a single plant could be found at one of the Kaiholena sites, and it was being overgrown by kahili ginger (*Hedygium gardnerianum*) (R. Hobdy, pers. comm., 1990). Browsing by deer and encroaching exotic species of plants are the main threats (R. Hobdy, pers. comm., 1990). The small number of extant individuals also is a threat, as the limited gene pool may depress reproductive vigor, or any natural or man-caused environmental disturbance could destroy the only known existing population.

Gahnia lanaiensis was first collected by Otto and Isa Degener on "Lanai, east of Munro Trail and north of Lanai-hale, in shrubby rainforest at 3,000 ft., Sept. 4, 1963 * * *" (Degener and Degener 1965). The following year, the Degeners and J.H. Kern published the new taxon, naming it for the island on which it grows (Degener *et al.* 1964). The species is considered endemic to the island of Lanai, but is very closely related to *G. melanocarpa* of eastern Australia (Koyama 1990).

Gahnia lanaiensis, a member of the sedge family (Cyperaceae), is a tall (5 to 10 ft (1.5 to 3 m)), tufted, perennial, grass-like plant. This sedge may be distinguished from grasses and other genera of sedges on Lanai by its spirally arranged flowers, its solid stems, and its numerous, three-ranked leaves. *Gahnia lanaiensis* differs from the other members of the genus on the island by its achenes (seed-like fruits), which are 0.14 to 0.18 in (0.35 to 0.45 cm) long and purplish-black when mature (Koyama 1990).

Gahnia lanaiensis is known from 15 or 16 large clumped plants growing along the summit of Lanaihale (HHP 1990d to 1990f). The population extends for a distance of about 0.8 mi (1.3 km) between 3,000 and 3,360 ft (915 and 1,025 m) in elevation (HHP 1990d to 1990f). This distribution encompasses the entire known historic range of the species. The primary threat to this species is the small number of plants and their restricted distribution, which increases the potential for extinction from stochastic events. Potentially, a long-term threat to the species is posed by the planned development of the island. Presently, hotels are being built and a tourist industry is planned. The Munro Trail, which traverses Lanaihale, affords a beautiful view of the island and is sure to be popular with tourists. Approximately 30 percent of the known plants of *G. lanaiensis* grow along this trail system. Increased human use of the trail could lead to the destruction of individuals of the species. Disturbance of the soil or destruction of groundcover plants would increase the potential for erosion and open the area to invading exotic plants (Joel Lau, HHP, pers. comm., 1990). Manuka (*Leptospermum scoparium*), a weedy tree introduced from New Zealand, is spreading along Lanaihale, but has not yet reached the *Gahnia* area. However, manuka may expand its distribution into the remaining *Gahnia* habitat and may compete with *Gahnia* for space.

Phyllostegia glabra var. *lanaiensis* was first collected by Horace Mann, Jr., and William Tufts Brigham during the

year they spent collecting botanical specimens in Hawaii (May 1864 to May 1865). It is presumed that all collections of this taxon were made in the "mountains of Lanai," but the plant is known definitely only from Kaiholena Gulch. Earl E. Sherff described this variety in 1934, naming it for the island on which it grows (Sherff 1934).

Phyllostegia glabra var. *lanaiensis* is a robust, erect to decumbent, glabrous, perennial herb in the mint family (Lamiaceae). Its leaves are thin, narrow, lance-shaped, 3 to 9.5 in (8 to 24 cm) long and 0.6 to 1 in (1.6 to 2.5 cm) wide, often red-tinged or with red veins, and toothed at their edges. The flowers are in clusters of 6 to 10 per leaf axil, mostly only at the ends of branches. The flowers are white, occasionally tinged with purple, and are variable in size, about 0.4 to 1 in (1 to 2.5 cm) long. The fruit consists of four small, fleshy nutlets. Two varieties of *P. glabra* occur on Lanai. The variety *lanaiensis* can be distinguished from the variety *glabra* by its shorter calyx and narrower leaves. *Phyllostegia imminuta*, the only other member of the genus on Lanai, is a hairy plant with a calyx about 0.1 in (0.3 cm) long, while *P. glabra* lacks hair and has a calyx about 0.2 to 0.4 in (0.4 to 1.1 cm) long (Degener and Degener 1960, Fosberg 1936a, Sherff 1935b, Wagner *et al.* 1990).

Phyllostegia glabra var. *lanaiensis* has not been seen for several years. Last sighted in the 1980's, a single plant was seen in a gulch feeding into the back of Maunalei Valley (R. Hobdy, pers. comm., 1990). The gulches and valleys of Lanaihale are very rugged and have steep walls; consequently they are not explored with any regularity. Because no thorough recent surveys for this taxon have been conducted in this rugged terrain, the likelihood that this plant still exists is very good. Browsing by deer and invading, competing exotic plants are the two main threats to all the native vegetation within the historic range of this taxon (R. Hobdy, pers. comm., 1990).

Tetramolopium remyi was first collected on Maui, most likely in the foothills of western Maui, by Ezechial Jules Remy, between 1851 and 1855. In 1861, Asa Gray described the species as *Vittadinia remyi*, reducing the genus *Tetramolopium* to section of *Vittadinia* in the same publication (Gray 1861). William Hillebrand was the first to collect the species on Lanai. After reviewing previous work, he decided to maintain the genus *Tetramolopium* and transferred all Hawaiian *Vittadinia* to that genus (Hillebrand 1888). Drake del Castillo (1888) placed this species in the

closely related genus *Erigeron*; he gave no explanation for his action, and this course has not been followed by other botanists.

