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FEDERAL REGISTER

Vol. 77 Thursday,
No. 197 October 11, 2012

Pages 61721–62132

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHEN: Tuesday, October 23, 2012
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2006–26661; Amdt. No. 61–129A]

RIN 2120–AI86

Pilot, Flight Instructor, and Pilot School Certification; Technical Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is correcting a final rule; technical amendment published on December 16, 2011 (76 FR 78141). This final rule; technical amendment was originally published to correct a final rule published on August 21, 2009 (74 FR 42500). In that original final rule, the FAA amended its regulations to revise the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools. A portion of the codified text was inadvertently deleted and this document corrects that error.

DATES: *Effective:* October 11, 2012.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Jeffrey Smith, Airmen Certification and Training Branch, AFS–810, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 493–4789; email to *jeffrey.smith@faa.gov.*

For legal questions concerning this action, contact Paul G. Greer, Office of the Chief Counsel, Regulations Division, AGC–210, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *Paul.G.Greer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Technical Amendment

On December 16, 2011 (76 FR 78141), the FAA published a final rule; technical amendment. This final rule; technical amendment was originally published to correct a final rule published on August 21, 2009 (74 FR 42500). That original final rule revised the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools. The FAA is now issuing an additional final rule; technical amendment that corrects the codified text that was inadvertently deleted in § 61.23.

Because the changes in this technical amendment result in no substantive change, we find good cause exists under 5 U.S.C. 553(d)(3) to make the amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 61

Aircraft, Airmen, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 61.23 by revising paragraph (c) to read as follows:

§ 61.23 Medical certificates: requirement and duration.

* * * * *

(c) *Operations requiring either a medical certificate or U.S. driver's license.* (1) A person must hold and possess either a medical certificate issued under part 67 of this chapter or a U.S. driver's license when—

(i) Exercising the privileges of a student pilot certificate while seeking sport pilot privileges in a light-sport aircraft other than a glider or balloon;

(ii) Exercising the privileges of a sport pilot certificate in a light-sport aircraft other than a glider or balloon;

(iii) Exercising the privileges of a flight instructor certificate with a sport pilot rating while acting as pilot in command or serving as a required flight crewmember of a light-sport aircraft other than a glider or balloon; or

(iv) Serving as an Examiner and administering a practical test for the issuance of a sport pilot certificate in a light-sport aircraft other than a glider or balloon.

(2) A person using a U.S. driver's license to meet the requirements of this paragraph must—

(i) Comply with each restriction and limitation imposed by that person's U.S. driver's license and any judicial or administrative order applying to the operation of a motor vehicle;

(ii) Have been found eligible for the issuance of at least a third-class airman medical certificate at the time of his or her most recent application (if the person has applied for a medical certificate);

(iii) Not have had his or her most recently issued medical certificate (if the person has held a medical certificate) suspended or revoked or most recent Authorization for a Special Issuance of a Medical Certificate withdrawn; and

(iv) Not know or have reason to know of any medical condition that would make that person unable to operate a light-sport aircraft in a safe manner.

* * * * *

Issued in Washington, DC, on October 1, 2012.

Lirio Liu,

Acting Director, Office of Rulemaking.

[FR Doc. 2012–25034 Filed 10–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Atlantic Ocean off Wallops Island and Chincoteague Inlet, VA; Danger Zone

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending an existing permanent danger zone in the waters of the Atlantic Ocean off Wallops Island and Chincoteague Inlet, Virginia. The National Aeronautics and Space Administration, Goddard Space Flight Center, Wallops Flight Facility flight range capabilities have been expanded to accommodate larger classes of orbital rockets. This amendment increases the permanent danger zone to a 30 nautical mile sector and is necessary to protect the public from hazards associated with rocket-launching operations.

DATES: *Effective Date:* October 12, 2012.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO–R (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922, or Ms. Nancy Hankins, Corps of Engineers, Norfolk District, Regulatory Branch, at 757–201–6048.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to amend an existing danger zone to accommodate larger classes of orbital rockets. This amendment increases the permanent danger zone to a 30 nautical mile sector and is necessary to protect the public from hazards associated with rocket-launching operations.

The Corps authority to amend this restricted area is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3).

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR part 334 by establishing a new permanent danger zone, in the waters of the Atlantic Ocean off Wallops Island and Chincoteague Inlet, Virginia. The modification to the regulations is described below.

The proposed rule was published in the October 11, 2011, issue of the **Federal Register** (76 FR 62692), and its regulations.gov docket number is COE–2011–0019. There were two comments received in response to the proposed rule. First, we received a response from the Commonwealth of Virginia Department of Conservation and Recreation stating that they do not anticipate that the project will adversely impact natural resources. Second, we received comments from the Town of Chincoteague, Virginia informing us of their space tourism plan and requesting confirmation that their proposed tourist viewing areas would not be in conflict with the new danger zone. In response, NASA met with the Town of Chincoteague and together they developed a communication plan that will ensure public safety during launching operations.

Procedural Requirements

a. *Review under Executive Order 12866.* This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that this regulation would have practically no economic impact on the public nor would it result in any anticipated navigational hazard or interference with existing waterway traffic. This regulation will have no significant economic impact on small entities.

c. *Review under the National Environmental Policy Act.* This rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared and it may be reviewed at the district office listed at the end of the **FOR FURTHER INFORMATION CONTACT** above.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty on the private sector and, therefore, it is not a Federal private sector mandate and is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Reform Act. (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*) We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.130 to read as follows:

§ 334.130 Atlantic Ocean off Wallops Island and Chincoteague Inlet, Va.; danger zone.

(a) *The area.* An area immediately behind and directly offshore from Wallops Island defined by lines drawn as follows: Beginning at latitude 37°53′00″ N, longitude 75°29′48″ W; thence to latitude 37°53′03″ N, longitude 74°50′52″ W; thence to latitude 37°38′28″ N, longitude 74°51′48″ W; thence to latitude 37°22′00″ N, longitude 75°09′35″ W; thence to latitude 37°19′11″ N, longitude 75°30′00″ W; thence to latitude 37°47′57″ N, longitude 75°32′19″ W; and thence to latitude 37°53′00″ N, longitude 75°29′48″ W.

(b) *The regulations.* (1) Persons and vessels shall only be prohibited from entering the area when launch operations are being conducted.

(2) In advance of scheduled launch operations which, in the opinion of the enforcing agency, may be dangerous to persons and watercraft, appropriate warnings will be issued to navigation interests through official government and civilian channels or in such other manner as the District Engineer, U.S. Army Corps of Engineers, may direct. Such warnings will specify the location, time, and duration of operations, and give other pertinent information as may be required in the interests of safety. Announcement of area of closure will appear in the weekly ''Notice to Mariners.''

(3) The intent to conduct rocket-launching operations in the area shall also be indicated by visual signals consisting of a large orange-colored ''blimp-shaped'' balloon by day and a rotating alternately red and white beacon by night. The balloon shall be flown at latitude 37°50′38″ N, longitude 75°28′47″ W and the beacon shall be displayed about 200 feet above mean high water at latitude 37°50′16″ N, longitude 75°29′07″ W. The appropriate signals shall be displayed 30 minutes prior to rocket-launching time and shall remain displayed until the danger no longer exists.

(4) In addition to visual signals and prior to conducting launch operations, the area will be patrolled by aircraft or surface vessels and monitored by radars and cameras to ensure no persons or watercraft are within the danger zone or

designated area of interest within the danger zone. Patrol aircraft and surface vessels are equipped with marine band radios and may attempt to hail watercraft and request that they leave the designated area and remain clear of the area at a safe distance until launch operations are complete, and launch will not occur until the designated area is clear. Patrol aircraft may also employ the method of warning known as ''buzzing'' which consists of low flight by the airplane and repeated opening and closing of the throttle. Surveillance vessels may also come close to watercraft and employ flashing light to establish communications to indicate that the watercraft is entering the designated hazard area.

(5) Any watercraft being so warned shall immediately leave the designated area until the conclusion of launch operations, and shall remain at a distance to ensure that it will be safe from falling debris.

(6) Nothing in this regulation shall be intended to prevent commercial fishing or the lawful use of approved waterfowl hunting blinds along the shorelines of the Wallops Flight Facility at Wallops Island, Virginia, provided that all necessary licenses and permits have been obtained from the Virginia Marine Resources Commission, Virginia Department of Game and Inland Fisheries, and U.S. Fish and Wildlife Service. Commercial fishermen and waterfowl hunters must observe all warnings and range clearances during hazardous range operations.

(c) *Enforcement.* The regulations in this section shall be enforced by the Director, National Aeronautics and Space Administration, Goddard Space Flight Center, Wallops Flight Facility Wallops Island, Va., or such agencies as he or she may designate.

Dated: October 2, 2012.

James R. Hannon,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2012–24991 Filed 10–10–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Felgates Creek and Indian Field Creek Along the York River in Yorktown, VA; Restricted Area

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending an existing restricted area to include the waters of Felgates Creek and Indian Field Creek along the York River in Yorktown, Virginia. Naval Weapons Station Yorktown requested the Corps of Engineers modify the existing restricted area to include areas historically noted on nautical charts as closed to the public and traditionally enforced by Commander, Naval Weapons Station Yorktown.

DATES: *Effective date:* November 13, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757–201–7122.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to amend an existing restricted area to include areas historically noted on nautical charts as closed to the public and traditionally enforced by the Commander, Naval Weapons Station Yorktown.

The Corps authority to amend this restricted area is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3).

Background

The proposed rule was published in the April 4, 2012, edition of the Federal Register (77 FR 20331) and the regulations.gov docket number was COE–2011–0038. In response to the proposal, three comments were received. The commenters stated that the proposed rule will have no effect on historic properties and no adverse impacts on natural heritage resources.

In response to a request by the United States Navy, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending 33 CFR 334.260 to include a permanent restricted area, in the waters of Felgates Creek and Indian Field Creek along the York River in Yorktown, Virginia.

Procedural Requirements

a. Review Under Executive Order 12866. This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act. This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that the restricted area amendment will have practically no economic impact on the public, no anticipated navigational hazard, and no interference with existing waterway traffic. This rule will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act. This rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared. It may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. Unfunded Mandates Act. This rule does not impose an enforceable duty among the private sector and, therefore, is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.260 to read as follows:

§ 334.260 York River, Va.; naval restricted areas.

(a) *The areas*—(1) *Naval mine service-testing area (prohibited).* A rectangular area surrounding Piers 1 and 2, Naval Weapons Station, and extending upstream therefrom, beginning at a point on the shore line at latitude 37°15′25″ N, longitude 76°32′32″ W; thence to latitude 37°15′42″ N,

longitude 76°32′06″ W; thence to latitude 37°15′27″ N, longitude 76°31′48″ W; thence to latitude 37°15′05″ N, longitude 76°31′27″ W; thence to a point on the shore line at latitude 37°14′51″ N, longitude 76°31′50″ W; and thence along the shore line to the point of beginning.

(2) *Naval mine service-testing area (restricted).* A rectangular area adjacent to the northeast boundary of the prohibited area described in paragraph (a)(1) of this section, beginning at latitude 37°16′00″ N, longitude 76°32′29″ W; thence to latitude 37°16′23″ N, longitude 76°32′00″ W; thence to latitude 37°15′27″ N, longitude 76°30′54″ W; thence to latitude 37°15′05″ N, longitude 76°31′27″ W; thence to latitude 37°15′27″ N, longitude 76°31′48″ W; thence to latitude 37°15′42″ N, longitude 76°32′06″ W; thence to latitude 37°15′40″ N, longitude 76°32′09″ W; and thence to the point of beginning.

(3) *Explosives-Handling Berth (Naval).* A circular area of 600 yards radius with its center at latitude 37°13′56″ N, longitude 76°28′48″ W.

(4) *Felgates Creek (prohibited).* Navigable waters of the United States as defined at 33 CFR part 329 within Felgates Creek from the boundary fence line at the mouth to the mean high water line of the head and all associated tributaries. The area contains the entirety of Felgates Creek and all associated tributaries south of the line which begins at latitude 37°16′24″ N, longitude 76°35′12″ W and extends east to latitude 37°16′21″ N, longitude 76°35′00″ W.

(5) *Indian Field Creek (prohibited).* Navigable waters of the United States as defined at 33 CFR part 329 within Indian Field Creek from the boundary fence line at the mouth to the mean high water line of the head and all associated tributaries. The area contains the entirety of Indian Field Creek and all associated tributaries south of the line which begins at latitude 37°16′05″ N, longitude 76°33′29″ W and extends east to latitude 37°16′01″ N, longitude 76°33′22″ W.

(b) *The regulations.* (1) All persons and all vessels other than naval craft are forbidden to enter the prohibited area described in paragraph (a)(1) of this section.

(2) Trawling, dragging, and net-fishing are prohibited, and no permanent obstructions may at any time be placed in the area described in paragraph (a)(2) of this section. Upon official notification, any vessel anchored in the area and any person in the area will be required to vacate the area during the actual mine-laying operation. Persons and vessels entering the area during mine-laying operations by aircraft must proceed directly through the area without delay, except in case of emergency. Naval authorities are required to publish advance notice of mine-laying and/or retrieving operations scheduled to be carried on in the area, and during such published periods of operation, fishing or other aquatic activities are forbidden in the area. No vessel will be denied passage through the area at any time during either mine-laying or retrieving operations.

(3) The Explosives-Handling Berth (Naval) described in paragraph (a)(3) of this section is reserved for the exclusive use of naval vessels and except in cases of emergency no other vessel shall anchor therein without the permission of local naval authorities, obtained through the Captain of the Port, U.S. Coast Guard, Norfolk, Virginia. There shall be no restriction on the movement of vessels through the Explosive-Handling Berth.

(4) Vessels shall not be anchored, nor shall persons in the water approach within 300 yards of the perimeter of the Explosives-Handling Berth (Naval) when that berth is occupied by a vessel handling explosives.

(5) All persons and all vessels are forbidden to enter the prohibited areas described in paragraphs (a)(4) and (a)(5) of this section without prior permission of the enforcing agency.

(6) The regulations of this section shall be enforced by the Commander, Naval Weapons Station Yorktown, Virginia, and such agencies as he/she may designate.

Dated: October 1, 2012.

James R. Hannon,

Chief, Operations and Regulatory Directorate of Civil Works.

[FR Doc. 2012–24994 Filed 10–10–12; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0553; FRL–9738–9]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans for Florida, Mississippi, and South Carolina; Section 110(a)(2)(D)(i)(I) Transport Requirements for the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to partially approve and partially disapprove revisions to the State Implementation Plans (SIPs) for Florida, Mississippi, and South Carolina submitted on September 23, 2009, October 6, 2009, and September 18, 2009, respectively. EPA is approving the determinations, contained in those submittals, that the existing SIPs for Florida, Mississippi, and South Carolina are adequate to meet the obligation under section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA or Act) to address interstate transport requirements with regard to the 2006 24-hour particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). Specifically, the interstate transport requirements contained in section 110(a)(2)(D)(i)(I) of the CAA prohibit a state's emissions from significantly contributing to nonattainment or interfering with the maintenance of the NAAQS in any other state. EPA is approving the States' determinations that their existing SIPs satisfy this requirement and conclusion that additional control measures are not necessary under section 110(a)(2)(D)(i)(I) because emissions from Florida, Mississippi and South Carolina do not contribute significantly to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state. EPA is also disapproving the SIP submissions from Florida, Mississippi and South Carolina to the extent that they rely on the Clean Air Interstate Rule (CAIR) to meet the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. Because CAIR does not address the 2006 $PM_{2.5}$ NAAQS, it cannot be relied upon to satisfy any requirements related to that NAAQS.

DATES: This rule will be effective on November 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0553. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and

Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On September 21, 2006, EPA revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 micrograms per cubic meter (μg/m^3) to 35 μg/m^3 based on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 71 FR 61144 (October 17, 2006). Section 110(a)(1) of the CAA requires states to submit to EPA SIPs that provide for the ''implementation, maintenance, and enforcement'' of a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe.[1] Sections 110(a)(1) and (2) require these submissions to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. EPA thus refers to these submissions as ''infrastructure'' SIPs. States were required to submit such SIPs to EPA no later than September 21, 2009, for the 2006 24-hour $PM_{2.5}$ NAAQS. SIPs must address the requirements of 110(a)(2), as applicable.

On September 23, 2009, October 6, 2009, and September 18, 2009, Florida, Mississippi and South Carolina, respectively, provided EPA with infrastructure SIP submissions certifying that the provisions in their current SIPs were adequate to address the CAA section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On July 23, 2012, EPA proposed to partially approve Florida, Mississippi and South Carolina's determination that their existing SIPs satisfy this requirement and to conclude that additional control measures are not necessary under section 110(a)(2)(D)(i)(I) because emissions from these states do not contribute significantly to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state. Additionally, in the same proposal EPA proposed to partially disapprove Florida, Mississippi and South Carolina's determination that their existing SIPs satisfy section 110(a)(2)(D)(i)(I) to the extent that these states relied upon CAIR to meet section 110(a)(2)(D)(i)(I) requirements in their infrastructure submissions for the 2006 $PM_{2.5}$ NAAQS, since CAIR did not address that NAAQS. See EPA's July 23, 2012, proposed rulemaking at 77 FR 43018 for more detail. EPA received no adverse comments on this proposal.