Tetramolopium remyi, a member of the sunflower family (Asteraceae), is a much branched, decumbent (reclining, with the end ascending) or occasionally erect shrub up to about 15 in (40 cm) tall. Its leaves are firm, very narrow, 0.6 to 1.4 in (1.5 to 3.5 cm) long, and with the edges rolled inward when the leaf is mature. There is a single flower head per branch. The heads are 0.4 to 0.6 in (0.9 to 1.5 cm) in diameter and on stalks 1.6 to 4.7 in (4 to 12 cm) tall; each comprises 70 to 100 yellow disk and 150 to 250 white ray florets. The stems, leaves, flower bracts, and fruit are covered with sticky hairs.

Tetramolopium remyi has the largest flower heads in the genus. Two other species of the genus are known historically from Lanai, but both have purplish rather than yellow disk florets and from 4 to 60 rather than 1 flower head per branch (Lowrey 1986, 1990; Sherff 1935a).

A single population of *Tetramolopium remyi*, comprising about 35 plants growing in an area of about 2,500 sq ft (230 sq m), is known to be extant; the population is found on Aualua Ridge at an elevation of about 750 ft (228 m). From the time the population was first observed about 11 years ago, it has decreased slightly. However, fluctuations in population size are normal, depending on season and rainfall (R. Hobdy, pers. comm., 1990). Historically, the species also was known from the Lahaina area of West Maui. As it has not been documented from Maui since 1944, it is believed to be extinct on that island. Browsing by deer and mouflon sheep (*Ovis musimon*) and competition from invading weedy species, primarily broomsedge (*Andropogon virginicus*) and Guinea grass (*Panicum maximum*), are the main threats to the species (HPCC 1990b; R. Hobdy, pers. comm., 1990). The plants are tiny and can easily be displaced and eliminated by invading exotic species. Because the population grows on a dry part of the island, fires also are a potential threat (HPCC 1990b).

Viola lanaiensis was first collected by Remy on Lanai sometime between 1851 and 1855. Hillebrand (1888) mentioned in passing that Remy's specimen probably was *V. robusta*, but it was not until 1911 that it was critically studied. In that year, Joseph Rock described the Lanai plant as a variety of *Viola helenae*, a species restricted to the Wahiawa drainage basin of Kauai (Rock 1911). Independently, and without knowledge

of Rock's publication, Wilhelm Becker described the taxon, named it *V. lanaiensis*, and selected a specimen collected by Rock as the type (Becker 1916). The similarity between the Lanai plant and *V. helenae* is superficial, and most botanists today regard the Lanai *Viola* as a distinct species (Becker 1916; St. John 1979, 1989; Wagner *et al.* 1990).

Viola lanaiensis is a member of the violet family (Violaceae) and is a small, erect, unbranched or little branched subshrub, 4 to 16 in (10 to 40 cm) tall. The leaves, which are clustered toward the upper part of the stem, are lance-shaped, about 2.4 to 4.3 in (6 to 11 cm) long and 0.5 to 1.0 in (1.3 to 2.5 cm) wide. Below each leaf is a pair of narrow, membranous stipules, about 0.4 in (0.9 cm) long. The flowers are small, 0.4 to 0.6 in (1.0 to 1.5 cm) long, white tinged with purple or with purple veins, occurring singly or up to four per upper leaf axil. The fruit are capsules, about 0.4 to 0.5 in (1.0 to 1.3 cm) long. It is the only member of the genus on Lanai (Becker 1916, MacCaughey 1918, St. John 1989, Skottsberg 1940, Wagner *et al.* 1990).

Viola lanaiensis historically was known from the summit and upper slopes of Lanaihale from near the head of Hookio Gulch to Haalelepaakai, a distance of about 2.5 mi (4 km). Presently, two small populations exist. Although their size currently is unknown, it is estimated that the two populations total less than 500 plants (J. Lau, pers. comm., 1990). This estimate undoubtedly is very high (Derrall Herbst, pers. obs.). Threats include browsing by deer and competition from invading exotic plants (J. Lau, pers. comm., 1990, St. John 1981), and the potential of extinction from stochastic events due to the small population size and restricted distribution. As most of the plants grow along the Lanaihale trails, the threat of destruction or damage to the plants will increase as the tourist industry continues to develop the island.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In that document, *Gahnia lanaiensis* and *Viola lanaiensis* (as *V. helenae* var. *lanaiensis*) were considered to be endangered; *Abutilon eremitopetalum*, *Cyanea macrostegia* subsp. *gibsonii* (as *C. gibsonii*), *Phyllostegia glabra* var. *lanaiensis*, and

Tetramolopium remyi were considered to be extinct. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *Abutilon eremitopetalum*, *Cyanea macrostegia* subsp. *gibsonii* (as *C. gibsonii*), *Gahnia lanaiensis*, *Phyllostegia glabra* var. *lanaiensis*, *Tetramolopium remyi*, and *Viola lanaiensis* (as *V. helenae* var. *lanaiensis*). The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, Federal Register publication.

General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the Federal Register (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Abutilon eremitopetalum*, *Cyanea macrostegia* subsp. *gibsonii* (as *C. gibsonii* in the 1980 and 1985 notices of review), *Gahnia lanaiensis*, *Phyllostegia glabra* var. *lanaiensis*, *Tetramolopium remyi*, and *Viola lanaiensis* (as *V. helenae* in the 1980 and 1985 notices of review) were treated as Category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly

submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989. On September 17, 1990, the Service published in the **Federal Register** (55 FR 38236) a proposal to list these six taxa as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program, data from specimens in the Herbarium Pacificum of the Bernice P. Bishop Museum, and the observations of botanists and naturalists. The Service now determines *Abutilon eremitopetalum*, *Cyanea macrostegia* subsp. *gibsonii*, *Gahnia lanaiensis*, *Phyllostegia glabra* var. *lanaiensis*, *Tetramolopium remyi*, and *Viola lanaiensis* to be endangered species with the publication of this rule.

Summary of Comments and Recommendations

In the September 17, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the final listing decision. The public comment period ended on November 16, 1990. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the "Maui News" on September 28, 1990, which invited general public comment. No public hearing was requested or held. Three letters of comment were received. Two conservation organizations responded to our request for comments: The Hawaii Heritage Program of The Nature Conservancy compared the status information in the proposed rule and found it consistent with the information for the six taxa that they had in their files; the Center for Plant Conservation supported the listing of the taxa. The third response was from Castle and Cooke, Inc. (C&C), which owns approximately 98 percent of the island of Lanai. They did not support the listing of the six taxa. Their comments and the Service's response to each are given below.

Issue 1: C&C questioned the observed rarity of the taxa in the proposed rule. In their view, neither the distributions nor the populations of the six plants are

fully known at the present time, but the distributions are likely to be greater than stated in the proposal, and therefore the plants would not qualify for endangered status. Also, given our lack of knowledge of the population size and distribution of the six taxa, the threat of destruction from stochastic events is highly speculative. Their rationale for this statement was as follows:

First: Lanaihale comprises an area of about 9,000 acres (3,642 hectares); its gulches and valleys are rugged and steep walled and have not been explored with any frequency or regularity.

Second: With the exception of *Abutilon eremitopetalum*, the known individuals of the taxa in the proposed rule are found in the vicinity of the existing trails on Lanaihale. C&C believes that no recent, thorough surveys have been conducted throughout the historic ranges of the taxa or other parts of Lanaihale where these plants potentially could be found. Therefore C&C believes it very likely that additional occurrences of each taxon exist on Lanaihale and that the proposed rule has significantly underestimated the abundance and distribution of these taxa. The Hawaii Heritage Program, one of the major sources of information in the proposed rule, states that its data base does not provide a definitive or comprehensive statement on the distribution and abundance of species.

Third: The information in the proposed rule concerning the six plants apparently came from personal communications from very few individuals or from the Hawaii Heritage Program data base. With the exception of *Gahnia lanaiensis*, the information in the proposal is based upon the personal observations of Robert Hobdy which, C&C believes, were made during field surveys on Lanai between August 16 and September 2, 1987. During this short period of time, Hobdy made several significant discoveries, which would indicate that the data used by the Service in proposing these plants as endangered is too limited to make an informed decision concerning their populations and distributions.

Service Response: First: More data on the population size and distribution of these plants would have been desirable, but is unnecessary to demonstrate the present-day rarity of the taxa. Given the threats to these plants, the amount of sampling which has occurred on the island (see "Third" below), and the noted decline in the quality of the habitat over the years, it is unlikely that

a sufficiently large and widespread, yet undiscovered population exists to warrant removal of the taxa from consideration for listing as endangered.

Second: The proposed rule mentions only two plants, *Gahnia lanaiensis* and *Viola lanaiensis*, with populations in the vicinity of the existing trails on Lanaihale; the distributions given for the other four plants are ridges and walls and floors of valleys. As discussed in the preceding response, the Service believes that the available information on these taxa is sufficient to warrant listing them as endangered. Section 4(b)(1)(A) of the Act states that the Secretary of the Interior shall make a determination whether any species is an endangered species or a threatened species solely on the basis of the best scientific data available. Therefore the Hawaii Heritage Program's statement that its data base may not have the final word on taxa in no way removes these plants from consideration as endangered or threatened taxa. The Act also requires that the Service periodically review all taxa listed by the Federal government as endangered or threatened. The discovery of additional populations could lead to the downlisting or delisting of the taxa.

Third: Knowledge of the flora of the island of Lanai began with the collections of Ezechiel Jules Remy, made between 1851 and 1855. By 1920, at least eight other botanists had collected on the island. Beginning in 1927, George C. Munro, a resident of Lanai and manager of the cattle ranch on the island, took an active interest in the flora of the island, and for the next 12 years sent specimens of the island's plants to the Bishop Museum. He freely shared his knowledge of the island's flora with other interested parties such as Dr. F. R. Fosberg, who spent a week botanizing on the island with him in 1935. Since that time a great number of botanists and naturalists have collected and studied the plants of Lanai. Perhaps the longest stay by a non-resident interested in Lanai's flora was that of Drs. Otto and Isa Degener, who spent three months on the island in late 1963 and early 1964. It was during their visit that Robert Hobdy became interested in the flora of the island. Mr. Hobdy is now recognized as the authority on the flora of Lanai and has continued up to the present to study the island's plants; his information is the most current. As Hobdy is an authority on the plants of Lanai, and as his information is the most current (he has conducted surveys since that of 1987), his observations were cited most frequently in the proposed rule. However, all available information

on the island's plants (including the results of Munro, Fosberg, and the Degeners) was taken into account while drafting the proposed rule.