EPA is taking final action to partially approve and partially disapprove revisions to the SIPs for Florida, Mississippi, and South Carolina submitted on September 23, 2009, October 6, 2009, and September 18, 2009 respectively. EPA is approving the States' determinations that the existing SIPs of Florida, Mississippi, and South Carolina have adequate provisions to satisfy the obligation under section 110(a)(2)(D)(i)(I) of the CAA to address interstate transport requirements with regard to the 2006 24-hour $PM_{2.5}$ NAAQS. This conclusion is based on air quality modeling originally conducted to quantify each individual state's contributions to downwind nonattainment and maintenance areas during the rulemaking process for the Transport Rule (also known as the Cross State Air Pollution Rule or CSAPR). This modeling is described in a technical support document which is in the docket for this rulemaking, Docket ID No., EPA–R04–OAR–2012–0553. This air quality modeling demonstrates that emissions from the states of Florida, Mississippi and South Carolina do not contribute more than one percent of the NAAQS to any downwind areas with nonattainment and maintenance problems with respect to the 2006 $PM_{2.5}$ NAAQS. For this reason, as explained in the proposal, 77 FR 43021, EPA concludes that these states do not contribute significantly to nonattainment or interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in another state.

The recent opinion vacating the Transport Rule, *EME Homer City Generation* v. *EPA,* No. 11–1302 (D.C. Cir., August 21, 2012), does not alter our conclusion that the existing SIPs for these states adequately address this requirement, and our rationale supporting this conclusion remains the same. Nothing in the *Homer City* opinion suggests that the air quality modeling on which our July 23, 2012 proposal relied was flawed or invalid for any reason. In addition, nothing in that opinion undermines or calls into question our proposed conclusion that, because emissions from Florida, Mississippi and South Carolina do not contribute more than one percent of the NAAQS to any downwind area with nonattainment or maintenance problems, these states do not contribute significantly to nonattainment or interfere with maintenance in another state. As EPA explained in the proposal, 77 FR 43022, this action does not rely on any requirements of the Transport Rule or emission reductions associated with that rule to support its conclusion that these three states have met their 110(a)(2)(D)(i)(I) obligations with respect to the 2006 $PM_{2.5}$ NAAQS.

Additionally, EPA is partially disapproving the SIP submissions from Florida, Mississippi and South Carolina to the extent they rely on CAIR to meet the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. As explained in our July 23, 2012, proposal, 77 FR 43021, a state may not rely on CAIR to satisfy the requirements of section 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ NAAQS because CAIR addressed only the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS and did not address the 2006 $PM_{2.5}$ NAAQS or any requirements related to that NAAQS. Today's partial disapproval will not trigger any further action, or a Federal Implementation Plan, for these States because today's action does not identify any deficiency in the SIPs. Thus, no further action will be required on the part of Florida, Mississippi, or South Carolina as a result of the partial disapproval because the SIPs themselves are not deficient with respect to the 2006 24-hour $PM_{2.5}$ NAAQS.

II. Final Action

EPA is taking final action to partially approve and partially disapprove infrastructure submissions from Florida, Mississippi and South Carolina dated September 23, 2009, October 6, 2009 and September 18, 2009, respectively,

[1] The rule establishing the revised $PM_{2.5}$ NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. Because EPA did not prescribe a shorter period for 110(a) ''infrastructure'' SIP submittals, these submittals were due on September 21, 2009, three years from the September 21, 2006, signature date pursuant to section 110(a)(1) of the CAA.

regarding the 110(a)(2)(D)(i)(I) requirements for the 2006 $PM_{2.5}$ NAAQS. Today's partial disapproval will not trigger a FIP for these States. *See* EPA's July 23, 2012, proposed rulemaking at 77 FR 43018 for more detail. In this action, EPA is only addressing the SIP revisions respecting section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. The SIP revisions pertaining to the remainder of section 110(a)(2)(D)(i) and sections 110(a)(2)(A)–(M), except for sections 110(a)(2)(C) and 110(a)(2)(I) nonattainment area requirements, are being addressed in separate actions.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action partially approves state law as meeting federal requirements and partially disapproves state law because it does not meet federal requirements. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications for Florida and Mississippi as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Further, EPA has determined that this final rule does not have tribal implications for South Carolina as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there are no ''substantial direct effects'' on an Indian Tribe as a result of this action. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte nonattainment area. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' Thus, the South Carolina SIP applies to the Catawba Reservation. EPA has also preliminarily determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 27, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K—Florida

■ 2. Section 52.520(e) is amended by adding a new entry for ''110(a)(2)(D)(i)(I) Infrastructure Requirements for the 2006 24-hour $PM_{2.5}$ NAAQS'' at the end of the table to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
* *		*	* *	* *
110(a)(2)(D)(i)(I) Infrastructure Requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.	9/23/2009	10/11/2012	[Insert citation of publication].	EPA partially disapproved this SIP submission to the extent that it relied on the Clean Air Interstate Rule to meet the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.

Subpart Z—Mississippi

■ 3. Section 52.1270(e) is amended by adding a new entry for ''110(a)(2)(D)(i)(I) Infrastructure Requirements for the 2006 24-hour $PM_{2.5}$ NAAQS'' at the end of the table to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	* *		* *	* *
110(a)(2)(D)(i)(I) Infrastructure Requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.	Mississippi	10/6/2009	10/11/2012 [Insert citation of publication].	EPA partially disapproved this SIP submission to the extent that it relied on the Clean Air Interstate Rule to meet the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.

Subpart PP—South Carolina

■ 4. Section 52.2120(e) is amended by adding a new entry for ''110(a)(2)(D)(i)(I) Infrastructure Requirements for the 2006 24-hour $PM_{2.5}$ NAAQS'' at the end of the table to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) *EPA-approved South Carolina non-regulatory provisions.*

Provision	State effective date	EPA approval date	Explanation
*	*	* *	* *
110(a)(2)(D)(i)(I) Infrastructure Requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.	9/18/2009	10/11/2012 [Insert citation of publication].	EPA partially disapproved this SIP submission to the extent that it relied on the Clean Air Interstate Rule to meet the 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.

[FR Doc. 2012–24897 Filed 10–10–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–BA64

Atlantic Highly Migratory Species; Vessel Monitoring Systems

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

ACTION: Notice of effective date for VMS requirements in Atlantic HMS fisheries.

SUMMARY: As of January 1, 2013, all vessels participating in Atlantic HMS fisheries that are subject to VMS requirements, including vessels with pelagic longline gear on board, vessels with bottom longline gear on board in the vicinity of the mid-Atlantic closed area (between 33° N and 36°30′ N) from January 1 to July 31, and vessels with shark gillnet gear on board fishing between November 15 and April 15, must have an Enhanced Mobile Transmitting Unit (E–MTU) installed by a qualified marine electrician and must provide hail in/hail out declarations specifying target species, gear possessed onboard, and location and timing of landing. These requirements were originally effective March 1, 2011, consistent with a December 2, 2011 final rule. On February 29, 2012, NMFS provided notice that HMS vessels could use either old MTUs or new E–MTUs without providing hail in/hail out declarations specifying target species, gear possessed onboard, and location and timing of landing. However, no new installations of MTUs were permitted, all installations of E–MTUs were required to be done by a qualified marine electrician, and vessels were to provide hourly position reports using VMS units starting two hours prior to leaving port and at all times away from port.

DATES: As of January 1, 2013, all vessels participating in Atlantic HMS fisheries that are subject to VMS requirements, including vessels with pelagic longline gear on board, vessels with bottom longline gear on board in the vicinity of the mid-Atlantic closed area (between 33° N and 36°30′ N) from January 1 to July 31, and vessels with shark gillnet

gear on board fishing between November 15 and April 15, must have an E–MTU VMS unit installed by a qualified marine electrician and must provide hail in/hail out declarations specifying target species, gear possessed onboard, and location and timing of landing.

ADDRESSES: Supporting documents associated with the December 2, 2011 final rule, including the Regulatory Impact Review, Final Regulatory Flexibility Analysis (RIR/FRFA), and compliance guides completed in conjunction with the December 2, 2011, final rule are available from Michael Clark, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East West Highway, Silver Spring, MD 20910. These documents and others, such as the Fishery Management Plans described below, also may be downloaded from the HMS Web site at *www.nmfs.noaa.gov/sfa/hms/.* A list of E–MTU VMS units that are currently type-approved for use in Atlantic HMS fisheries is available on the NMFS Office of Law Enforcement Web site at *http://www.nmfs.noaa.gov/ole/docs/2012/noaa_fisheries_service_type.pdf.* Copies of this list and other information may be obtained by contacting the VMS Support Center at (phone) 888–219–9228, (fax) 301–427–0049, *ole.helpdesk@noaa.gov,* or write to NOAA Fisheries Office for Law Enforcement (OLE), VMS Support Center, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: For information on this notice and regulations for Atlantic HMS fisheries, contact Michael Clark (phone: 301–427–8503, fax: 301–713–1917). For questions regarding the status of VMS provider evaluations, contact Kelly Spalding, VMS Management Analyst, phone 301–427–2300; fax 301–427–0049. For questions regarding Atlantic HMS fisheries VMS requirements, contact Pat O'Shaughnessy, Southeast Division VMS Program Manager, at phone 727–824–5358; fax 727–824–5318.

SUPPLEMENTARY INFORMATION: On December 2, 2011, NMFS published a final rule (76 FR 75492) and type approval notice (76 FR 75523) updating VMS requirements in Atlantic HMS fisheries. The final rule required that as of March 1, 2012 all HMS vessels subject to VMS requirements have a type-approved E–MTU VMS unit capable of two-way communication and installed by a qualified marine electrician install. Further, the final rule required vessels to declare target species, fishing gear possessed, and location/timing of landing using the E–MTU VMS unit and to provide hourly position reports using VMS units starting two hours prior to leaving port and at all times away from port, effective March 1, 2012.

In late February 2012, we became aware of issues that would affect the ability of fishermen to obtain the required units and to comply with the December 2011 rule. Due to these unforeseen circumstances that would have limited some vessel operators' ability to comply fully with the E–MTU VMS requirements, NMFS notified provided notice on February 29, 2012, that HMS vessels could use either old MTUs or new E–MTUs and were not required to provide hail in/hail out declarations specifying target species, gear possessed onboard, and location and timing of landing. However, no new installation of MTUs were permitted, any installations of E–MTUs were required to be done by a qualified marine electrician, and vessels were required to provide hourly position reports using VMS units starting two hours prior to leaving port and at all times away from port.

The issues that would have prevented some vessels from fully complying with the requirements have now been resolved and NMFS is announcing that MTU VMS units will no longer be allowed after December 31, 2012.

On any fishing trip beginning on or after January 1, 2013, HMS vessels subject to VMS requirements must have an E–MTU that was installed by a qualified marine electrician and must provide hail in/hail out declarations specifying target species, gear possessed onboard, and location and timing of landing, as specified in the December 2011 final rule. This Notice should allow sufficient time for all HMS vessel owners who have not already replaced their MTU with an E–MTU to do so prior to January 1, 2013.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: October 5, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–25009 Filed 10–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120424023–1023–01]

RIN 0648–XC223

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #15 through #21

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

ACTION: Modification of fishing seasons and landing and possession limits; request for comments.

SUMMARY: NOAA Fisheries announces 7 inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial and recreational fisheries in the area from the U.S./Canada Border to Cape Falcon, Oregon.

DATES: The effective dates for the inseason action are set out in this document under the heading Inseason Actions. Comments will be accepted through October 26, 2012.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2012–0079, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0079 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA, 98115–6349
- *Fax:* 206–526–6736, Attn: Peggy Mundy

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without

change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION:

Background

In the 2012 annual management measures for ocean salmon fisheries (77 FR 25915, May 2, 2012), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2012, and 2013 salmon seasons opening earlier than May 1, 2013.

NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Prior to taking inseason action, the Regional Administrator (RA) consults with the Chairman of the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)(1)). Management of the salmon fisheries is generally divided into two geographic areas: north of Cape Falcon (U.S./Canada Border to Cape Falcon, Oregon) and south of Cape Falcon (Cape Falcon, Oregon to the U.S./Mexico Border).

Inseason Actions

The table below lists the inseason actions announced in this document.

Inseason action no.	Effective date	Salmon fishery affected
15	August 29, 2012	Commercial and Recreational fisheries from U.S./Canada Border to Cape Falcon, Oregon.
16	September 1, 2012	Recreational fishery from Queets River to Leadbetter Point (Westport subarea).
17	September 3, 2012	Recreational fishery from Leadbetter Point to Cape Falcon, Oregon (Columbia River subarea).
18	August 31, 2012	Commercial fishery from U.S./Canada Border to Cape Falcon, Oregon.
19	September 5, 2012	Commercial and Recreational fisheries from U.S./Canada Border to Cape Falcon, Oregon.
20	September 7, 2012	Commercial fishery from U.S./Canada Border to Cape Falcon, Oregon.
21	September 5, 2012	Commercial fishery from U.S./Canada Border to Cape Falcon, Oregon.

Inseason actions #15, #16, #17, and #18

The RA consulted with representatives of the Council, Washington Department of Fish and Wildlife (WDFW), and Oregon Department of Fish and Wildlife (ODFW) on August 29, 2012. The information considered during this consultation related to catch and effort to date in the commercial and recreational salmon fisheries north of Cape Falcon. Four inseason actions were implemented as a result of this consultation.

Inseason action #15 transferred 1,000 coho salmon from the north of Cape Falcon commercial mark-selective coho salmon fishery quota to the north of Cape Falcon recreational salmon fishery quota. The quota transfer was distributed 80 percent (800 fish) to the Neah Bay subarea (U.S./Canada Border to Cape Alava) and 20 percent (200 fish) to the La Push subarea (Cape Alava to Queets River). This action resulted in the following quota adjustments: north of Cape Falcon commercial quota decreased from 13,280 to 12,280 marked coho salmon; Neah Bay recreational quota increased from 7,250 to 8,050 coho salmon; and La Push recreational quota increased from 1,760 to 1,960 coho salmon. This action was taken to prevent closure of recreational fisheries, due to projected attainment of quota, by transferring unutilized quota from the commercial fishery. On August 29, 2012, the states recommended this action and the RA concurred; inseason action #15 took effect on August 29, 2012, and remains in effect until the end of the fishing season. Inseason modification of quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason action #16 adjusted the daily bag limit for the recreational salmon fishery in the Westport subarea (Queets River to Leadbetter Point) to allow retention of unmarked coho, as anticipated in the 2012 annual management measures (77 FR 25915, May 2, 2012). Inseason action #16 set the daily bag limit at two fish per day only one of which can be a coho salmon and unmarked coho may be retained. This action was taken to allow greater access to available coho quota in the recreational fishery. On August 29, 2012, the states recommended this action and the RA concurred; inseason action #16 took effect on September 1, 2012, superseding that portion of inseason action #13 that applied to the Westport subarea (77 FR 55426, September 10, 2012), and remained in effect until superseded by inseason action #23 on September 13, 2012. Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Inseason action #17 adjusted the daily bag limit for the recreational salmon fishery in the Columbia River subarea (Leadbetter Point to Cape Falcon) to allow retention of unmarked coho, as anticipated in the 2012 annual management measures (77 FR 25915, May 2, 2012). Inseason action #17 set the daily bag limit at two fish per day and unmarked coho salmon may be retained. This action was taken to allow greater access to available coho quota in the recreational fishery. On August 29, 2012, the states recommended this action and the RA concurred; inseason action #17 took effect on September 3, 2012, superseding inseason action #14 (77 FR 55426, September 10, 2012), and remains in effect until the end of the fishing season or subsequent inseason action. Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Inseason action #18 adjusted the landing limit in the commercial salmon fishery north of Cape Falcon from 120 Chinook salmon and 40 marked coho per vessel per open period to 150 Chinook salmon and 40 marked coho per vessel per open period. This action was taken to allow greater access to available Chinook salmon. On August 29, 2012, the states recommended this action and the RA concurred; inseason action #18 took effect on August 31, 2012, superseding the portion of inseason action #12 that applied to landing limit (77 FR 55426, September 10, 2012) and remained in effect until superseded by inseason action #20 on September 7, 2012. Inseason modification of landing limits is authorized by 50 CFR 660.409(b)(1)(ii).

Inseason actions #19, #20, and #21

The RA consulted with representatives of the Council, Washington Department of Fish and Wildlife (WDFW), and Oregon Department of Fish and Wildlife (ODFW) on September 5, 2012. The information considered during this consultation related to catch and effort to date in the commercial and recreational salmon fisheries north of Cape Falcon. Three inseason actions were taken as a result of this consultation.