Issue 2: The proposed tourist industry does not present a threat to the plants. None of the development will take place on Lanaihale, a mostly rugged, not easily accessible area, and use of Lanaihale will be controlled by C&C.

Service Response: The proposed rule acknowledges that no development presently planned for the island will directly impact the six plants included in the proposal. However, the Service stands by its statement that the plants face a *potential* threat of damage to their habitat due to increased human traffic stemming from recreational use and development-related activities. The first four phases of development planned for the island include 352 hotel rooms, 500 single family homes, and about 200 townhouses. Compared with the pre-development numbers, this will almost double the number of residential units and will be an increase of 342 hotel units (State of Hawaii 1980). It is unknown what further development will occur if the first four phases are successful. Many of the valley of Lanaihale are rugged and not easily accessible, but the Munro Trail, which traverses Lanaihale, is a good jeep road and is easily hiked. Two of the plants included in the proposed rule occur along the trail and are susceptible to inadvertent damage by those using the trail. Regardless of the numerous amenities provided downslope by C&C, many people enjoy hiking or traveling by jeep in more remote areas and it is very likely that the use of Lanaihale by unguided individuals will increase with the influx of people attracted by the development of the island.

Issue 3: Fire does not pose a significant threat to the plants, as Lanaihale is damp most of the year.

Service Response: Fire is listed as a threat to two of the plants, *Tetramolopium remyi* and *Abutilon eremitopetalum*. These species grow on lower elevation, dry ridges where fires do occur on occasion.

Issue 4: Any threat from axis deer is likely to be reduced in the future. Because deer have damaged vegetation on the island and pose a risk to Lanai's watershed on Lanaihale, C&C is undertaking measures to control and reduce the deer population.

Service Response: The Act requires that the Service periodically review the status of all taxa listed by the Federal government as endangered or threatened. A change in status could lead to the downlisting or delisting of the taxa. Should the population of axis

deer be reduced to the point that it no longer poses a threat to one or more of these plants, then the status of those taxa will be reassessed and they would be downlisted or delisted if warranted.

Issue 5: Habitat degradation and competition by naturalized, exotic vegetation does not pose a significant threat. The proposed rule mentions that only three of the plants, *Phyllostegia glabra* var. *lanaiensis*, *Tetramolopium remyi*, and *Viola lanaiensis*, were threatened by competing, naturalized vegetation. *Phyllostegia glabra* var. *lanaiensis* has not been seen for several years, but is likely to still exist, according to the proposed rule. The *Tetramolopium remyi* population has decreased only slightly in the last 11 years. This seems to belie the proposed rule's contention that these plants can easily be eliminated by invading, exotic species.

Service Response: The proposed rule states that *Abutilon eremitopetalum* is threatened by encroaching exotic plants such as lantana, koa haole, and sourbush; *Cyanea macrostegia* subsp. *gibsonii* by kahili ginger; *Gahnia lanaiensis* potentially by manuka, which is spreading along Lanaihale; *Tetramolopium remyi* by broomsedge and Guinea grass; and *Viola lanaiensis* by various invading, exotic plants. Although *Phyllostegia glabra* var. *lanaiensis* has not been seen since the 1980's, the proposed rule states that exotic plants are a threat to all native vegetation within its historic range. That aggressive, exotic vegetation can and does compete with and often replaces native vegetation is well documented for many parts of the world, including Hawaii. The dry land species in the proposed rule, such as *Tetramolopium remyi*, are doubly threatened by the presence of grasses. Grasses provide fuel for fires, and a fire usually will favor the more rapid spread of the grasses; also very few species can outcompete well established, perennial grasses such as those that threaten *Tetramolopium remyi*. A single fire or a year of weather favorable to the grasses could mark the end of the population of *Tetramolopium remyi*. The fact that this species appears to have maintained its population over the past 11 years does not discount the threat that exotic vegetation poses to its survival.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the six taxa from Lanai in this rule should be classified as endangered species. Procedures found at section 4 of

the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Abutilon eremitopetalum* Caum (NCN), *Cyanea macrostegia* subsp. *gibsonii* (Hillebr.) Lammers (NCN), *Gahnia lanaiensis* Degener, I. Degener, and J. Kern (NCN), *Phyllostegia glabra* var. *lanaiensis* Sherff (NCN), *Tetramolopium remyi* (A. Gray) Hillebr. (NCN), and *Viola lanaiensis* W. Becker (NCN) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As evidenced by remnants of native vegetation on this island, Lanai probably was covered throughout by forests and shrublands before arrival of the early Polynesians who discovered the islands. Much of Lanai's vegetation was destroyed by early land use practices, which include cattle and sheep (*Ovis aries*) ranching; the clearing of land for pineapple cultivation; and the introduction of feral animals such as goats (*Capra hircus*), deer, and mouflon sheep, and domestic animals such as cattle and pigs (*Sus scrofa*) which later became feral (Cuddihy and Stone 1990, Fosberg 1936b, Tomich 1986). Over the ensuing years, the cattle, sheep, goats, and pigs were destroyed or removed from the island. But it is estimated that only about 10 percent of the island presently remains in native forest or shrubland (Alan Holt, the Nature Conservancy of Hawaii, pers. comm., 1990). Today, habitat degradation due to axis deer, and, to a lesser extent, mouflon, and the invasion of and competition by exotic species of plants probably are the two greatest threats to the six taxa in this rule. The axis deer is now considered to be the major threat to the forests of Lanai (Culliney 1988). Deer and mouflon browse on native vegetation (see Factor C), destroying or damaging the habitat. Also, their trampling removes vegetation and litter important to soil-water relations, compacts the soil, promotes erosion, and opens areas, allowing exotic plants to invade. Deer are common throughout the summit; very few patches of forest are untouched by them. Ridge tops in particular, are being invaded, but so are gulches (R. Hobdy, pers. comm., 1990).

Lanai is in the process of converting from an agricultural (pineapple) to a tourist-based economy. Hotels are being

built in conjunction with an anticipated increase in the tourist industry. Although at present there are no plans for development which would directly impact Lanai, it is inevitable that an increase in the number of people on the island will have that effect. The Munro Trail, which traverses Lanai, affords a beautiful view of the island and will likely be popular with tourists. Approximately 30 percent of the known plants of *Gahnia lanaiensis* and most of the known *Viola lanaiensis* plants grow along this trail or one of its branches. Increased hiking or jeep-riding along the trail could lead to the destruction of individuals of these plants. Disturbance of the soil or destruction of groundcover plants due to these activities would increase the potential for erosion and open the area to invading exotic plants.

B. Overutilization for commercial, recreational, scientific, or educational purposes

Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity and would seriously impact the taxa in this rule. Disturbance to the area by trampling during recreational use (hiking, for example) would promote erosion and greater ingress by competing exotic species. This threat will increase as the tourist industry becomes a more prominent force on Lanai.

C. Disease or Predation

Axis deer and mouflon sheep are managed by the State for recreational hunting on the island. The deer are primarily on the summit and in the gulches of Lanai, whereas mouflon are more common on the drier slopes—precisely the habitats of the six taxa included in this rule. In addition to habitat degradation resulting from their activities, which was discussed in Factor A above, their browsing also destroys or damages plants.

D. The Inadequacy of Existing Regulatory Mechanisms

There are no State laws or existing regulatory mechanisms at the present time to protect these taxa or to prevent their further decline. However, Hawaii's Endangered Species Act (Hawaii Revised Statutes (HRS), section 195D-4(a)) states, "Any species of aquatic life, wildlife or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter * * *". Further, the State may enter into agreements with Federal

agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (section 195D-5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of the six taxa from Lanai will therefore reinforce and supplement the protection available to the taxa under State law. The Federal Act also will offer additional protection to the taxa, because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The small number of populations and of individual plants of these taxa increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals of these taxa.

Several species of exotic plants have become common on the summit and in the gulches and valleys of Lanai. Strawberry guava (*Psidium cattleianum*) is most common on the northern end of Lanai, firebush (*Myrica faya*) is most common on the southern end, and manuka has spread through the range (R. Hobdy, pers. comm., 1990). Kahili ginger is common on some of the valley floors, as in Kaiholena Gulch, while koa haole, lantana, and soursage are aggressive invaders. These weedy plants are more aggressive than the native species and compete more successfully for water, minerals, space, and light. In the drier areas, broomsedge and Guinea grass are the dominant exotic species (R. Hobdy, pers. comm., 1990). Not only do these species compete with native plants such as *Tetramolopium remyi*, they are a source of fuel, increasing the potential threat of fire in the area (HPCC 1990b).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to make this rule final. Based on this evaluation, the preferred action is to list *Abutilon eremitopetalum*, *Cyanea macrostegia* subsp. *gibsonii*, *Gahnia lanaiensis*, *Phyllostegia glabra* var. *lanaiensis*, *Tetramolopium remyi*, and *Viola lanaiensis* as endangered. These taxa

are threatened by predation and habitat degradation by feral animals, by encroachment and competition from exotic species of plants, and/or by the potential of stochastic events to extirpate these small populations with restricted distributions. They also face the potential threat of damage to their habitat by increased human traffic stemming from recreational use and development-related activities. In addition, wildfires can eliminate plants and habitat. Because these taxa are in danger of extinction throughout all or a significant portion of their range, they fit the definition of endangered as defined in the Act. Critical habitat is not being designated for these taxa for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these taxa. Such a determination would result in no known benefit to the taxa. The publication of descriptions and maps required when critical habitat is designated would increase the degree of threat to these plants from possible take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as endangered publicizes the rarity of the plants and, thus, can make them attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowner have been notified of the general location and importance of protecting the habitat of these taxa. Protection of their habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these taxa is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities, and because it is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in

conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(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 a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Although none of these taxa occur on Federal land, private activities requiring Federal permits or funding can be affected. In this case, the Federal agency is responsible for consulting with the Service under section 7 of the Act to ensure that the activities they provide permits or funding for are not likely to jeopardize the continued existence of any listed species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to the six plants from the island of Lanai, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such plants on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy listed plants on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation

agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances.