Inseason action #19 transferred 500 coho salmon from the north of Cape Falcon commercial mark-selective coho salmon fishery quota to the north of Cape Falcon recreational salmon fishery quota. The quota transfer was distributed 60 percent (300 fish) to the Neah Bay subarea (U.S./Canada Border to Cape Alava) and 40 percent (200 fish) to the La Push subarea (Cape Alava to Queets River). This action resulted in the following quota adjustments: north of Cape Falcon commercial quota decreased from 12,280 to 11,780 marked coho salmon; Neah Bay recreational quota increased from 7,250 to 8,350 coho salmon; and La Push recreational quota increased from 1,760 to 2,160 coho salmon. This action was taken to prevent closure of recreational fisheries, due to projected attainment of quota, by transferring unutilized quota from the commercial fishery. On September 5, 2012, the states recommended this action and the RA concurred; inseason action #19 took effect on September 5, 2012, and remains in effect until the end of the fishing season. Inseason modification of quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason action #20 took effect on Friday, September 7, 2012, to close the commercial salmon fishery in marine area 4 (U.S./Canada Border to Cape Alava); marine areas 1, 2, and 3 (Cape Alava to Cape Falcon) remain open with a landing and possession limit of 150 Chinook and 50 coho per vessel per open period, unmarked coho may be retained. Vessels fishing, or in possession of salmon while fishing, north of Leadbetter Point must land and deliver their fish north of Leadbetter Point in any port in marine areas 2, 3, or 4. Vessels fishing, or in possession of salmon while fishing, south of Leadbetter Point must land and deliver their fish south of Leadbetter Point. Inseason action #20 superseded inseason action #18, and remains in effect until the end of the fishing season or subsequent inseason action. Inseason modification of quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason action #21 adjusted the Chinook salmon quota in the commercial salmon fishery north of Cape Falcon for the summer season (July 1 through September 17, 2012) by rolling over unused quota from the spring season (May 1 through June 30, 2012) on an impact-neutral basis, effective September 5, 2012. The net effect of inseason action #21 was to increase the summer quota by 850 Chinook salmon to 16,650. Transfer of unused quota from the spring commercial fishery to the summer commercial fishery is anticipated in the 2012 annual management measures (77 FR 25915, May 2, 2012). Inseason modification of quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

All other restrictions and regulations remain in effect as announced for the 2012 Ocean Salmon Fisheries (77 FR 25915, May 2, 2012) and subsequent inseason actions (77 FR 55426) not otherwise modified herein.

The RA determined that the best available information indicated that the stock abundance, and catch and effort projections supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (77 FR 25915, May 2, 2012), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan (50 CFR 660.409 and 660.411). Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, thus allowing fishers access to the available fish at the time the fish were available while ensuring that quotas are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: October 5, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–25039 Filed 10–10–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 197
Thursday, October 11, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1069; Directorate Identifier 2012–NM–044–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all The Boeing Company Model 727 airplanes. The existing AD currently requires repetitive inspections of the in-tank fuel boost pump wiring to detect chafing of the wire insulation, evidence of electrical arcing, or arc-through of the conduit wall, and applicable corrective action; and installation of sleeving over the in-tank fuel boost pump wires. The existing AD also requires repetitive inspections for damage of a certain electrical wire and sleeve, and arcing damage of the conduit and signs of fuel leakage into the conduit; applicable investigative and corrective actions; and repetitive engine fuel suction feed operational tests. Since we issued that AD, we received a report of damage found to the sleeve, jacket, and insulation on an electrical wire during a repetitive inspection. This proposed AD would require replacement of the wire bundles for the wing and center fuel boost pumps with new, improved wire bundles, installation of convoluted liners, and related investigative and corrective actions if necessary. This proposed AD would also require replacement of the fuel quantity indicating system (FQIS) wires with new, improved wires; a low-frequency eddy current inspection for cracking; and repair if necessary. This proposed AD would also require revising the maintenance program to incorporate changes to the airworthiness limitations section. We are proposing this AD to detect and correct chafing of the fuel boost pump electrical wiring and leakage of fuel into the conduit, and to prevent electrical arcing between the wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

DATES: We must receive comments on this proposed AD by November 26, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1069; Directorate Identifier 2012–NM–044–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On May 1, 2007, we issued AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007), for all The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. That AD requires repetitive inspections of the in-tank fuel boost pump wiring to detect chafing of the wire insulation, evidence of electrical arcing, or arc-through of the conduit wall, and applicable corrective action; and installation of sleeving over the in-tank fuel boost pump wires as a method to protect the wiring from chafing. That AD also requires repetitive inspections for damage of the electrical wire and sleeve that run to the fuel boost pump through a conduit in the fuel tank, and arcing damage of the conduit and signs of fuel leakage into the conduit; applicable investigative and corrective actions; repetitive engine fuel suction feed operational tests; an engine fuel suction feed operational test; related investigative and corrective actions, as applicable; and sending

inspection results and damaged parts to the manufacturer.

Actions Since Existing AD (72 FR 28594, May 22, 2007) Was Issued

In the preamble to AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007), the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Further, since we issued AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007), we received a report of damage found to the sleeve, jacket, and insulation on an electrical wire during a repetitive inspection approximately 21,000 flight hours after installation of the sleeve. (The inspection interval in AD 2007–11–08 is 30,000 flight hours.) The sleeve and jacket were worn through, exposing the insulation on the electrical wire inside the jacket. The actions developed by the manufacturer eliminate the possibility of wiring damage during reinstallation following the repetitive inspections.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 727–28A0133, dated October 5, 2011. This service bulletin describes procedures for replacing wire bundles for the wing and center fuel boost pumps, installing convoluted liners, and related investigative and corrective actions. This service bulletin specifies that doing these actions eliminates the need for the inspections specified in Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007 (which is referenced as the appropriate source of service information for inspections specified in AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007)). Replacing the wire bundles and installing the convoluted liners includes:

- Installing new ground brackets, removing fuel boost pumps from the fuel boost pump housing, and removing wire bundles and sleeves.
- Removing or stowing fuel boost pump wire bundles, installing new convoluted liners and new wire bundles in the fuel boost pump conduits.
- Routing new wire bundles.
- Installing fuel boost pumps and making changes to the wire bundles.
- Installing the ground stud assembly for wire bundles.

Related investigative actions include testing the fuel tank conduits for leaks and testing the fuel boost pumps. Corrective actions include repairing or replacing the fuel tank conduit.

Boeing Alert Service Bulletin 727–28A0133, dated October 5, 2011, specifies prior or concurrent accomplishment of the actions specified in Boeing Service Bulletin 727–28–0131, dated August 18, 2010, for the following actions:

- Replacing the FQIS wires with new wires, which includes: Installing new ground brackets in the left and right wing, a new disconnect bracket in the cargo compartment, and a new tie plate in the cargo compartment; making and installing new doublers in the left and right wing; installing new standoffs in the left and right wing; drilling new holes or ground holes in left and right wing; changing the wire bundles; making changes to wire bundle routes; and making changes to wire bundles and assembling wire bundle overbraids.
- Doing a low-frequency eddy current (LFEC) inspection for cracks in certain locations of the fuselage skin, and repair if necessary, in accordance with Boeing Service Bulletin 727–28–0131, dated August 18, 2010.

Airworthiness Limitation Instruction (ALI) Task 28–AWL–20, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank;'' and Critical Design Configuration Control Limitation (CDCCL) Task 28–AWL–21, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank;'' of Section 9 of Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, Revision August 2010, provide maintenance instructions for the wiring changes and replace the requirements of CDCCL Task 28–AWL–14 of Section 9 of Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain certain requirements of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). This proposed AD would also require accomplishing the actions specified in the service information described previously, except as provided under ''Differences Between the AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Although Boeing Alert Service Bulletin 727–28A0133, dated October 5, 2011, specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions using a method approved by the FAA.

Change to Existing AD

This proposed AD would remove the reporting requirements of paragraph (m) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). The inspection report requirement gathered sufficient information for the manufacturer to develop corrective actions.

This proposed AD would retain certain requirements of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). Since AD 2007–11–08 was issued, the AD format has been revised, and certain paragraphs have been rearranged. Also, certain notes have been re-designated as paragraphs. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2007–11–08, amendment 39–15065 (72 FR 28594, May 22, 2007)	Corresponding requirement in this proposed AD
paragraph (f)	paragraph (g)(1)
paragraph (g)	paragraph (g)(2)
paragraph (h)	paragraph (g)(3)
paragraph (i)	paragraph (h)
paragraph (j)	paragraph (i)
paragraph (k)	paragraph (j)
paragraph (l)	paragraph (k)

Costs of Compliance

We estimate that this proposed AD affects 569 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of U.S. airplanes	Cost on U.S. operators
Inspection, test, and corrective actions [retained actions from existing AD 2007-11-08, Amendment 39-15065 (72 FR 28594, May 22, 2007)].	10 work-hours × $85 per hour = $850.	$0	$850	260	$221,000.
Replacement [proposed action]	185 work-hours × $85 per hour = $15,725.	$28,771	$44,496	569	$25,318,224.
Revise Maintenance Program [proposed action].	1 work-hour × $85 per hour = $85.	$0	$85	569	$48,365.
Concurrent FQIS wire replacement [proposed action].	Up to 248 work-hours × $85 per hour = $21,080.	Up to $34,865	Up to $55,945	569	Up to $31,832,705.
Concurrent low frequency eddy current (LFEC) inspection [proposed action].	2 work-hours × $85 per hour = $170.	$0	$170	569	$96,730.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007), and adding the following new AD:

The Boeing Company: Docket No. FAA–2012–1069; Directorate Identifier 2012–NM–044–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by November 26, 2012.

(b) Affected ADs

This AD supersedes AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007), which superseded AD 99–12–52, Amendment 39–11199 (64 FR 33394, June 23, 1999).

(c) Applicability

(1) This AD applies to all Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (p) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by a report of damage found to the sleeve, jacket, and insulation on an electrical wire during a repetitive inspection. We are issuing this AD to detect and correct chafing of the fuel boost pump electrical wiring and leakage of fuel into the conduit, and to prevent electrical arcing between the wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Compliance Times

This paragraph restates the requirements of paragraphs (f), (g), and (h) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007).

(1) For airplanes with 50,000 or more total flight hours as of June 28, 1999 (the effective date of AD 99–12–52, Amendment 39–11199 (64 FR 33394, June 23, 1999)): Within 20 days after June 28, 1999, accomplish the requirements of paragraph (h) of this AD.

(2) For airplanes with less than 50,000 total flight hours, but more than 30,000 total flight

hours, as of June 28, 1999 (the effective date of AD 99–12–52, Amendment 39–11199 (64 FR 33394, June 23, 1999)): Within 30 days after June 28, 1999, accomplish the requirements of paragraph (h) of this AD.

(3) For airplanes with 30,000 total flight hours or less as of June 28, 1999 (the effective date of AD 99–12–52, Amendment 39–11199 (64 FR 33394, June 23, 1999)): Within 90 days after June 28, 1999, accomplish the requirements of paragraph (h) of this AD.

(h) Retained Detailed Inspection, Corrective Action, and Installation

This paragraph restates the requirements of paragraph (i) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007).

(1) Perform a detailed inspection of the in-tank fuel boost pump wire bundles, and applicable corrective actions; and, except as provided by paragraph (i) of this AD, install sleeving over the wire bundles; in accordance with Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999; Boeing Service Bulletin 727–28A0126, Revision 1, dated May 18, 2000; or Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007.

(2) For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(i) Retained Installation: Possible Deferral

This paragraph restates the optional actions of paragraph (j) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). Installation of sleeving over the wire bundles, as required by paragraph (h) of this AD, may be deferred if, within 18 months or 6,000 flight hours, whichever occurs first, after accomplishment of the inspection and applicable corrective actions required by paragraph (h) of this AD, the following actions are accomplished: Perform a detailed inspection of the in-tank fuel boost pump wire bundles, and applicable corrective actions; and install sleeving over the wire bundles; in accordance with Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999; Boeing Service Bulletin 727–28A0126, Revision 1, dated May 18, 2000; or Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007.

(j) Retained Repetitive Inspections and Corrective Actions

This paragraph restates the requirements of paragraph (k) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). Repeat the detailed inspection and applicable corrective actions required by paragraphs (h) and (i) of this AD, as applicable, at intervals not to exceed 30,000 flight hours, until the initial inspection, applicable corrective actions, and engine fuel suction feed operational test required by paragraph (k) of this AD have been done.

(k) Retained Inspection, Test, and Related Investigative and Corrective Actions

This paragraph restates the requirements of paragraph (l) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). For all airplanes: Within 120 days after June 6, 2007 (the effective date of AD 2007–11–08), or 5,000 flight hours after the last inspection or corrective action done before June 6, 2007, as required by paragraph (h), (i), or (j), as applicable, of this AD, whichever occurs later, do a detailed inspection for damage of the sleeve and electrical wire of the fuel boost pump, and do an engine fuel suction feed operational test; and, before further flight, do related investigative and corrective actions, as applicable; by doing all applicable actions in and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007. Repeat the detailed inspection and engine fuel suction feed operational test thereafter at intervals not to exceed 15,000 flight cycles. Accomplishment of the initial inspection, applicable corrective actions, and engine fuel suction feed operational test of this paragraph terminates the requirements of paragraphs (h), (i), and (j) of this AD.

(l) New Installation

Within 60 months after the effective date of this AD: Install new shielded wire bundles in convoluted liners in the wing and center fuel tank conduits and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0133, dated October 5, 2011. Related investigative and corrective actions must be done before further flight. Doing the actions in paragraphs (l) and (m) of this AD terminates the requirements of paragraphs (g), (h), (i), (j), and (k) of this AD.

(m) New Concurrent Requirement

Before or concurrently with accomplishing the requirements of paragraph (l) of this AD, replace the fuel quantity indicating system (FQIS) wire bundles and do a low frequency eddy current inspection for cracking, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–28–0131, dated August 18, 2010. If any cracking is found during the inspection, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(n) New Maintenance Program Revision

Within 60 days after the effective date of this AD: Revise the maintenance program to incorporate Airworthiness Limitation Instruction (ALI) Task 28–AWL–20, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank;'' and CDCCL Task 28–AWL–21, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank,'' of Section 9 of Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, Revision August 2010. The initial compliance time for the inspections is within 60 months after the effective date of this AD.

(o) No Alternative Actions, Intervals, and/or CDCCLs

After accomplishing the revision required by paragraph (n) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (p) of this AD.

(p) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) AMOCs approved previously in accordance with AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007), are approved as AMOCs for the corresponding provisions of this AD.

(q) Related Information

(1) For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 28, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–24954 Filed 10–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket Nos.: PTO–P–2012–0015 and PTO–P–2012–0024]

RIN 0651–AC77

Changes and Examination Guidelines To Implement the First-Inventor-to-File Provisions of the Leahy-Smith America Invents Act; Reopening of the Period for Comments

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments; reopening of the comment period.

SUMMARY: The United States Patent and Trademark Office (USPTO) published a notice of proposed rulemaking and a notice of proposed examination guidelines to implement the first-inventor-to-file (FITF) provisions the Leahy-Smith America Invents Act (AIA). The USPTO also conducted a roundtable to obtain public input from organizations and individuals on issues relating to the USPTO's proposed implementation of the FITF provisions of the AIA. The Office has received several requests for additional time to submit comments on the USPTO's implementation of the FITF provisions of the AIA. The USPTO is reopening the comment period to provide interested members of the public with an additional opportunity to submit comments to the USPTO.

DATES: The deadline for receipt of written comments in response to the notice of proposed rulemaking published July 26, 2012 (77 FR 43742) and notice of proposed examination guidelines published July 26, 2012 (77 FR 43759) is November 5, 2012.

ADDRESSES: Comments on the notice of proposed rulemaking should be sent by electronic mail message over the Internet addressed to: *fitf_rules@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Susy Tsang-Foster, Legal Advisor, Office of Patent Legal Administration.

Comments on the proposed examination guidelines should be sent by electronic mail message over the Internet addressed to: *fitf_guidance@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Mary C. Till, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

Comments on the notice of proposed rulemaking and the proposed examination guidelines may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Office of the Commissioner for Patents, currently located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Mary C. Till, Senior Legal Advisor (telephone (571) 272–7755, email *mary.till@uspto.gov*); or Kathleen Kahler Fonda, Senior Legal Advisor (telephone (571) 272–7754, email *kathleen.fonda@uspto.gov*), of the Office of the Deputy Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION: The AIA was enacted into law on September 16, 2011. Public Law 112–29, 125 Stat. 284 (2011). Section 3 of the AIA amends the patent laws to: (1) Convert the United States patent system from a ''first to invent'' system to a ''first inventor to file'' system; (2) eliminate the requirement that a prior public use or sale activity be ''in this country'' to be a prior art activity; (3) treat U.S. patents and U.S. patent application publications as prior art as of their earliest effective filing date, regardless of whether the earliest effective filing date is based upon an application filed in the U.S. or in another country; and (4) treat commonly owned patents and patent application publications, or those resulting from a joint research agreement, as being by the same inventive entity for purposes of 35 U.S.C. 102 and 103. The changes in section 3 of the AIA take effect on March 16, 2013.

The USPTO published a notice of proposed rulemaking and notice of proposed examination guidelines on July 26, 2012, to implement the FITF provisions of section 3 of the AIA. *See Changes to Implement the First Inventor to File Provisions of the Leahy-Smith America Invents Act,* 77 FR 43742 (July 26, 2012), and *Examination Guidelines for Implementing the First-Inventor-to-File Provisions of the Leahy-Smith America Invents Act,* 77 FR 43759 (July 26, 2012). The notice of proposed rulemaking proposes changes to the rules of practice in title 37 of the Code of Federal Regulations (CFR) for consistency with, and to address the examination issues raised by, the changes in the FITF provisions of the AIA. The proposed examination guidelines set out the Office's interpretation of 35 U.S.C. 102 and 103 as amended by the AIA, and advise the public and the Patent Examining Corps on how the changes to 35 U.S.C. 102 and 103 in the AIA impact the provisions of the *Manual of Patent Examining Procedure* (MPEP) pertaining to 35 U.S.C. 102 and 103. The USPTO also conducted a roundtable to obtain public input from organizations and individuals on issues relating to the USPTO's proposed implementation of the FITF provisions of the AIA. *See Notice of Roundtable on the Implementation of the First Inventor to File Provisions of the Leahy-Smith America Invents Act,* 77 FR 49427 (Aug. 16, 2012).

The Office has received several requests for additional time to submit comments on the USPTO's implementation of the FITF provisions of the AIA. The USPTO is reopening the comment period to provide interested members of the public with an additional opportunity to submit comments to the USPTO.

Dated: October 5, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–25042 Filed 10–10–12; 8:45 am]

BILLING CODE 3510–16–P

Notices

Federal Register

Vol. 77, No. 197

Thursday, October 11, 2012

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0042]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Hygiene

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on October 23, 2012. The objective of the public meeting is to provide information, receive public comments on agenda items, and draft United States (U.S.) positions that will be discussed at the 44th Session of the Codex Committee on Food Hygiene (CCFH) of the Codex Alimentarius Commission (Codex), which will be held in New Orleans, Louisiana, from November 12–16, 2012. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 44th Session of the CCFH and to address items on the agenda.

DATES: The public meeting is scheduled for October 23, 2012, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the Jamie L. Whitten Building, USDA, 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250.

Documents related to the 44th Session of the CCFH will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org.*

Jenny Scott, U.S. Delegate to the CCFH, invites U.S. interested parties to submit their comments electronically to the following email address: *Jenny.Scott@fda.hhs.gov.*

Call-In Number: If you wish to participate in the public meeting for the 44th session of the CCFH by conference call, please use the call-in number and participant code listed below. Call-in Number: 1–888–858–2144. Participant Code: 6208658.

For Further Information About the 44th Session of the CCFH Contact: Jenny Scott, Senior Advisor, Office of Food Safety, Center for Food Safety and Applied Nutrition, FDA, 5100 Paint Branch Parkway, HFS–300, Room 3B–014, College Park, MD 20740–3835, Telephone: (240) 402–2166, Fax: (202) 436–2632, Email: *Jenny.Scott@fda.hhs.gov.*

For Further Information About the Public Meeting Contact: Barbara McNiff, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, Telephone: (202) 690–4719, Fax: (202) 720–3157, Email: *Barbara.McNiff@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in the food trade.

The CCFH is responsible for:

(a) Drafting basic provisions on food hygiene applicable to all food;

(b) Considering, amending if necessary, and endorsing provisions on hygiene prepared by Codex commodity committees and contained in Codex commodity standards;

(c) Considering, amending if necessary, and endorsing provisions on hygiene prepared by Codex commodity committees and contained in Codex codes of practice unless, in specific cases, Codex has decided otherwise;

(d) Drafting provisions on hygiene applicable to specific food items or food groups, whether coming within the terms of reference of a Codex commodity committee or not;

(e) Considering specific hygiene problems assigned to it by Codex;

(f) Suggesting and prioritizing areas where there is a need for microbiological risk assessment at the international level and to develop questions to be addressed by the risk assessors; and

(g) Considering microbiological risk management matters in relation to food hygiene, including food irradiation, and in relation to the risk assessment of FAO/WHO.

The CCFH is hosted by the United States.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 44th Session of the CCFH will be discussed during the public meeting:

- Matters Referred by Codex and/or Other Codex Committees and Task Forces to the Food Hygiene Committee
- Draft Regional Code of Practice for Street-Vended Foods (Near East)
- Matters Arising from the Work of FAO, WHO and Other International Intergovernmental Organizations

(a) Progress Report on the Joint FAO/WHO Expert Meetings on Microbiological Risk Assessment (JEMRA) and Related Matters

(b) Information from the World Organisation for Animal Health (OIE)

- Proposed Draft Revision of *Principles for the Establishment and Application of Microbiological Criteria for Foods* at Step 4
- Practical Examples on the Application and Establishment of Microbiological Criteria
- *Proposed Draft Guidelines for Control of Specific Zoonotic Parasites in Meat: Trichinella spiralis and Cysticercus bovis* at Step 4
- Proposed Draft Revision of the *Code of Hygienic Practice for Spices and Dried Aromatic Plants* at Step 4
- Proposed Draft Annex on Berries to the *Code of Hygienic Practice for Fresh Fruits and Vegetables* at Step 4
- Discussion Paper on a Code of Hygienic Practice for Low Moisture Food
- Discussion Paper on New Work and Periodic Review/Revision of Codes of Hygienic Practice
- CCFH Work Priorities

Each issue listed will be fully described in documents distributed, or to be distributed, by the Codex Secretariat prior to the CCFH meeting. Members of the public may access these documents (see **ADDRESSES**).

Public Meeting

At the October 23, 2012, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 44th Session of the CCFH, Jenny Scott (see **ADDRESSES**). Written comments should state that they relate to activities of the 44th Session of the CCFH.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information.

This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, on: October 1, 2012.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2012–25001 Filed 10–10–12; 8:45 am]

BILLING CODE 3410–DM–P

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

Time and Date: 10 a.m.–12 p.m. November 2, 2012.

Place: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

Status: The meeting will be open to the public.

Matters To Be Considered

Portions Open to the Public: The primary purpose of this meeting is to (1) Review the independent auditors' report of Commission's financial statements for fiscal year 2011–2012; (2) Review the Low-Level Radioactive Waste (LLRW) generation information for 2010; (3) Consider a proposed budget for fiscal year 2013–2014; (4) Review recent developments regarding LLRW management and disposal; and (5) Elect the Commission's Officers.

Portions Closed to the Public: Executive Session, if deemed necessary, will be announced at the meeting.

Contact Person for More Information: Rich Janati, Administrator of the Commission, at 717–787–2163.

Rich Janati,

Administrator, Appalachian Compact Commission.

[FR Doc. 2012–24999 Filed 10–10–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on October 30, 2012, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than October 23, 2012.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 27, 2011 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: October 4, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–25036 Filed 10–10–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On April 6, 2012, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand.[1] This review covers the respondents Pacific Pipe Public Company Limited (Pacific Pipe) and Saha Thai Steel Pipe (Public) Company, Ltd. (Saha Thai). Based on our analysis of the comments received, we have made changes to the preliminary results, which are discussed below. For the final dumping margins, *see* the ''Final Results of Review'' section below.

DATES: *Effective Date:* October 11, 2012.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Andrew Huston, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5255 or (202) 482–4261, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the preliminary results, the following events have taken place. Wheatland Tube Company, United States Steel Corporation, Pacific Pipe and Saha Thai submitted timely case briefs on July 16, 2012. Wheatland Tube Company, United States Steel Corporation, Allied Tube and Conduit and TMK IPSCO, Pacific Pipe, and Saha Thai filed timely rebuttal briefs on July 23, 2012.

Period of Review

The period of review (POR) is March 1, 2010, through February 28, 2011.

Scope of the Order

The products covered by the antidumping order are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing'' are hereinafter designated as ''pipes and tubes.'' The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs by parties in this administrative review are addressed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand: Issues and Decision Memorandum'' (Decision Memorandum), dated October 3, 2012, and hereby adopted by this notice. A list of the issues addressed in the Decision Memorandum is appended to this notice. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made adjustments to our margin calculations for Pacific Pipe and Saha Thai. For Pacific Pipe, with regard to the cost of production, we subtracted the cost of galvanizing in the instances where our methodology resulted in the selection of a galvanized product as the substitute for a non-galvanized product and added galvanizing where our methodology selected non-galvanized products as a substitute for galvanized products. *See* Memorandum to Neal Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Results—Pacific Pipe Public Company Limited,'' dated October 3, 2012. For Pacific Pipe, we also revised coding in our margin program to correct an error in the Department's comparison market program related to determining cost for products sold, but not produced, during the POR. *See* Decision Memorandum at Comment 13.

For Saha Thai, we made the following adjustments for these final results. First, after reviewing the comments and examining all of the documentation on the record with respect to warehousing, we removed warehousing expenses and revenue from the calculation for these final results. *See* Decision Memorandum at Comment 4. Second, we corrected a clerical error in Saha Thai's U.S. margin calculation program which affects how we calculate the freight revenue cap. *See* Decision Memorandum at Comment 10. We have also made a number of corrections and adjustments to Saha Thai's cost response which are discussed in the Decision Memorandum at Comments 6, 7, 8 and 9, and in the Memorandum to Neal Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Results—Saha Thai Steel Pipe (Public) Company, Ltd.,'' dated October 3, 2012.

Final Results of Review

As a result of our review, we determine that the following weighted-average margins exist for the period of March 1, 2010, through February 28, 2011:

Manufacturer/exporter	Weighted-average margin
Saha Thai Steel Pipe (Public) Company, Ltd	0.92
Pacific Pipe Public Company Limited	8.23

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, where the respondent reported the entered value for its sales, we calculated importer-specific (or customer-specific) *ad valorem* assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. *See* 19 CFR 351.212(b)(1). However, where the respondent did not report the entered value for its sales, we

[1] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 20782 (April 6, 2012).

have calculated importer-specific (or customer-specific) per-unit assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, any entries for which the assessment rate is *de minimis.* The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification applies to entries of subject merchandise during the POR produced by the companies included in these final results of review for which the reviewed company did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all others rate from the investigation if there is no rate for the intermediate company involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) For the company covered by this review, the cash deposit rate will be the rate listed above in the section ''Final Results of Review''; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and, (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 15.67 percent, the all-others rate established in the less than fair value investigation.[2] These deposit requirements shall remain in effect until further notice.

Notification Regarding Administrative Protective Orders

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

Notification to Importers

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

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

Dated: October 3, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

Issues in the Decision Memorandum

Comment 1: U.S. Date of Sale for Saha Thai
Comment 2: Adjustment for Duty Drawback Exemption for Saha Thai
Comment 3: Freight Revenue Cap for Saha Thai
Comment 4: Warehousing Expense for Saha Thai
Comment 5: Actual-to-Theoretical Conversion Factor for Saha Thai's Cost of Production
Comment 6: Production Quantities for Saha Thai
Comment 7: Treatment of Saha Thai's Non-Prime Products in Calculating the Cost of Production
Comment 8: Cost Reconciliation for Saha Thai
Comment 9: Treatment of Painting Services from Saha Thai's Affiliated Parties in the Cost of Production
Comment 10: Correcting an Error in the Calculation of the Freight Revenue Cap for Saha Thai
Comment 11: Duty Drawback Adjustment for Pacific Pipe
Comment 12: Pacific Pipe's Proposed Substitute Cost Methodology for Products Sold During the POR but Not Produced During the POR
Comment 13: Correcting the Programming Error in Pacific Pipe's Comparison Market Program

[FR Doc. 2012–25040 Filed 10–10–12; 8:45 am]

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[2] *See Antidumping Duty Order: Circular Welded Carbon Steel Pipes and Tubes From Thailand,* 51 FR 8341 (January 27, 1986).

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Public Law 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before October 31, 2012. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 12–036. *Applicant:* Michigan State University, 2555 Engineering Building Department of Mechanical Engineering, East Lansing, MI 48824–1226. *Instrument:* Diode Pumped High speed Nd:YAG laser system. *Manufacturer:* Edgewave GmbH, Germany. *Intended Use:* The instrument will be used as a diagnostics equipment to study high temperature combustion occurring in a laboratory combustor with highly turbulent flows, specifically to detect chemical species of combustion in conditions that are similar to actual engine operating conditions. The system will be used to pump a dye laser to generate ultra-violet light which can be used to rack chemical species during combustion, such as hydroxyl (OH) radicals. The

hydroxyl which is excited using ultraviolet light (283 nm) will then fluoresce and can be detected using an intensified CCD camera. The key requirements that this system fulfills are the beam profile of $M^2<2$, to ability to perform sub 10 ns pulses with all the different specifications, and the crystals inside are all temperature controlled to phase match regardless of the outside temperature fluctuations. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 30, 2012.

Dated: October 4, 2012.

Gregory W. Campbell,

Director of Subsidies Enforcement, Import Administration.

[FR Doc. 2012–25052 Filed 10–10–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Argonne National Laboratory; Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC.

Docket Number: 12–007. *Applicant:* Argonne National Laboratory, 9700 South Cass Ave., Lemont, IL 60439. *Instrument:* Klystron. *Manufacturer:* Thales Components Corp., France. *Intended Use:* See notice at 77 FR 25960, May 2, 2012. *Date of Denial without Prejudice to Resubmission:* June 1, 2012. *Decision:* Denied. The applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available. *Reasons:* Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the above-mentioned docket.

Dated: October 4, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–25054 Filed 10–10–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 120913451–2451–01]

Call for Applications for the International Buyer Program—Calendar Years 2014 and 2015

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and Call for Applications.

SUMMARY: In this notice, the U.S. Department of Commerce (DOC) announces that it will accept applications for the International Buyer Program (IBP) for calendar year 2014 (January 1, 2014 through December 31, 2014). The announcement also sets out the objectives, procedures and application review criteria for the IBP. The purpose of the IBP program is to bring international buyers together with U.S. firms in industries with high export potential at leading U.S. trade shows. Specifically, through the IBP, the DOC selects domestic trade shows which will receive DOC assistance in the form of global promotion in foreign markets, providing export counseling to exhibitors, and providing export counseling and matchmaking services at the trade show. This notice covers selection for IBP participation during calendar year 2014. It also announces a new pilot initiative for the IBP, which will allow up to 20% of the 2014 IBP shows to be preselected for IBP participation in calendar year 2015 (January 1, 2015 through December 31, 2015) without having to reapply for the second year. Eligibility for this pilot initiative is limited to annual trade shows that participated in the IBP in calendar years 2011 or 2012. Applicants interested in being considered for this pilot must indicate so in the application.

DATES: Applications for the IBP must be received by December 10, 2012.

ADDRESSES: The IBP application may be downloaded from *http://www.export.gov/IBP.* Applications may be submitted by any of the following methods: (1) Mail/Hand Delivery Service: International Buyer Program, Trade Promotion Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, Ronald Reagan Building, 1300 Pennsylvania Ave. NW., Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004. Telephone (202) 482–0691; (2) Facsimile: (202) 482–7800; or (3) email: *IBP2014@trade.gov.* Facsimile and email applications will be accepted as interim applications, but must be followed by a signed original application that is received by the program no later than five (5) business days after the application deadline. To ensure that applications are timely received by the deadline, applicants are strongly urged to send applications by hand delivery service (e.g., U.S. Postal Service Express Delivery, Federal Express, UPS, etc.).

FOR FURTHER INFORMATION CONTACT: Gary Rand, Acting Director, International Buyer Program, Trade Promotion Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 1300 Pennsylvania Ave. NW., Ronald Reagan Building, Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004; Telephone (202) 482–0691; Facsimile: (202) 482–7800; Email: *IBP2014@trade.gov.*

SUPPLEMENTARY INFORMATION: The IBP was established in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, codified at 15 U.S.C. 4724) to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. Shows selected for the IBP will provide a venue for U.S. companies interested in expanding their sales into international markets.

Through the IBP, the DOC selects trade shows that DOC determines to be leading international trade shows with participation by U.S. firms interested in exporting for promotion in overseas markets by U.S. Embassies and Consulates. DOC is authorized to provide successful applicants with assistance in the form of overseas promotion of the show; outreach to show participants about exporting; recruiting potential buyers to attend the events; and through physical staff assistance at the event through setting up international trade centers at the events. Worldwide promotion is executed through the offices of the DOC

U.S. and Foreign Commercial Service (hereinafter referred to as the Commercial Service) in more than 70 countries representing the United States' major trading partners, and also in U.S. Embassies in countries where the Commercial Service does not maintain offices.

The Commercial Service is accepting applications from trade show organizers for the IBP for trade events taking place between January 1, 2014 and December 31, 2014. Selection of a trade show is valid for one event, unless the applicant is selected to participate under the pilot initiative described below, i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. For events that occur more than once in a calendar year, the trade show organizer must submit a separate application for each event.

There is no fee required to submit an application. If accepted into the program for calendar year 2014, a participation fee of $9,800 for shows of five days or less is required. For trade shows more than five days in duration, or requiring more than one International Trade Center, a participation fee of $15,000 is required. For trade shows ten days or more in duration, and/or requiring more than two International Trade Centers, the participation fee will be determined by DOC and stated in the written notification of acceptance. In all cases, the fee is due within 45 days of written notification of acceptance into the program.

For this announcement cycle only, the Commercial Service is piloting a new initiative to preselect up to 20% of the shows that are selected for the 2014 IBP, to also participate in the IBP during calendar year 2015 (January 1, 2015 through December 31, 2015), without having to reapply. The purpose of this pilot initiative is to maximize promotion to international buyers by allowing show organizers to engage in longer-term planning while reducing administrative burden on both the Commercial Service and the show organizers by avoiding the need to reapply for the second year. Eligibility for this pilot initiative is limited to annual trade events that participated in the IBP in calendar years 2011 or 2012. For events selected for both calendar years 2014 and 2015, the participation fee for the IBP program for calendar year 2015 event will be announced in the fall of 2013. Payment will be due within 45 days of written notification of the 2015 fee schedule.

For the IBP in calendar year 2014, the Commercial Service expects to select approximately 35 events from among the applicants. Applicants that have expressed interest in the application for preselection for the 2015 IBP cycle will be considered for the pilot initiative. Of these applicants, up to 20% of the events for 2014 will be preselected for the next IBP cycle during the January 1, 2015 through December 31, 2015 period.