It is anticipated that few, if any, trade permits would ever be sought or issued because the taxa are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432-ARLSQ, Arlington, Virginia 22203-3507 (703/358-2104, FTS 921-2093).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

References Cited

- Bates, D.M. 1990. Malvaceae: Pp. 868-903 in Wagner, W.L., D.R. Herbst, and S.H. Sohmer, Manual of the flowering plants of Hawai'i. Bishop Mus. Spec. Publ. 83. University of Hawaii Press and Bishop Museum Press, Honolulu.
- Becker, W. 1916. *Violae Asiaticae et Australenses*. I. Beih. Bot. Centralbl. 34: 208-266.
- Caum, E.L. 1933. *Abutilon cryptopetalum*. In: Degener, O. Fl. Hawaiiensis, fam. 221. Malvaceae. Publ. priv., 2 pp.
- Christophersen, E. 1934. A new Hawaiian *Abutilon*. Occas. Pap. Bernice P. Bishop Mus. 10(15): 1-7.
- Cuddihy, L.W., and C.P. Stone. 1990. Alteration of native Hawaiian vegetation; effects of humans, their activities and introductions. University of Hawaii Cooperative National Park Resources Studies Unit, Honolulu. 138 pp.
- Culliney, J.L. 1988. Islands in a far sea; nature and man in Hawaii. Sierra Club Books, San Francisco. 410 pp.
- Degener, O. 1932. Fl. Hawaiiensis, fam. 221. *Abutilon*. Publ. priv., 2 pp. Rep., 1946.
- Degener, O. 1936. Fl. Hawaiiensis, contents of second century and important notes. Publ. Priv., 4 pp. Rep., 1946.
- Degener, O., and I. Degener. 1960. Fl. Hawaiiensis, fam. 316. Labiatae; *Phyllostegia glabra*, part 2. Publ. priv., 2 pp.
- Degener, O., and I. Degener. 1965. Fl. Hawaiiensis, fam. 48. Cyperaceae; *Gahnia lanaiensis*. Publ. priv., 2 pp.
- Degener, O., I. Degener, and J.H. Kern. 1964. A new Hawaiian *Gahnia* (Cyperaceae). *Blumea* 12: 349-351.
- Drake del Castillo, E. 1888. Illustrationes florum insularum maris pacifici. Part 4. G. Masson, Paris, pp. 65-80 (Facsimile ed., 1977, J. Cramer, Vaduz).
- Ekern, P.C. 1964. Direct interception of cloud water on Lanai, Hawaii. Soil Sci. Soc. Proc. 28: 419-421.
- Foot, D.E., E.L. Hill, S. Nakamura, and F. Stephens. 1972. Soil survey of the islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii. U.S. Dept. of Agriculture Soil Conservation Service, Washington, D.C. 232 pp., 130 maps.
- Fosberg, F.R. 1936a. Miscellaneous Hawaiian plant notes—I. Occas. Pap. Bernice P. Bishop Mus. 12(15): 1-11.
- Fosberg, F.R. 1936b. Plant collecting on Lanai, 1935. Mid-Pacific Mag. 49: 119-123.
- Gagne, W.C., and L.W. Cuddihy. 1990. Vegetation. Pp. 45-114 in Wagner, W.L., D.R. Herbst, and S.H. Sohmer, Manual of the flowering plants of Hawai'i. Bishop Mus. Spec. Publ. 83. University of Hawaii Press and Bishop Museum Press, Honolulu.
- Gray, A. 1861. Characters of some Compositae in the collection of the United States South Pacific Exploring Expedition under Captain Wilkes, with observations &c. Proc. Amer. Acad. Arts 5: 114-146.
- Hawaii Heritage Program. 1990a. Element Occurrence Record for *Abutilon eremitopetalum*, PDMAL02030.001, dated March 4, 1989. Honolulu. Unpubl. 2 pp.
- Hawaii Heritage Program. 1990b. Element Occurrence Record for *Abutilon eremitopetalum*, PDMAL02030.002, dated May 2, 1990. Honolulu. Unpubl. 2 pp.
- Hawaii Heritage Program. 1990c. Element Occurrence Record for *Abutilon eremitopetalum*, PDMAL02030.008, dated May 2, 1990. Honolulu. Unpubl. 2 pp.
- Hawaii Heritage Program. 1990d. Element Occurrence Record for *Gahnia lanaiensis*, PMCYP0D040.001, dated March 24, 1990. Honolulu. Unpubl. 2 pp.
- Hawaii Heritage Program. 1990e. Element Occurrence Record for *Gahnia lanaiensis*, PMCYP0D040.002, dated March 24, 1990. Honolulu. Unpubl. 2 pp.
- Hawaii Heritage Program. 1990f. Element Occurrence Record for *Gahnia lanaiensis*, PMCYP0D040.003, dated March 24, 1990. Honolulu. Unpubl. 1 p.
- Hawaii Plant Conservation Center. 1990a. Hawaii Plant Conservation Center Accession Data for *Abutilon eremitopetalum*, 905216.000, Lawai, Kauai. Unpubl. 1 p.
- Hawaii Plant Conservation Center. 1990b. Hawaii Plant Conservation Center Accession Data for *Tetramolopium remyi*, 905214.000, Lawai, Kauai. Unpubl. 1 p.
- Hillebrand, W. 1888. Flora of the Hawaiian Islands: a description of their phanerogams and vascular cryptogams. Carl Winter, Heidelberg, Germany. 673 pp.
- Koyama, T. 1990. Cyperaceae. Pp. 1381-1436 in Wagner, W.L., D.R. Herbst, and S.H. Sohmer, Manual of the flowering plants of Hawai'i. Bishop Mus. Spec. Publ. 83. University of Hawaii Press and Bishop Museum Press, Honolulu.
- Lammers, T.G. 1988. New taxa, new names, and new combinations in the Hawaiian Lobelioideae (Campanulaceae). *Systematic Botany* 13(4): 496-508.

Lammers, T.G. 1990. Campanulaceae. Pp. 420-489 in Wagner, W.L., D.R. Herbst, and S.H. Sohmer. Manual of the flowering plants of Hawai'i. Bishop Mus. Spec. Publ. 83. University of Hawaii Press and Bishop Museum Press, Honolulu.

Lowrey, T.K. 1986. A biosystematic revision of Hawaiian *Tetramolopium* (Compositae: *Astereae*). Allertonia 4: 203-265.

Lowrey, T.K. 1990. *Tetramolopium*. Pp. 361-369 in Wagner, W.L., D.R. Herbst, and S.H. Sohmer. Manual of the flowering plants of Hawai'i. Bishop Mus. Spec. Publ. 83. University of Hawaii Press and Bishop Museum Press, Honolulu.

MacCaughy, V. 1918. The Hawaiian Violaceae. Torreyia 18: 1-11.

Rock, J.F. 1911. Notes upon Hawaiian plants with descriptions of new species and varieties. Coll. Hawaii Publ. Bull. 1: 1-20.

Rock, J.F. 1919. A monographic study of the Hawaiian species of the tribe *Lobelioideae*, family Campanulaceae. Mem. Bernice P. Bishop Mus. 7(2): 1-395.

St. John, H. 1979. Resurrection of *Viola helenae* Becker. Hawaiian plant studies 90. Phytologia 44: 323-324.

St. John, H. (C.A. Corn, ed.). 1981. Rare endemic plants of the Hawaiian Islands. Hawaii Dept. of Land and Nat. Resources, Honolulu. 74 pp.

St. John, H. 1987. Enlargement of *Delissea* (Lobeliaceae). Hawaiian plant studies 138. Phytologia 63: 79-90.

St. John, H. 1989. Revision of the Hawaiian species of *Viola* (Violaceae). Bot. Jahrb. Syst. 111(2): 165-204.

St. John, H., and W. Takeuchi. 1987. Are the distinctions of *Delissea* valid? Hawaiian plant studies 137. Phytologia 63: 129-130.

Sherff, E.E. 1934. Some new or otherwise noteworthy members of the families Labiatae and Compositae. Bot. Gaz. (Crawfordsville) 96: 136-153.

Sherff, E.E. 1935a. Revision of *Tetramolopium*, *Lipochaeta*, *Dubautia*, and *Raillardia*. Bernice P. Bishop Mus. Bull. 135: 1-136.

Sherff, E.E. 1935b. Revision of *Haplostachys*, *Phyllostegia*, and *Stenogyne*. Bernice P. Bishop Mus. Bull. 136: 1-101.

Skottsberg, C. 1940. Observations on Hawaiian violets. Acta Horti Gothob. 13: 451-528.

State of Hawaii. 1980. State of Hawaii data book, a statistical abstract. Hawaii Dept. of Planning and Economic Development, Honolulu. 545 pp.

Tomich, P.Q. 1986. Mammals in Hawaii. 2nd ed. Bishop Mus. Spec. Publ. 76. Bishop Museum Press, Honolulu. 375 pp.

Wagner, W.L., D.R. Herbst, and S.H. Sohmer. 1990. Manual of the flowering plants of Hawai'i. Bishop Mus. Spec. Publ. 83. University of Hawaii Press and Bishop Museum Press, Honolulu. 1853 pp.

Wimmer, F.E. 1943. Campanulaceae-Lobelioideae. I. Pflanzenr. IV. 276b (Heft 106): 1-260.

Author

The primary author of this final rule is Dr. Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Office,

U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541-2749 or FTS 551-2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgated

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361-1407, 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
<i>Tetramolopium remyi</i>	None	U.S.A. (HI)	E	435	NA	NA
Campanulaceae—Bellflower family:						
<i>Cyanea macrostegia</i> subsp. <i>gibsonii</i>	None	U.S.A. (HI)	E	435	NA	NA
Cyperaceae—Sedge family:						
<i>Gahnia lanaiensis</i>	None	U.S.A. (HI)	E	435	NA	NA
Lamiaceae—Mint family:						
<i>Phyllostegia glabra</i> var. <i>lanaiensis</i>	None	U.S.A. (HI)	E	435	NA	NA
Malvaceae—Mallow family:						
<i>Abutilon eremitopetalum</i>	None	U.S.A. (HI)	E	435	NA	NA
Violaceae—Violet family:						
<i>Viola lanaiensis</i>	None	U.S.A. (HI)	E	435	NA	NA

Dated: August 27, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-22693 Filed 9-19-91; 8:45am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Five Plants From the Wahiawa Drainage Basin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines five plants, *Cyanea undulata* (no common name (NCN)), *Dubautia pauciflora* (NCN), *Hesperomannia lydgatei* (NCN), *Labordia lydgatei* (kamakahala), and *Viola helenae* (NCN), to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). These species are known only from the Wahiawa drainage basin located on the island of Kauai, Hawaii. The five plants have been variously affected and are threatened by one or more of the following: habitat degradation and competition by naturalized, exotic vegetation; predation by rats which eat fruit, seeds, or vegetative parts of the plants; habitat destruction and potential seed transport of exotic plants by feral pigs; a typhoon which opened some small areas and allowed exotic species to invade; and the potential for extinction because of the depauperate number of extant individuals and their severely restricted distribution. This rule implements the protection and recovery provisions provided by the Act for these species.