The Commercial Service will select those events that are determined to most clearly meet the Commercial Service's statutory mandate in 15 U.S.C. 4721 to promote U.S. exports, especially those of small- and medium-sized enterprises, and that best meet the selection criteria articulated below. Successful applicants will be required to enter into a Memorandum of Agreement (MOA) with the DOC, and must submit payment of the 2014 participation fee within 45 days of written notification of acceptance into the IBP. The MOA constitutes an agreement between the DOC and the show organizer specifying which responsibilities for international promotion of and export assistance services at the trade shows are to be undertaken by the DOC as part of the IBP and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the application and a copy of this **Federal Register** Notice. Applicants are encouraged to review the MOA closely as IBP participants are required to comply with all terms, conditions, and obligations in the MOA. Trade show organizer obligations include, but are not limited to, the construction of an International Trade Center at the trade show, production of an export interest directory, and provision of complementary hotel accommodations for DOC staff as explained in the MOA. The responsibilities to be undertaken by the DOC will be carried out by the Commercial Service. Commercial Service responsibilities include, but are not limited to, the worldwide promotion of the trade show and, where feasible, recruitment of international buyers to that show, provision of on-site export assistance to U.S. exhibitors at the show, and the reporting of results to the show organizer.

Selection as an IBP partner does not constitute a guarantee by DOC of the show's success. IBP partnership status is not an endorsement of the show except as to its international buyer activities. Neither non-selection of an applicant for IBP partnership status nor selection for only one calendar year should be viewed as a determination that the event will not be successful in promoting U.S. exports.

Eligibility: All 2014 U.S. trade events, through the show organizer, are eligible to apply for IBP participation. However, only annual U.S. trade events to be held in 2014 and 2015 that were IBP participants in calendar years 2011 and/or 2012 are eligible to apply to the pilot initiative for selection for participation for two calendar years.

Exclusions: Trade shows that are either first-time or horizontal (non-industry specific) events generally will not be considered.

General Evaluation Criteria: The Commercial Service will evaluate shows to be International Buyer Program partners using the following criteria:

(a) Level of Intellectual Property Rights Protection: The trade show organizer includes in the terms and conditions of its exhibitor contracts provisions for the protection of intellectual property rights (IPR); has procedures in place at the trade show to address IPR infringement, which, at a minimum, provides information to help U.S. exhibitors procure legal representation during the trade show; and agrees to assist the DOC to reach and educate U.S. exhibitors on the Strategy Targeting Organized Piracy (STOP!), IPR protection measures available during the show, and the means to protect IPR in overseas markets, as well as in the United States.

(b) Export Potential: The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, e.g., Commercial Service best prospects lists and U.S. export statistics (certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides, available through the Web site, *http://www.export.gov*).

(c) Level of International Interest: The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (e.g., best prospect lists). Previous international attendance at the show may be used as an indicator.

(d) Scope of the Show: The event must offer a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors are given priority.

(e) U.S. Content of Show Exhibitors: Trade shows with exhibitors featuring a high percentage of products produced in the United States or products with a high degree of U.S. content will be preferred.

(f) Stature of the Show: The trade show is clearly recognized by the

industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally, and as a showplace for the latest technology or services in that industry.

(g) Level of Exhibitor Interest: There is expressed interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be new-to-export (NTE) or seeking to expand their sales into additional export markets.

(h) Level of Overseas Marketing: There has been a demonstrated effort by the applicant to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, and explain how efforts should increase individual and group international attendance. (Planned cooperation with Visit USA Committees overseas is desirable. For more information on Visit USA Committees go to: *http://www.visitusa.com.*)

(i) Logistics: The trade show site, facilities, transportation services, and availability of accommodations at the site of the exhibition must be capable of accommodating large numbers of attendees whose native language will not be English.

(j) Level of Cooperation: The applicant demonstrates a willingness to cooperate with the Commercial Service to fulfill the program's goals and adhere to the target dates set out in the MOA and in the event timetables, both of which are available from the program office (see the **FOR FURTHER INFORMATION CONTACT** section above). Past experience in the IBP will be taken into account in evaluating the applications received.

(k) Delegation Incentives: Show organizers should offer a range of incentives to delegations and/or delegation leaders recruited by the Commercial Service overseas posts. Examples of incentives to international visitors and to organized delegations include, but are not limited to: Waived or reduced admission fees; special organized events, such as receptions, meetings with association executives, briefings, and site tours; and complimentary accommodations for delegation leaders. Waived or reduced admission fees are required for international attendees who are members of Commercial Service-recruited delegations under this program. Delegation leaders also must be provided complimentary admission to the event.

Review Process

The Commercial Service will vet all applications received based on the criteria set out in this notice. Vetting will include soliciting input from Commercial Service domestic and international field offices, focusing primarily on the export potential, level of international interest, and stature of the show. In reviewing applications, the Commercial Service will also consider sector and calendar diversity in terms of the need to allocate resources to support selected events. In selecting events under the two-year pilot initiative, although all of the above factors will be considered, additional emphasis will be placed on past IBP success and cooperation respectively under factors (c) and (j) above. The Assistant Secretary for Trade Promotion and Director General of the U.S. and Foreign Commercial Service will make all selection decisions.

Application Requirements: Show organizers submitting applications for the 2014 or 2014–2015 IBP are requested to submit: (1) A narrative statement addressing each question in the application, Form ITA–4102P; (2) a signed statement that ''The above information provided is correct and the applicant will abide by the terms set forth in this Call for Applications for the 2014 and 2015 International Buyer Program (January 1, 2014 through December 31, 2015);'' and (3) two copies of the application, on company letterhead, and one electronic copy submitted on a CD–RW (preferably in Microsoft Word® format), on or before the deadline noted above. Applicants interested in participating in the pilot initiative for selection of one event for two successive calendar years should explicitly so indicate in their applications. There is no fee required to apply. The Commercial Service expects to issue the results of this process in April 2013.

Legal Authority: The statutory program authority for the Commercial Service to conduct the International Buyer Program is 15 U.S.C. 4724. The Commercial Service has the legal authority to enter into MOAs with show organizers (partners) under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C. 2455(f) and 2458(c)). MECEA allows the Commercial Service to accept contributions of funds and services from firms for the purposes of furthering its mission.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program (Form ITA–4102P) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (OMB Control No. 0625–0151). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. For further information please contact: Gary Rand, Acting Director, International Buyer Program (*Gary.Rand@trade.gov*).

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2012–24926 Filed 10–10–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Certain Lined Paper Products From India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2010

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain lined paper products from India. The period of review (POR) is January 1, 2010, through December 31, 2010, and the review covers one producer/exporter of the subject merchandise, AR. Printing & Packaging India Pvt. Ltd. (AR Printing). We have preliminarily determined that AR Printing received countervailable subsidies during the POR.

DATES: *Effective Date:* October 11, 2012.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1009.

Scope of the Order

The merchandise subject to the order is certain lined paper products. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020,

4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in the *Lined Paper Order,* remains dispositive.[1]

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific. *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity. In making these findings, we have relied, in part, on facts available and because one or more respondents did not act to the best of their ability to respond to the Department's requests for information, we have drawn an adverse inference in selecting from among the facts otherwise available. *See* sections 776(a) and (b) of the Act. Finally, the Department was not able to make a preliminary determination of countervailability for certain programs because it requires additional information. We intend to seek that information prior to our final results.

For a full description of the methodology underlying our conclusions, please see ''Decision Memorandum for Preliminary Results for the Countervailing Duty Administrative Review of Certain Lined Paper Products from India,'' (Preliminary Decision Memorandum) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department has determined that the following preliminary net subsidy rates exist for the period January 1, 2010, through, December 31, 2010:

ASSESSMENT RATE

Company	Net subsidy rate
AR. Printing & Packaging India Pvt. Ltd. (AR Printing)	73.51 percent *ad valorem.*

CASH DEPOSIT RATE

Company	Net subsidy rate
AR. Printing & Packaging India Pvt. Ltd. (AR Printing)	68.03 percent *ad valorem.*

Assessment and Cash Deposit Requirements

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of this review. We will instruct CBP to collect cash deposits for the respondent at the countervailing duty rate indicated above of the f.o.b. invoice price on all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. We will also instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[2] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[3] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[4] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW.,

[1] *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Lined Paper Order*).

[2] *See* 19 CFR 351.224(b).

[3] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[4] *See* 19 CFR 351.310(c).

Washington, DC 20230, at a time and location to be determined.[5] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 1, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

Application of Adverse Facts Available (AFA)—AR Printing

Analysis of Programs

A. *Programs Preliminarily Determined to be Countervailable*
  1. *Pre- and Post-Shipment Export Financing*
  2. *Export Promotion of Capital Goods Scheme (EPCGS)*
  3. *Export Oriented Units (EOU) Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically*
  4. *Export Oriented Units Duty-Free Import of Capital Goods and Raw Materials*
  5. *Market Development Assistance (MDA)*
  6. *Market Access Initiative (MAI)*
  7. *Status Certificate Program*
  8. *Income Deduction Program (80IB Tax Program)*
  9. *Duty Entitlement Passbook Scheme (DEPS)*
  10. *Advance Authorization Program (AAP)*
  11. *Export Processing Zones (Renamed Special Economic Zones)*
  12. *Target Plus Scheme (TPS)*

B. *Programs Preliminarily Determined to Constitute a Program-Wide Change*
  1. *Income Tax Exemptions Under Section 10A*
  2. *Income Tax Exemptions Under Section 10B*

C. *Programs Preliminarily Determined to be Terminated*
  1. *Duty Free Replenishment Certificate (DFRC) Program*

D. *Programs Previously Determined to be Terminated*
  1. *Exemption of Export Credit from Interest Taxes*
  2. *Income Tax Exemptions Under 80 HHC*

E. *Programs for Which the Department Requires Additional Information*

[FR Doc. 2012–24815 Filed 10–10–12; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 10–3A001]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review to Alaska Longline Cod Commission (Application No. 10–3A001).

SUMMARY: On September 27, 2012, the U.S. Department of Commerce issued an amended Export Trade Certificate of Review to the Alaska Longline Cod Commission (''ALCC''). This is the third amendment to the Certificate. This notice summarizes the conduct for which certification has been granted. ALCC's original Certificate was issued on May 13, 2010 (75 FR 29514, May 26, 2010).

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by Email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2009).

The Office of Competition and Economic Analysis is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

ALCC's Export Trade Certificate of Review has been amended to:

1. Add the following company as a Member of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Glacier Bay Fisheries, LLC.

The effective date of the amended certificate is July 18, 2012, the date on which ALCC's application to amend the certificate was deemed submitted. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: October 1, 2012.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2012–24881 Filed 10–10–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 84–23A12]

Export Trade Certificate of Review

ACTION: Notice of application to amend the Export Trade Certificate of Review issued to Northwest Fruit Exporters, Application No. 84–23A12.

SUMMARY: The Office of Competition and Economic Analysis (''OCEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the

comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–23A12.''

The Northwest Fruit Exporters' (''NWF'') original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984), and last amended on August 12, 2011 (76 FR 55010). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Northwest Fruit Exporters, 105 South 18th Street, Suite 227, Yakima, WA 98901. Contact: James R. Archer, Manager, (509) 576–8004.

Application No.: 84–23A12.

Date Deemed Submitted: October 3, 2012.

Proposed Amendment: NWF seeks to amend its Certificate to:

1. Add the following companies as new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Crown Packing, LLC (Wenatchee, WA); HoneyBear Growers, Inc. (Brewster, WA); and Jenks Bros Cold Storage & Packing (Royal City, WA); and

2. Remove the following companies as Members of NWF's Certificate: J & D Packing, LLC (Outlook, WA); Oregon Cherry Growers (Salem, OR); and Prentice Packing & Storage (Yakima, WA); and

3. Change the name of the following member: Conrad & Adams Fruit LLC of Grandview, WA is now Conrad & Adams Fruit L.L.C.

Dated: October 5, 2012.

Praveen Dixit,

Deputy Assistant Secretary for Industry Analysis.

[FR Doc. 2012–25029 Filed 10–10–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC058

Endangered Species; File No. 16803

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center (SWFSC), 8901 La Jolla Shores Drive, La Jolla, CA 92037, [Responsible Party: Lisa Ballance, Ph.D.] has been issued a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), and olive ridley (*Lepidochelys olivacea*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On June 11, 2012, notice was published in the **Federal Register** (77 FR 34349) that a request for a scientific research permit to take loggerhead, green, and olive ridley sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The SWFSC has been issued a 5-year permit to take sea turtles in San Diego Bay, California. The purpose of the work is to determine their abundance, size ranges, growth, sex ratio, health status, diving behavior, local movements, habitat use, and migration routes. Up to 50 green, five olive ridley, and five loggerhead sea turtles may be captured annually by entanglement or seine netting and have the following procedures performed before release: Photography/video; carapace marking; flipper tagging and passive integrated transponder tagging; ultrasound; morphometrics; tetracycline injection; fecal, scute, blood and tissue sampling; cloacal and oral swabbing; lavage; and attachment of up to two transmitters. Animals with transmitters may be tracked by vessel after release.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 5, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–25011 Filed 10–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patents External Quality Survey (formerly Customer Panel Quality Survey).

Form Number(s): None.

Agency Approval Number: 0651–0057.

Type of Request: Extension of a currently approved collection.

Burden: 527 hours annually.

Number of Respondents: 3,100 responses per year, with an estimated 75 surveys submitted by small entities. Out of a sample size of 3,100 for each wave of data collection, the USPTO estimates that 1,550 completed surveys will be received, for a response rate of 50%. This estimate was based on the response rates of the previous survey waves that the USPTO has conducted. Each year of the survey will include two waves of data collection with an estimated 3,100 completed surveys received annually (1,550 completed surveys × 2 waves of the survey). Of this total, the USPTO estimates that 15% (465) of the surveys will be returned by mail and that 85% (2,635) of the surveys will be completed using the online option.

Avg. Hours per Response: The USPTO estimates that it takes the public approximately ten minutes (0.17 hours) to complete either the paper or online version of this survey. This estimated time includes gathering the necessary information, completing the survey, and submitting the completed survey to the USPTO.

Needs and Uses: Individuals who work at firms that file more than six patent applications a year use the Patents External Quality Survey to provide the USPTO with their perceptions of examination quality. The USPTO uses the feedback gathered from the survey to assist them in targeting key areas for examination quality improvement and to identify important areas for examiner training.

Affected Public: Individuals or households; businesses or other for-profits; and non-profit institutions.

Frequency: Semi-annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *www.reginfo.gov.*

Paper copies can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0057 copy request'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before November 13, 2012 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: October 5, 2012.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2012–25020 Filed 10–10–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Guam and Commonwealth of the Northern Mariana Islands Military Relocation (2012 Roadmap Adjustments) and Notice of Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy (DoN) announces its intent to expand the scope of the ongoing Supplemental Environmental Impact Statement (SEIS) for a live-fire training range complex on Guam to evaluate the potential environmental consequences from construction and operation of a main cantonment area, including family housing, and associated infrastructure on Guam to support the relocation of a substantially reduced number of Marines than previously analyzed. This SEIS will supplement the Final EIS for the ''Guam and Commonwealth of the Northern Mariana Islands Military Relocation; Relocating Marines from Okinawa, Visiting Aircraft Carrier Berthing, and Army Air and Missile Defense Task Force'' dated July 2010.

Pursuant to 40 CFR 1502.9(c), the SEIS is being prepared for the limited purpose of supplementing the 2010 Final EIS regarding the establishment of a live-fire training range complex, a main cantonment area, including family housing, and associated infrastructure on Guam.

The purpose and need for the proposed action is to ensure that the relocated Marines are organized, trained, and equipped as mandated in Section 5063 of Title 10 of the U.S. Code, to satisfy individual live-fire training requirements as described in the Final EIS and associated Record of Decision (ROD), and to establish an operational U.S. Marine Corps (USMC) presence in Guam in accordance with April 2012 adjustments to the May 2006 United States-Japan Roadmap for Realignment Implementation (Roadmap).

The proposed action that will be analyzed in the SEIS is to construct and operate a live-fire training range complex on Guam that allows for simultaneous use of all firing ranges to support training and operations of the relocated Marines, and a main cantonment area of sufficient size and layout to provide military support functions, including family housing. The proposed action also includes the construction of utilities and infrastructure to support the range complex, main cantonment, and housing.

The live-fire training range complex will consist of a Known Distance (KD) rifle range, a KD pistol range, a Modified Record of Fire Range, a nonstandard small arms range, a Multipurpose Machine Gun (MPMG) range, and a hand grenade range. The main cantonment area will provide military support functions (also known as base operations and support) to the relocated Marines. Such functions include, but are not limited to, headquarters and administrative support, bachelor housing, family housing, supply, maintenance, open storage, community support (e.g., retail, education, recreation, medical, and day care), some site-specific training, and open space (e.g., parade grounds, open training areas, and open green space in communities). The proposed action also includes the utilities and infrastructure required to support the range, cantonment, and housing areas.

The DoN has identified seven (7) preliminary alternative locations for the live-fire training range complex: Two are adjacent to Route 15 in northeastern Guam, three are located at or immediately adjacent to the Naval Magazine (NAVMAG), also known as the Naval Munitions Site, one is located at Andersen Air Force Base (AAFB) Northwest Field in northern Guam, and one is located at Naval Computer and Telecommunications Station (NCTS) Finegayan on the northwest coast of Guam. The DoN has identified five (5) preliminary alternatives for the main cantonment/family housing: AAFB, NCTS Finegayan, NCTS Finegayan (main cantonment)/South Finegayan Navy Housing (family housing), Navy and Air Force Barrigada in the central area of Guam, and Naval Base Guam in the Apra Harbor area.