EFFECTIVE DATE: October 21, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Cyanea undulata, *Dubautia pauciflora*, *Hesperomannia lydgatei*, *Labordia lydgatei*, and *Viola helenae* are endemic to the Wahiawa drainage basin in the Koloa District of southern Kauai. Kauai is the oldest of the eight major Hawaiian Islands. Because of its

age and relative isolation, the levels of floristic diversity and endemism are higher on Kauai than on any other island in the archipelago. The Wahiawa Mountains area has one of the oldest and most diverse montane wet forests in Hawaii. In addition to the wet forest ecosystem, permanent streams, bogs, and ridge summit habitats also comprise the Wahiawa Mountains area. The majority of the plant communities are primary in nature with high floristic endemism. There has been relatively little disturbance to the area in the past, but alien plants are encroaching and feral pigs are present. Listing these five endemic species as endangered will aid in protecting and improving this habitat which also is home to an additional 18 or more taxa of extremely rare plants.

The area is roughly triangular in shape with Kapalaoa, Mt. Kahili, and Puuauka forming the three corners; it is about 1,200 acres (485 hectares) in size. The elevation ranges from about 2,000 to 3,300 feet (ft) (610 to 1,000 meters (m)). The land is owned primarily by a single corporate landowner, with a small parcel of State-owned land forming one corner of the triangle. The Wahiawa drainage basin is an important source of water for the agricultural industry on this part of the island and is managed by the landowner to preserve water quality.

Discussion of the Five Species

Until its rediscovery on June 10, 1988, *Cyanea undulata* was known only from the type collection made by Charles Forbes in 1909 in the "damp woods surrounding the Wahiawa swamp," and an earlier collection, now lost, by the Reverend J.M. Lydgate in 1908, probably from the same area (Rock 1919). Forbes described the plant as a new species in 1912, naming it for the wavy appearance of its leaf margins (Forbes 1912). In 1987, Harold St. John, questioning the validity of the characters used to delineate the genus *Cyanea*, transferred all species of *Cyanea* to the closely related genus *Delissea* (St. John 1987a, St. John and Takeuchi 1987). The prior existence of the combination *Delissea undulata* necessitated a new name for *Cyanea undulata* when treated as a *Delissea*. For this reason, St. John published *Delissea forbesii* as a new name for *Cyanea undulata* (St. John 1987a), and 4 months later published *Delissea lydgatei* as the new name (St. John 1987b). The second name is superfluous and thus illegitimate. Few botanists accept St. John's taxonomy for this group, and continue to recognize the genus *Cyanea* (Lammers 1990).

Cyanea undulata is an unbranched shrub in the bellflower family (Campanulaceae) and is about 6 to 12 ft

(1.8 to 3.6 m) tall. The leaves are narrowly elliptic, about 12 to 16 inches (in) (30 to 40 centimeters (cm)) long and 1 to 2 in (3 to 5 cm) wide, with wavy margins; the upper surface is smooth, and the lower is covered with fine, rust-colored hairs. The leaf stem is winged throughout its length. The inflorescence is about 17 in (45 cm) long and bears five or six yellowish, slightly curved, hairy flowers. The fruit is an orange berry about 0.7 in (1.7 cm) long (Lammers 1990, Rock 1919, Wimmer 1943). The size, shape, and the wavy margins of the leaves distinguish this species from the rest of the genus.

Cyanea undulata is presently known from a single small population of about three or four individuals growing along the bank of a tributary of the Wahiawa Stream (Steven Perlman, Hawaii Plant Conservation Center, pers. comm., 1990). Several exotic plant species such as *Psidium cattleianum* (strawberry guava) and *Melastoma candidum* (melastoma) have invaded the drainage basin and are moving up along the stream (Timothy Flynn and David Lorence, National Tropical Botanical Garden, and S. Perlman, pers. comms., 1990). Habitat degradation and competition by exotic species are major threats to the native plants growing along the stream banks. The small number of extant individuals is in itself a considerable threat, because the limited gene pool may result in depressed reproductive vigor, or a single natural or man-caused environmental disturbance could destroy the only known existing population.

The earliest collections of *Dubautia pauciflora* were made in 1909 by C.N. Forbes and in 1911 by J.M. Lydgate, both from the "Wahiawa Mountains (on a) ridge just above tributary of the Wahiawa Stream." There is no further record of the species until it was rediscovered by S. Perlman in 1979 in the "Wahiawa Mts., on E facing ridge of 10° slope 30 m from an unnamed left (Hanapepe) fork of Wahiawa Stream * * *." This is the same general area from which the Forbes and Lydgate collections were made, and consists of a population of about 30 plants. Two additional populations have been found since 1979. A population of about three plants is on the Mt. Kahili ridge that forms the eastern boundary of the Wahiawa drainage basin. The other is a small population along the east fork of the Wahiawa Stream (T. Flynn, D. Lorence, and S. Perlman, pers. comms., 1990). In 1981, H. St. John and G.D. Carr (1981) described the taxon as a new species, based on a specimen that Carr collected from the population