The preliminary alternatives may continue to evolve as the DoN considers public and regulatory agency input through the NEPA process. For example, the DoN is currently working with the Federal Aviation Administration (FAA) to determine whether airspace impacts would render an otherwise preliminary alternative untenable. Should the FAA conclude that an alternative's conflicts with existing airspace are unmitigatable, that preliminary alternative would not be carried forward for evaluation in the SEIS.

The DoN encourages government agencies, private-sector organizations, and the general public to participate in the NEPA process for the SEIS. The DoN has invited the U.S. Air Force, the FAA, the U.S. Fish and Wildlife Service, the U.S. Department of Agriculture, the Federal Highway Administration, Environmental Protection Agency Region 9, and the Office of Insular Affairs in the U.S. Department of the Interior to participate as cooperating agencies in the preparation of the SEIS.

The DoN invites comments on the expanded proposed scope and content of the SEIS from all interested parties. Comments on the scope of the SEIS may be provided by mail and through the SEIS Web site at: *http://guambuildupeis.us*. In addition, the DoN will conduct open-house style public scoping meetings on Guam to obtain comments on the scope of the SEIS and to identify specific environmental concerns or topics for consideration in the SEIS. Meetings will be held at the following locations and times: Thursday, November 8, 2012, from 5 p.m. to 8 p.m., Bldg. 4175 (Old McCool School) Gym/Cafeteria, Santa Rita, Guam; Friday, November 9, 2012, from 5 p.m. to 8 p.m., Okkodo High School, Dededo, Guam; and Saturday, November 10, 2012, from 12 p.m. to 3 p.m., University of Guam Field House, Mangilao, Guam.

Interested agencies, individuals, and groups unable to attend the open-house public scoping meetings are encouraged to submit comments by December 10, 2012, Chamorro Standard Time (ChST). Mailed comments should be postmarked no later than December 10, 2012, ChST to ensure they are considered. Mail comments to: Joint Guam Program Office Forward, P.O. Box 153246, Santa Rita, Guam 96915.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Spitler, Communications Director, Joint Guam Program Office, phone 703–602–4728. On Guam, please contact Major Darren Alvarez, Joint Guam Program Office Forward, phone 671–339–3337.

SUPPLEMENTARY INFORMATION: The DoN's proposed action is to construct and operate a live-fire training range complex, a main cantonment area, including family housing, and associated infrastructure in support of the Guam Military Relocation.

Background

A ROD for the Final EIS was signed on September 20, 2010 (75 FR 60438, September 30, 2010). The ROD deferred a decision on the specific site for a live-fire training range complex. Regarding the establishment of the main cantonment area, the ROD selected an area utilizing Department of Defense (DoD)-owned lands at NCTS Finegayan and South Finegayan Navy Housing and acquiring land known as the former FAA parcel. The Final EIS identified this total area as the Preferred Alternative for establishment of the main cantonment area.

In the months following the issuance of the ROD, the DoN made adjustments with regards to the live-fire training range complex, including application of probabilistic modeling that shrank the overall footprint of the MPMG range. DoN also formally committed that if the Route 15 area was selected for the live-fire training range complex, DoN would provide for 24 hours a day, 7 days a week access to Pagat Village and Pagat Cave historical sites, to include the trail leading to both.

Faced with this new information, the DoN initially elected to prepare a SEIS limited solely to the evaluation of impacts associated with the location, construction, and operation of the live-fire training range complex. The DoN issued its Notice of Intent (NOI) to prepare the SEIS in February 2012 (77 FR 6787, February 9, 2012). In the NOI, the DoN preliminarily identified five alternatives for the range complex: Two were adjacent to Route 15 in northeastern Guam, and three were located at or immediately adjacent to the NAVMAG. Public scoping meetings were conducted for the SEIS in March 2012, and the public scoping comment period closed on April 6, 2012.

Shortly after the close of the public comment period, on April 27, 2012, the U.S.-Japan Security Consultative Committee (SCC) issued a joint statement announcing its decision to adjust the plans outlined in the May 2006 Realignment Roadmap. In accordance with the SCC's adjustments, the DoD adopted a new force posture in the Pacific providing for a materially smaller force on Guam. Specifically, the adjustments include reducing the originally planned relocation of approximately 8,600 Marines and 9,000 dependents to a force of approximately 5,000 Marines and approximately 1,300 dependents on Guam. That decision prompted the DoN's review of the major actions previously planned for Guam and approved in the September 2010 ROD. This review concluded that while some actions remain unchanged as a result of the smaller force size, others, such as the main cantonment and family housing areas, could significantly change as a result of the modified force. The DoN has opted to issue a new NOI and amend the scope of the ongoing SEIS to add those actions that may materially change as a result of the new force posture.

Range of Preliminary Alternatives

The proposed reduction in the size of the new force structure does not affect all of the decisions that were made in the September 2010 ROD. For example, the relocation of the Marine Corps Aviation Combat Element facilities to AAFB, the development of the North Gate and access road at AAFB, the establishment of training ranges on Tinian, Apra Harbor wharf improvements, and the non-live-fire training ranges on Andersen South remain unaffected by the changes in force structure resulting from the April 2012 Roadmap adjustments. These actions will occur no matter where on Guam the main cantonment and family housing areas and live-fire training range complex are situated. The potential environmental effects of these actions were fully and accurately considered and analyzed in the 2010 Final EIS. For those decisions that are not affected by the new force structure, the September 2010 ROD stands as the final agency action for those elements. The expanded scope of the SEIS does not include the transient aircraft carrier berthing in Apra Harbor and the Army Air and Missile Defense Task Force.

The reduction in the number of Marines and dependents to be relocated to Guam led to a reduction in the footprint for the main cantonment area, enabling development of new preliminary alternatives to be considered. The possibility of not establishing the main cantonment area at NCTS Finegayan opened that area up for consideration as a new preliminary alternative for the live-fire training range complex. Consideration of public input, refinement of range designs, and a reassessment of operational requirements, conflicts, and opportunities resulted in AAFB Northwest Field being added as a new preliminary range alternative. The number and size of the ranges comprising the live-fire training range complex are unaffected by the April 2012 adjustments to the Roadmap and will remain as described in the 2010 Final EIS. Similarly, the qualification standards have not changed.

The DoN has identified five (5) preliminary alternatives for establishment of the main cantonment/family housing area: AAFB, NCTS Finegayan, NCTS Finegayan (main cantonment)/South Finegayan Navy Housing (family housing), Navy and Air Force Barrigada, and Naval Base Guam.

The SEIS will also consider the No Action Alternative. Under the No Action Alternative, the DoN would continue to implement the September 2010 ROD. The decision to construct and operate the live-fire training range complex would remain deferred, and DoN would establish a main cantonment area for approximately 8,600 Marines and approximately 9,000 dependents on DoD-controlled lands at NCTS Finegayan and South Finegayan and by acquiring land known as the former FAA parcel. Although the No Action Alternative presumes the present course of action identified in the September 2010 ROD, for purposes of assessing the environmental impacts of the proposed alternatives in the SEIS, the DoN will compare the impacts of the proposed action to the baseline conditions identified in the July 2010 Final EIS. Baseline conditions will be updated in the SEIS, as appropriate, if new information is made available. The No Action Alternative is not a reasonable alternative. Foremost, it is inconsistent with the new force posture adopted by the DoD in accordance with the SCC's April 27, 2012 adjustments to the Roadmap, which provide for a materially smaller relocated force on Guam. Furthermore, the No Action Alternative neither satisfies the need for training requirements for the relocated Marines as mandated in Section 5063 of Title 10 the U.S. Code, nor the individual live-fire training requirements as described in the Final EIS and ROD.

The SEIS will evaluate environmental effects associated with: Geology and soils; water resources, which may include surface and ground water, floodplains, wetlands, wild and scenic rivers; terrestrial biology; threatened and endangered species and their designated critical habitat (if applicable); air quality; noise; airspace; cultural resources; socioeconomics; environmental justice (minority and low income populations and children); land use and coastal zone management federal consistency; utilities, transportation; hazardous materials/hazardous waste/installation restoration; public health and safety; and other environmental concerns as identified through scoping. The analysis will include an evaluation of direct and indirect impacts, and will account for cumulative impacts from other relevant activities in the area of Guam. Additionally, the DoN will undertake any consultations required by all applicable laws or regulations.

No decision will be made to implement any alternative until the SEIS process is completed and a ROD is signed by the Assistant Secretary of the Navy (Energy, Installations and Environment) or her/his designee.

By publishing this Notice, the DoN is initiating a scoping process to identify community concerns and issues that should be addressed in the SEIS. Federal, Territorial, and local agencies, and interested parties and persons are encouraged to provide comments on the proposed action that clearly describe specific issues or topics of environmental concern that the commenter believes the DoN should consider. Additional information will be posted on the project web site as it becomes available.

Comments may be submitted in writing at one of the public scoping meetings, through the project web site at: *http://guambuildupeis.us,* or may be mailed to: Joint Guam Program Office Forward, P.O. Box 153246, Santa Rita, Guam, 96915.

To ensure consideration, all written comments on the scope of the SEIS must be submitted or postmarked by December 10, 2012, ChST.

Dated: October 4, 2012.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–24972 Filed 10–10–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: Patent No. 7,810,498: VOLUME EXPANSION SYSTEM FOR BREATHING GAS IN CLOSED-CIRCUIT BREATHING//Patent No. 7,813,529: OPTICAL 3-D SURFACE TOMOGRAPHY USING DEPTH FROM FOCUS OF PARTIALLY OVERLAPPING 2-D IMAGES//Patent No. 7,905,527: HARNESS ASSEMBLY FOR USE IN UNDERWATER RECOVERY OPERATIONS//Patent No. 7,932,718: SYSTEM AND METHOD USING MAGNETIC ANOMALY FIELD MAGNITUDES FOR DETECTION, LOCALIZATION, CLASSIFICATION AND TRACKING OF MAGNETIC OBJECTS//

ADDRESSES: Requests for copies of the patents cited should be directed to Office of Counsel, Naval Surface Warfare Center Panama City Division, 110 Vernon Ave., Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. James Shepherd, Patent Counsel, Naval Surface Warfare Center Panama City Division, 110 Vernon Ave., Panama City, FL 32407–7001, telephone 850–234–4646.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: October 3, 2012.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–24967 Filed 10–10–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Annual Public Meeting of the Interagency Steering Committee on Multimedia Environmental Modeling

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The annual public meeting of the Federal Interagency Steering Committee on Multimedia Environmental Modeling (ISCMEM) will convene to discuss the latest developments in environmental modeling applications, tools and frameworks as well as new operational initiatives for FY 2013 among the participating agencies. The meeting will be hosted by the U.S. Geological Survey, one of the participants in the ISCMEM, at its headquarters facility in Reston, VA. The meeting is open to the public and all interested parties may attend.

DATES: November 7 and 8, 2012, from 8:30 a.m. to 5:30 p.m., EST and November 9, 2012, from 8:30 a.m. to noon, EST.

ADDRESSES: U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Pre-registration may be accomplished through the ISCMEM public Web site: *http://iemhub.org/topics/iscmem.* Instructions for registration through the Web site may be requested by email to *Whelan.Gene@epamail.epa.gov.* Other inquiries and notice of intent to attend the meeting may be faxed or emailed to: Dr. Ming Zhu, ISCMEM Chair, U.S.

Department of Energy, Office of Environmental Management, 1000 Independence Ave. SW., Washington, DC 20585, Tel 301–903–9240, Fax 301–903–4307, *Ming.Zhu@em.doe.gov*.

SUPPLEMENTARY INFORMATION:

Background: In 2001 six Federal agencies began formal cooperation under a Memorandum of Understanding (MOU) on the research and development of multimedia (i.e. air, soil, water) environmental models. This MOU established the Federal Interagency Steering Committee on Multimedia Environmental Modeling (ISCMEM). The MOU was revised and renewed in 2006 and 2011. The MOU establishes a framework for facilitating cooperation and coordination among research organizations in the participating agencies. So far, six agencies have signed the current renewal of the MOU: The U.S. Army Corps of Engineers (Engineer Research and Development Center); the U.S. Department of Energy (Office of Environmental Management); the U.S. Department of Interior (U.S. Geological Survey); the U.S. Environmental Protection Agency (Office of Research and Development); the U.S. National Science Foundation (Geosciences Directorate); and the U.S. Nuclear Regulatory Commission (Office of Nuclear Regulatory Research). Other agencies are still reviewing the revised MOU.

In ISCMEM, agencies work to cooperate and coordinate in the research and development of all aspects of multimedia environmental modeling. This includes development and enhancements of software, databases, and interoperability. It includes applications and assessment of site specific, generic, and process-oriented multimedia environmental models as they pertain to human and environmental health risk assessment. Multimedia environmental model development and simulation supports interagency interests in risk assessment, uncertainty analyses, and management of geologic, hydrologic, atmospheric, terrestrial, and ecological resources. The topics to be discussed this year focus on: (1) Development of frameworks and platforms; (2) subsurface biogeochemical studies; (3) cyber-water research program; and (4) integration modeling for national weather services, water resources management, and surface water and ecological systems.

Purpose of the Public Meeting: The annual public meeting provides an opportunity for the scientific community, ISCMEM members and other Federal and State agencies, and the public to discuss ISCMEM activities and their initiatives for the upcoming year, and to discuss technological advancements in multimedia environmental modeling.

Proposed Agenda: The ISCMEM Chair will open the meeting with a brief overview of the goals of the MOU and an update on current activities and future plans of ISCMEM. This introduction will be followed by a series of invited technical presentations for the remainder of the first day and for the entire second day, focusing on topics of mutual interest to ISCMEM participants. The steering committee will hold an open business session on the morning of the third day. A detailed agenda with presentation titles and speakers will be posted on the ISCMEM public Web site: *http://iemhub.org/topics/iscmem.* The agenda and instructions for registration will also be available through the list of public meetings on the US Nuclear Regulatory Commission Web site at *http://www.nrc.gov/public-involve/public-meetings.html.*

Meeting Access: The meeting facility at the U.S. Geological Survey Headquarters is located at 12201 Sunrise Valley Drive, Reston, VA, near the Washington Dulles International Airport. Directions to the U.S. Geological Survey Headquarters can be found on its Web site at *http://www.usgs.gov/visitors/directions.asp.* The most convenient transportation to the meeting venue is via automobile. There is free visitor parking at the U.S. Geological Survey facility. The meeting facility is wheel-chair accessible. Please allow time to register with building security and bring two photo ID's. Direct access to the meeting facility is available on the same level and near the visitor security check-in. Please pre-register through the Web site listed above under **FOR FURTHER INFORMATION CONTACT** or via the agency contact information. Please follow signs for the ISCMEM public meeting.

Ming Zhu,

Chair, Federal Interagency Steering Committee on Multimedia Environmental Modeling.

[FR Doc. 2012–24982 Filed 10–10–12; 8:45 am]

BILLING CODE 6450–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0526]

Application for Final Commitment for a Long-term Loan or Financial Guarantee in Excess of $100 Million; 25 Day Comment Period

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice of 25 day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of $100 million.

Reason for Notice: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP086383XX.

Purpose and Use

Brief description of the purpose of the transaction:

To support the export of U.S. services and equipment for setting up of new gasification plant and the expansion and improvement of petrochemical manufacturing facilities in India.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for the expansion and improvement of petrochemical manufacturing facilities and setting up of new gasification plant in India.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: Fluor Enterprises, Inc.

Obligor: Reliance Industries Limited.

Guarantor(s): N/A.

Description of Items Being Exported

Gas turbines, compressors, centrifuges, technology licenses, engineering services and related equipment.

Information on Decision: Information on the final decision for this transaction

will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before November 5, 2012 to be assured of consideration.

ADDRESSES: Comments may be submitted through *www.regulations.gov.*

Kathryn Hoff-Patrinos,

Deputy General Counsel.

[FR Doc. 2012–24981 Filed 10–10–12; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0528]

Application for Final Commitment for a Long-term Loan or Financial Guarantee in Excess of $100 Million; 25 Day Comment Period

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of 25 day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of $100 million.

Reason for Notice: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP083531XP.

Purpose and Use: Brief description of the purpose of the transaction:

To support the export of a U.S.-manufactured satellite and associated services to China (Hong Kong).

Brief non-proprietary description of the anticipated use of the items being exported:

The U.S. exports will be used to provide video and data communication services.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties: Principal Suppliers: Space Systems/Loral Inc.

Obligor: Kingsbridge Ltd.

Guarantor(s): Asia Broadcast Satellite Holdings, Ltd., Asia Broadcast Satellite 2, Ltd., Asia Broadcast Satellite (HK), Ltd., Asia Broadcast Satellite Ltd.

Description of Items Being Exported: The items being exported are a satellite, ground equipment, and associated services.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before November 5, 2012 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through *www.regulations.gov.*

Kathryn Hoff-Patrinos,

Deputy General Counsel.

[FR Doc. 2012–25000 Filed 10–10–12; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0527]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million; 25 Day Comment Period

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of 25 day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of $100 million.

Reason for Notice: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP086918XX

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of U.S.-manufactured satellites and associated services to China (Hong Kong).

Brief non-proprietary description of the anticipated use of the items being exported:

The U.S. exports will be used to provide video and data communication services.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Suppliers: Boeing Space and Intelligence Systems, Space Exploration Technologies Corp., Aon plc.

Obligor: Kingsbridge Ltd.

Guarantor(s): Asia Broadcast Satellite Holdings, Ltd., Asia Broadcast Satellite 2, Ltd., Asia Broadcast Satellite (HK), Ltd., Asia Broadcast Satellite Ltd.

Description of Items Being Exported

The items being exported are satellites, ground equipment, launch services, and associated services

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before November 5, 2012 to be assured of consideration before final

consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through *www.regulations.gov.*

Kathryn Hoff-Patrinos,

Deputy General Counsel.

[FR Doc. 2012–24983 Filed 10–10–12; 8:45 am]

BILLING CODE 6690–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 11, 2012, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matter to be considered at the meeting is:

Open Session

A. Approval of Minutes

- September 13, 2012

B. New Business

- Final Rule—Investment Management
- Final Rule—Farmer Mac Investment Management
- Bookletter—Providing Credit to Farmers and Ranchers Operating in Local/Regional Food Systems

Dated: October 9, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–25122 Filed 10–9–12; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10132—Bank of Elmwood, Racine, WI

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Bank of Elmwood, Racine, WI (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Bank of Elmwood on October 23, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated at Washington, DC, this 5th day of October, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–25005 Filed 10–10–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

DATE AND TIME: Tuesday, October 16, 2012 at 10:00 a.m.

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

STATUS: This Meeting will be Closed to the Public.

Items To Be Discussed

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

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration

Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2012–25125 Filed 10–9–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012155–001.

Title: MSC/Zim South America East Coast Vessel Sharing Agreement.

Parties: Mediterranean Shipping Co. S.A. and Zim Integrated Shipping Services Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment revises the geographic scope of the Agreement by adding Mexico and deleting Panama. It also revises the number and capacity of vessels to be operated by the parties, adjusts the space allocations accordingly, and revises the space charter arrangement between the parties. It also updates the address of MSC and restates the Agreement.

Agreement No.: 012184–000.

Title: Crowley/Maersk Line Panama-U.S. Space Charter Agreement.

Parties: Crowley Latin America Services, LLC and A.P. Moller-Maersk A/S

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement authorizes Crowley to charter space to Maersk Line in the trade from Panama to the U.S. Atlantic Coast.

By Order of the Federal Maritime Commission.

Dated: October 5, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–25044 Filed 10–10–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 13543N.
Name: Knight International Corporation.
Address: 1345 Woodline Road, East Hampton, NJ 08060.
Date Revoked: September 30, 2012.
Reason: Voluntary surrender of license.

License No.: 019372N.
Name: Action Brokerage Corp.
Address: 4477 NW 97th Avenue, Miami, FL 33178.
Date Revoked: September 24, 2012.
Reason: Voluntary surrender of license.

License No.: 023305NF.
Name: Wilson Transportation, Inc.
Address: 16226 Foster Street, Overland Park, KS 66085.
Date Revoked: September 25, 2012.
Reason: Voluntary surrender of license.

License No.: 023644N.
Name: Multimodal Container Consulting LLC dba World Maritime NVOCC.
Address: 2081 Raritan Road, Scotch Plains, NJ 07076–4711.
Date Revoked: September 24, 2012.
Reason: Voluntary surrender of license.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–25041 Filed 10–10–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 002302F.
Name: Whiting World-Wide Inc.
Address: 1901 NW. 79th Avenue, Miami, FL 33126.
Date Reissued: August 23, 2012.

License No.: 017342N.
Name: Trans Circle Inc.
Address: 1927 West 139th Street, Gardena, CA 90249.
Date Reissued: August 15, 2012.

License No.: 020088N.
Name: Hal-Mari International Logistics, Inc.
Address: 9122 Telephone Road, Houston, TX 77075.
Date Reissued: August 30, 2012.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–25050 Filed 10–10–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

Always Affordable Shipping LLC (NVO), 16 Angela Circle, Hazlet, NJ 07730, Officers: Christopher L. Loux, President (QI), Steven Van Elk, Treasurer, Application Type: Transfer to NMT USA (New Jersey) Inc.

Apex Maritime Co. (HOU) Inc. (NVO), 9610 Long Point, Suite 320, Houston, TX 77055, Officers: Vicky Cheung, President (QI), James Chu, Vice President, Application Type: New NVO License.

Awilda Shipping Inc. (NVO), 41–02 108 Street, Corona, NY 11368, Officers: Inocencia Del Villar, President (QI), Jorge Perez, Vice President, Application Type: New NVO License.

Ayodeji Oluseun Bamijoko dba Star Express Shipping (OFF), 2600 Westhollow Drive, #312, Houston, TX 77082, Officer: Ayodeji O. Bamijoko, Sole Proprietor (QI), Application Type: New OFF License.

Chicago Express International, Inc. (OFF), 301 Frontier Way, Bensenville, IL 60106, Officer: Lutz Austermeier, President (QI), Application Type: New OFF License.

Easy Express Inc. (NVO & OFF), 11222 S. La Cienega Blvd., #410, Inglewood, CA 90304, Officers: Erwin Ross Dalao, CFO (QI), Yang Su, CEO, Application Type: New NVO & OFF License.

Econshippers, LLC (NVO), 3421 Hampton Hollow Drive, #F, Silver Spring, MD 20904, Officer: Mario Theranus, President (QI), Application Type: New NVO License.

Equipsa Inc. (OFF), 2105 NW. 102 Avenue, Miami, FL 33172, Officers: Isabel C. Montejo, GM (QI), Arthur Gelfand, President, Application Type: Add NVO Service.

Estevez and Sons, LLC dba Embarqueya Quisqueya (OFF), 9160 Estate Thomas, Fortress Self-Storage Unit H–815, St. Thomas, VI 00802, Officers: Emilo J. Estevez, Member (QI), Luz V. Estevez, Member, Application Type: New OFF License.

Focus Forwarding, Inc (OFF), 5237 Banbury Circle, La Palma, CA 90623, Officer: Chiyoon Apollo Sung, Director (QI), Application Type: New OFF License.

Innocent P. Ajaroh dba Innglo Global (NVO & OFF), 2427 Texana Way, Richmond, TX 77406, Officer: Innocent P. Ajaroh, Sole Proprietor (QI), Application Type: Add NVO Service.

Inter Shipping Line, Inc. (OFF), 18039 Crenshaw Blvd., #311, Torrance, CA 90504, Officers: Brendan Sheen, CFO (QI), Seungjoon Kim, CEO, Application Type: New OFF License.

Korchina Logistics USA, Inc. (NVO & OFF), 18120 S. Broadway Street, Unit A, Gardena, CA 90248, Officers: Jong (A.K.A. Jake) K. Park, CFO (QI), Eric Sun, President, Application Type: QI Change.

La Isabela Embarque Corporation (NVO & OFF), 376 Totowa Avenue, Paterson, NJ 07502, Officers: Robert Guerra, President (QI), Henry Guerra, Vice President, Application Type: New NVO & OFF License.

Ocean Line Logistics Inc. (NVO & OFF), 630 W. Duarte Road, #205, Arcadia, CA 91007, Officer: Peixin Li, President (QI), Application Type: QI Change.

Panda Logistics (NY), Inc. (NVO), 10 East Merrick Road, Suite 204, Valley Stream, NY 11580, Officers: Cooper Chao, President (QI), Marjorie Ovid, CFO, Application Type: QI Change.

Pegasus Worldwide Logistics NY, Inc. (NVO), 10 East Merrick Road, Suite 204, Valley Stream, NY 11580, Officers: Raymond Choy, Vice

President (QI), Cooper Chao, President, Application Type: QI Change.

Seven Seas Cargo, LLC (NVO & OFF), 200 Emile Street, Suite #A, Houston, TX 77020, Officer: Moataz Kesba, Member (QI), Application Type: New NVO & OFF License.

Suncoast Ocean Lines, LLC (NVO), 3426 Hancock Bridge Parkway, Suite 305, North Fort Myers, FL 33903, Officer: Anton Samoila, Managing Member (QI), Application Type: New NVO License.

By the Commission.

Dated: October 5, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–25049 Filed 10–10–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 5, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *BancTenn Corp.,* Kingsport, Tennessee; to merge with Carter County Bancorp, Inc., and thereby indirectly acquire Carter County Bank, both in Elizabethton, Tennessee.

2. *MidSouth Bancorp, Inc.,* Lafayette, Louisiana; to merge with PSB Financial Corporation, and thereby indirectly acquire Peoples State Bank, both in Many, Louisiana.

Board of Governors of the Federal Reserve System, October 5, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–24978 Filed 10–10–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED—SEPTEMBER 1, 2012 THROUGH SEPTEMBER 30, 2012

09/04/2012		
20121107	G	St. Joseph Health System; Hoag Memorial Hospital Presbyterian St. Joseph Health System.
20121291	G	William Goldring; OCM Luxembourg Spirits Holdings Sarl; William Goldring.
09/05/2012		
20121224	G	The Dai-ichi Life Insurance Company, Limited; Janus Capital Group Inc.; The Dai-ichi Life Insurance Company, Limited.
20121269	G	China National Offshore Oil Corporation; Nexen Inc. China National Offshore Oil Corporation.
20121290	G	Loews Corporation; PL Logistics LLC; Loews Corporation.
09/06/2012		
20121251	G	Bain Capital Partners Asia II, L.P.; Genpact Limited; Bain Capital Partners Asia II, L.P.
20121252	G	Bain Capital Partners X, L.P.; Genpact Limited; Bain Capital Partners X, L.P.
20121263	G	Optima Group LLC; Georgian American Alloys, Inc.; Optima Group LLC.
09/10/2012		
20121236	G	McKesson Corporation; NRE Holding Corporation; McKesson Corporation.
20121248	G	Blackstone Capital Partners VI, L.P.; Knight Capital Group, Inc.; Blackstone Capital Partners VI, L.P.
20121293	G	Calumet Specialty Products Partners, L.P.; Connacher Oil and Gas Limited; Calumet Specialty Products Partners, L.P.
20121294	G	Griffey Investors, L.P.; Abe Investment, L.P.; Griffey Investors, L.P.
20121302	G	Arrow Electronics. Inc.; John F. Baker (Micro Electronics, Inc.); Arrow Electronics, Inc.
20121303	G	Wind Point Partners L.P.; Mistral Equity Partners, LP; Wind Point Partners VII–A, L.P.
20121307	G	Roark Capital Partners III LP; Sentinel Capital Partners IV, L.P.; Roark Capital Partners III LP.

EARLY TERMINATIONS GRANTED—SEPTEMBER 1, 2012 THROUGH SEPTEMBER 30, 2012—Continued

20121309	G	IAC/InterActiveCorp; The New York Time Company; IAC/InterActiveCorp.
20121315	G	American Securities Partners VI, L.P.; HHI Group Holdings, LLC; American Securities Partners VI, L.P.
20121317	G	FMC Technologies, Inc.; Pure Energy Services Ltd.; FMC Technologies, Inc.
20121318	G	GA Trinet, LLC; Marc A. Utay; GA Trinet, LLC.
09/12/2012		
20121324	G	Tech Mahindra Limited; Tech Mahindra Limited; Tech Mahindra Limited.
09/13/2012		
20121313	G	Cidron Healthcare Topco Limited; Cortec Group Fund IV, L.P.; Cidron Healthcare Topco Limited.
20121321	G	CCMP Capital Investors II, L.P.; SKM Equity Fund III, L.P.; CCMP Capital Investors II, L.P.
09/14/2012		
20121275	G	James Richardson & Sons, Limited; Glencore International plc; James Richardson & Sons, Limited.
20121305	G	Tornier N.V.; OrthoHelix Surgical Designs, Inc.; Tomier N.V.
20121320	G	UnitedHealth Group Incorporated; Quality Software Services, Inc.; UnitedHealth Group Incorporated.
20121327	G	Andritz AG; Schuler AG Andritz AG.
20121329	G	MJM 2012 Annuity Trust; Universal Truckload Services, Inc.; MJM 2012 Annuity Trust.
20121337	G	Leeds Equity Partners V, L.P.; The Fourth Viscount Rothermere; Leeds Equity Partners V, L.P.
20121340	G	Dakota Holdings, LLC; Laurence LeJeune; Dakota Holdings, LLC.
20121341	G	Stephen A. Wynn; Wynn Resorts, Limited; Stephen A. Wynn.
20121345	G	GS Apple Investors 2011, LLC; AmRest Holdings SE; GS Apple Investors 2011, LLC.
20121350	G	Olympus Growth Fund V, L.P.; Seven Mile Capital Founders Fund, L.P.; Olympus Growth Fund V, L.P.
09/17/2012		
20121332	G	Olympus Growth Fund IV, L.P.; Hi-Tech Holdings, Inc.; Olympus Growth Fund IV, L.P.
20121335	G	Clayton, Dubilier & Rice Fund VIII. L.P.; Green Equity Investors IV, L.P.; Clayton, Dubilier & Rice Fund VIII, L.P.
20121342	G	Onex Partners III LP; Court Square Capital Partners, L.P.; Onex Partners III LP.
09/18/2012		
20121355	G	International Business Machines Corporation; Kenexa Corporation; International Business Machines Corporation.
20121357	G	Enstar Group Limited; SeaBright Holdings, Inc.; Enstar Group Limited.
09/19/2012		
20121331	G	Berkshire Hathaway Inc.; Nochi Dankner; Berkshire Hathaway Inc.
09/20/2012		
20121295	G	Corvex Master Fund LP; Ralcorp Holdings, Inc.; Corvex Master Fund LP.
20121349	G	John B. Zachry; J.V. Holdings; John B. Zachry.
09/21/2012		
20121270	G	NRG Energy, Inc.; GenOn Energy, Inc.; NRG Energy, Inc.
20121338	G	Johnson & Johnson; Genmab A/S; Johnson & Johnson.
20121347	G	DCP Funding LLC; Red Zone Capital Partners II, L.P.; DCP Funding LLC.
20121351	G	FR XII Alpha AIV, L.P.; TPC Group Inc.; FR XII Alpha AIV, L.P.
20121352	G	Edward S. Lampert; Sears Holdings Corporation; Edward S. Lampert.
20121353	G	ESL Partners, L.P.; Sears Holdings Corporation; ESL Partners L.P.
20121361	G	William Dillard, II; W.D. Company, Inc.; William Dillard, II.
20121362	G	Alex Dillard; W.D. Company Inc.; Alex Dillard.
20121364	G	Apollo Investment Fund VII, L.P.; Jimmy Sanders Incorporated; Apollo Investment Fund VII, L.P.
20121366	G	Journal Communications, Inc.; Landmark Media Enterprises, LLC; Journal Communications, Inc.
20121368	G	Carlyle Partners V Cayman L.P.; E.I. du Pont de Nemours and Company; Carlyle Partners V Cayman L.P.
09/24/2012		
20121278	G	Deutsche Telekom AG; AT&T Inc.; Deutsche Telekom AG.
20121279	G	AT&T Inc.; Deutsche Telekom AG; AT&T Inc.
20121344	G	Seven Bank, Ltd.; Marlin Equity II, L.P.; Seven Bank, Ltd.
09/25/2012		
20121308	G	Thoma Bravo Fund X, L.P.; New Mountain Partners II, L.P.; Thoma Bravo Fund X, L.P.
20121322	G	Nuance Communications, Inc.; Francisco Partners II, L.P.; Nuance Communications, Inc.
20121371	G	Perrigo Company; James E. Sowell; Perrigo Company.
09/26/2012		
20121281	G	Tokyo Electron Limited; FSI International, Inc.; Tokyo Electron Limited.

EARLY TERMINATIONS GRANTED—SEPTEMBER 1, 2012 THROUGH SEPTEMBER 30, 2012—Continued

20121354	G	FormFactor, Inc.; Astria Semiconductor Holdings, Inc.; FormFactor, Inc.
20121365	G	ABRY Partners VII, L.P.; Source Medical Solutions, Inc.; ABRY Partners VII, L.P.
20121367	G	Blackstone RGIS Capital Partners V L.P.; Nautic Partners V, L.P.; Blackstone RGIS Capital Partners V L.P.
09/27/2012		
20121240	G	Fresenius SE & Co. KGaA; Fenwal Holdings, Inc.; Fresenius SE & Co. KGaA.
20121323	G	Trimble Navigation Limited; Wells Fargo & Company; Trimble Navigation Limited.
20121360	G	Valeant Pharmaceuticals International, Inc.; Johnson & Johnson; Valeant Pharmaceuticals International, Inc.
20121372	G	Kirby Corporation; Allied Marine Industries, Inc.; Kirby Corporation.
09/28/2012		
20120910	G	SAP AG; Ariba, Inc.; SAP AG.
20121375	G	Google Inc.; Nest Labs, Inc.; Google Inc.
20121377	G	CP V Landmark, L.P.; Landmark FBO Holdings, LLC; CP V Landmark, L.P.
20121379	G	Olympus Growth Fund V, L.P.; KPLT Holdings, Inc.; Olympus Growth Fund V, L.P.
20121380	G	Plains Exploration & Production Company; BP p.l.c.; Plains Exploration & Production Company.
20121381	G	James R. Ratcliffe; Enterprise Product Partners, L.P.; James R. Ratcliffe.
20121382	G	Summit Midstream Partners, LLC; Energy Transfer Equity, L.P.; Summit Midstream Partners, LLC.
20121383	G	Wright Express Corporation; LLR Equity Partners III, L.P.; Wright Express Corporation.

For Further Information Contact:
Renee Chapman, Contact Representative
or
Theresa Kingsberry, Legal Assistant.
Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–24899 Filed 10–10–12; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Performance Review Board Members

Title 5 U.S.C. 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board Members be published in the **Federal Register.**

The following persons may be named to serve on the Performance Review Boards or Panels, which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services.

Employee last name	Employee first name
ARONSON	LAUREN
ATKINSON	LESLIE
BAITMAN	FRANKLIN
BARCLAY	LISA
BEADLE	MIRTHA
BERGER	SHERRI
BERNARDY	PETER
BOWERS	TONYA
BOYCE	DONALD
BRUCE	MICHAEL
CHAFFIN	EUGENIA
CHAUDRY	AJAY
CHOI	JULIET
COHEN	GARY
CONNOR	SUZI
COX	VIRGINIA
DANIEL	KATHERINE
DEL VECCHIO	PAOLO
DELPHIN-RITTMON	MIRIAM
DEVOSS	ELIZABETH
DICKINSON	ELIZABETH
ERNEY	JOAN
GABRIEL	EDWARD
GOLDHABER	BEN
GOTTLICH	VICKI
HENDERSON	JOSEPH
HOLLIE	LESLIE
HOOVER	CAMILLE
IMMERGUT	STEVEN
IYER	RAJ
JONES	CHRISTINE
KAPPELER	EVELYN
KEMPER	PETER
KETCHER	MARTHA
KOLKER	JIMMY
KUX	LESLIE
LEWIS	TERESA
LU	MICHAEL
METTLER	ERIK
MILLER	TERESA
MUNTZ	DAVID
MURPHY	JUDITH
NOVY	STEVEN
OLIN	ELAINE
POTTS	OLIVER
RAJKUMAR	RAHUL
REILLY	THOMAS
RODRIGUEZ	LEON
SCHWEITZER	ROXANNE
SEYLER	DEAN
SHEAFFER	HEIDI
SHELTON	DANA
SIVAK	BRYAN
SMAGH	KALWANT
SMITH	LINDA
SMITH	PHILLIP
SMITH	TYLER
STARINSKY	MELISSA
STEVENS	CHERYL
STEVENSON	COREY
SUFIAN	AVIVA
SYE	TAIT
TAYLOR	DIA
TETI	CATHERINE
VILLAR	CARMEN
WHEELES	TIMOTHY
WILSON	LEE ANDREW
WOESTELL	MEGAN
WRIGHT	DAVID
YOUNG	JASON

Non-SES Employees

Employee last name	Employee first name
BOWMAN	BARBARA
BRANCH	CHRISTINE
HADDIX	ANNE
MUSSER	STEVEN
NICHOLSON	JANET
POLLACK	STEVEN
POPOVIC	TANJA
REDD	STEVE
SINKS	TOM

Dated: October 3, 2012.

Denise L. Carter,

Deputy Assistant Secretary for Human Resources.

[FR Doc. 2012–25015 Filed 10–10–12; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Occupational Safety and Health Training Project Grant, PAR 10–288, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., November 8, 2012 (Closed).

Place: Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345, Telephone: (404)325–0000.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to Occupational Safety and Health Training Project Grant, PAR 10–288.

Contact Person for More Information: Joan Karr, Ph.D., Scientific Review Officer, CDC/NIOSH 1600 Clifton Road, Mailstop E–74, Atlanta, Georgia 30333, Telephone: (404)498–2506.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 4, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–25010 Filed 10–10–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned subcommittee:

Time and Date: 9 a.m.–5 p.m., Eastern Time, November 1, 2012

Place: Cincinnati Airport Marriott, 2395 Progress Drive,

Hebron, Kentucky 41018, Telephone: (859) 334–4611, Fax: (859) 334–4619.

Status: Open to the public, but without an oral public comment period. To access by conference call dial the following information: 1 (866) 659–0537, Participant Pass Code 9933701.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000, to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the ABRWH to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: The ABRWH is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes discussion of the following Oak Ridge Associated Universities (ORAU) and DCAS procedures: OCAS TIB–0009 (''Estimation of Ingestion Intakes'') and its application for the Du Pont Deepwater Works facility, DCAS TIB–0013 (''Selected Geometric Exposure Scenario Considerations for External Dose Reconstruction at Uranium Facilities''), DCAS OTIB–0010 (''Best Estimate External Dose Reconstruction for Glovebox Workers''), ORAUT OTIB–0070 (''Dose Reconstruction During Residual Radioactivity Periods at Atomic Weapons Employer Facilities''), DCAS IG–003 (''Radiation Exposures Covered for Dose Reconstructions under Part B of the Energy Employees Occupational Illness Compensation Program Act''), and DCAS IG–005 (''Use of Classified Information''); Identification of Overarching Dose Reconstruction Issues; Discussion of New Summaries of Completed Procedure Reviews; Assignment of Additional Procedure Reviews by the Board's Technical Support Contractor; and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

This meeting is open to the public, but without an oral public comment period. In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta Georgia 30333, Telephone: (513) 533–6800, Toll Free 1 (800) CDC–INFO, Email: *dcas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 1, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–24964 Filed 10–10–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 77 FR 53888–53889, dated September 4, 2012) is amended to reflect the reorganization of the National Center for Injury Prevention and Control, Office for Non-communicable Diseases, Injury and Environmental Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the listing for the National Center for Injury Prevention and Control (CUH), delete in their entirety the remaining titles and functional statements and insert the following:

Office of the Director (CUH1). (1) Manages, directs, coordinates and evaluates the activities of the National Center for Injury Prevention and Control (NCIPC); (2) develops goals and objectives and provides leadership, policy formation, scientific oversight, and guidance in program planning and development; (3) coordinates NCIPC program activities with other CDC components, other Public Health Service (PHS) agencies, PHS regional offices, other federal agencies, state and local health departments, community-based organizations, business and industry; (4) consults and coordinates activities with medical, engineering, and other scientific and professional organizations interested in injury prevention and control; (5) provides administrative support, program management and fiscal services to the center; (6) supports the activities of the Secretary's Advisory Committee for Injury Prevention and Control; (7) coordinates technical assistance to other nations and international organizations in establishing and implementing injury prevention and control programs; (8) directs and coordinates information resources management activities, the production and distribution of technical and nontechnical injury prevention and control publications and information, and the conduct of health education and health promotion activities; and (9) provides overall guidance and support for center-wide grant activities.

Office of Policy and Partnerships (CUH12). (1) Manages issues proactively in order to minimize their negative effects, maximize their potential opportunities, and avoid the need for crisis management; (2) reviews, prepares, and coordinates policy and briefing documents; (3) conducts monitoring and analysis of policy issues potentially affecting NCIPC and its constituents; (4) provides information for the development of NCIPC's annual budget submission and supporting documents; (5) engages in partnerships with external organizations to meet mutual goals; (6) coordinates partnership activities across NCIPC; (7) identifies and defines emerging or cross-cutting long-term policy issues and develops action plans that support and advance action; (8) advises NCIPC and CDC leadership and staff on policy and partnership issues relevant to NCIPC; (9) oversees and coordinates performance-related activities for NCIPC; and (10) provides liaison with staff offices and other officials of CDC.

Office of Program Management and Operations (CUH13). (1) Plans, coordinates, and provides administrative and management support, advice, and guidance to NCIPC; (2) coordinates NCIPC-wide administrative management and support services in the areas of fiscal management, personnel, travel, and other administrative services; (3) prepares annual budget formulation and budget justifications; (4) coordinates NCIPC requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (5) develops and implements administrative policies, procedures, and operations, as appropriate, for NCIPC, and prepares special reports and studies, as required, in the administrative management areas; and (6) maintains liaison with related staff offices and other officials of CDC.

Office of Communication (CUH14). (1) Provides ongoing communication leadership and support to NCIPC's Office of the Director and divisions in furthering the Center's mission to prevent violence and unintentional injury and to reduce their consequences; (2) leads strategic planning for communications and branding programs and projects for NCIPC and injury and violence issues; (3) through matrix management, provides strategic communication direction and technical assistance across NCIPC to ensure all health communication activities are evidence-based and demonstrate impact; (4) leads and oversees news media strategy and evaluation, including news response, media monitoring, proactive media engagement, media training, and long lead pitching; (5) oversees, manages and executes CDC web and digital governance through matrix management and work group structures; (6) leads digital communication and marketing strategies, and manages digital channels; (7) executes web development for the NCIPC intranet; provides technical assistance and training to OD offices in accessing and using NCIPC wiki for internal communication and information sharing; (8) manages and coordinates clearance of NCIPC print and non-print materials, ensuring adherence to and consistency with CDC and Department of Health and Human Services (DHHS) information and publication policies and guidelines; (9) facilitates cross-division, and cross-CIO coordination of health communication activities, sharing of lessons learned, and development of best practices; (10) serves as primary liaison between NCIPC and CDC's Office of the Associate Director for Communication (OADC); (11) coordinates and leads implementation of CDC-wide communication initiatives and policies, including health literacy, plain language, and CDC branding; (12) provides communication support to OD offices and technical assistance and training in accessing centralized communication systems available through OADC and other offices; (13) provides oversight and approval for CDC logo licensing requests from external partner organizations and involving NCIPC divisions and programs; (14) represents NCIPC on cross-CIO and external committees, workgroups, and at conferences relating to health communication activities; and (15) in carrying out these functions, develops and manages relationships with a wide range of partners and customers, including other PHS agencies, federal and state departments and agencies, and private organizations.

Office of the Associate Director of Science (CUH17). (1) Ensures NCIPC produces the highest quality, most useful and most relevant science possible; (2) guides and mentors other scientists by helping link scientists with the tools they need to succeed; (3) oversees scientific clearance for NCIPC and sends documents for cross-clearance to other centers and reviews documents from other centers for cross clearance; (4) conducts peer review of intramural research and scientific programs; (5) provides information and guidance to the staff regarding scientific

issues and provides scientific leadership for the center; (6) serves as a scientific expert and a key resource for information through linkage to staff and resources in the center; (7) supervises Institutional Review Board activities and is responsible for Office of Management and Budget-Paperwork Reduction Act activities for the center; (8) assures scientists follow CDC's policies on data release and sharing; (9) provides leadership, management, and oversight for NCIPC's external advisory board; (10) provides oversight and support for the Extramural Research Program Office (ERPO) to include planning, developing, coordinating, and evaluating extramural research activities in cooperation with centers, divisions, and offices within the Office of Non-communicable Diseases, Injury and Environmental Health; (11) directs the extramural research program by planning, coordinating, developing, implementing, monitoring, and evaluating extramural research that is designed to address center priorities; (12) participates with divisions and offices within the center to establish research priorities for the center; (13) provides scientific leadership in the areas of extramural research supported by the center; (14) promotes and prepares initiatives to stimulate extramural research in relevant priority areas; (15) coordinates and conducts in-depth external peer review and secondary program relevance review of extramural research applications by use of consultant expert panels; (16) makes recommendations to the center director on award selections and staff members serve as the program officials in conjunction with CDC grants management and policy officials to implement and monitor the scientific, technical, and administrative aspects of awards; (17) facilitates scientific collaborations between external and internal investigators; (18) disseminates and evaluates extramural research progress, findings, and impact; and (19) develops extramural research policies and implements those policies within NCIPC.

Division of Violence Prevention (CUHC). (1) Provides leadership in developing and executing a national program for the prevention and control of non-occupational violence-related injuries and death which addresses, but is not limited to, youth violence, intimate partner violence, sexual violence, suicide, elder abuse, and child abuse; (2) develops and disseminates policies, recommendations, and guidelines for the prevention of violence and its consequences; (3) proposes goals and objectives for national violence prevention and control programs, monitors progress toward these goals and objectives, and recommends and develops guidelines for priority prevention and control activities; (4) facilitates similar strategic planning activities by other federal, state, and local agencies, academic institutions, and private and other public organizations; (5) plans, directs, conducts, and supports research focused on the causes of violence and the development and evaluation of strategies to prevent and control violence-related injuries and deaths; (6) plans, establishes, and evaluates surveillance systems to monitor national trends in morbidity, mortality, disabilities, and cost of violence-related injuries and deaths, and facilitates the development of surveillance systems by state and local agencies; (7) plans, conducts, supports, and evaluates demonstration projects and programs to prevent and control violence; (8) provides technical assistance, consultation, training, and epidemiological, statistical, educational, and other technical services to assist state and local health departments and community-based organizations in the planning, development, implementation, evaluation, and overall improvement of violence prevention programs; (9) supports the dissemination of research findings and transfer of violence prevention and control technologies to federal, state, and local agencies, private organizations, and other national and international groups; and (10) in carrying out the above functions, collaborates with other Divisions of NCIPC, CDC Centers/Institute/Offices (CIO), DHHS agencies, other federal, state, and local departments and agencies, academic institutions, and voluntary, private sector, and international organizations, as appropriate.

Office of the Director (CUHC1). (1) Plans, directs, and evaluates the activities of the Division; (2) provides national leadership and guidance in policy formation and program division; (3) provides national leadership and guidance in policy formation and program planning, development, and evaluation; (4) provides administrative, fiscal, and technical support for Division programs and units; (5) assures multi-disciplinary collaboration in violence prevention and control activities; (6) provides leadership for developing research in etiologic, epidemiologic, and behavioral aspects of violence prevention and control, and for coordinating activities within the division and others involved in violence prevention; (7) prepares, edits, and monitors clearance of manuscripts for publication in scientific and technical journals and publications, including articles and guidelines published in MMWR, and other publications for the public; (8) prepares, tracks and coordinates controlled and general correspondence; (9) prepares responses and coordinates provision of materials requested by Congress and the Department; (10) collaborates with subject matter experts, program and policy staff, develops and implements communication strategies, campaigns, and plans to meet the needs of division programs and mission; (11) develops tailored messages and materials to promote dissemination of scientific findings, evidence-based prevention strategies, priority recommendations, and guidelines through various media sources; (12) coordinates with NCIPC Office of Communication to execute and support NCIPC and CDC-wide communication initiatives and policies; (13) provides consultation on international violence prevention and control activities of the Division; (14) collaborates, as appropriate, with other divisions and offices in NCIPC, and with other CIOs throughout CDC; (15) collaborates, as appropriate, with non-governmental organizations to achieve the mission of the Division; and (16) establishes linkages with other CIOs and national level prevention partners that impact on violence prevention programs.

Surveillance Branch (CUHCB). (1) Conducts national and international surveillance and surveys to identify new and monitor recognized forms of violence and its consequences, analyzes incidence and prevalence data, and monitors trends in violence and its trajectory across the lifespan; (2) provides expert consultation to state, local, and international health agencies on surveillance system design and implementation and use of surveillance data to describe the burden of violence; (3) develops and implements uniform definitions for public health surveillance of various forms of violence and related outcomes; (4) monitors the activities of contracts, cooperative agreements, and grants to ensure operational guidelines are met; (5) provides information on violence surveillance to the scientific community and the general public through regular publication in peer-reviewed journals and CDC publications as well as through presentations to professional conferences and other stakeholder

groups; (6) works with other branches to provide consultation, collaboration, and to ensure the use of surveillance data to inform research and prevention efforts; and (7) provides leadership and expands collaboration with other federal, state, local, voluntary, and professional and international organizations in all aspects of surveillance of violence and its consequences.

Research and Evaluation Branch (CUHCC). (1) Plans, directs, conducts, and supports etiologic and epidemiologic research focused on casual factors, risk and protective factors, and psychosocial, cultural, and contextual determinants for violence and its consequences; (2) plans, directs, conducts, and supports applied research focused on the evaluation of strategies, policies, and interventions to prevent violent behavior and violence-related injuries and deaths; (3) uses research findings to develop new strategies, policies, and interventions or improve the impact of existing strategies, policies, and interventions to prevent and reduce violent behavior, its risk factors, and its consequences; (4) develops and evaluates methodologies for conducting program evaluation; (5) evaluates the effectiveness and impact of violence prevention interventions, strategies, policies, and interventions as practiced or implemented by public health agencies and organizations at the national/regional and state/local levels; (6) conducts research to examine the context, processes, and factors that influence effective and efficient dissemination/diffusion, uptake/adoption, implementation, translation, and sustainability of violence prevention strategies, policies, and interventions; (7) serves as a resource, collaborates, and provides technical assistance in applying research and evaluation results and techniques to the ongoing assessment and improvement of violence prevention and control programs; (8) collaborates on planning, translating, and disseminating research and evaluation results to other branches, grantees, and prevention partners; (9) collaborates with other branches to stimulate surveillance and programmatic activities and to ensure integration of activities across the public health model; (10) monitors activities of contracts, cooperative agreements, and grants to ensure operational objectives are being met; (11) contributes to the research literature by publishing regularly in peer-reviewed journals and CDC-sponsored publications that include, but are not limited to, etiology and evaluation research and syntheses; and (12) collaborates with other components within CDC, PHS, and DHHS and other federal agencies, national professional, voluntary and philanthropic organizations and international agencies.

Prevention Practice and Translation Branch (CUHCD). (1) Provides leadership and support in public health practice and the application of science for maximal benefit of violence prevention programmatic efforts; (2) develops and manages liaison and collaborative relationships with professional, community, international, federal, and other voluntary agencies involved in violence prevention activities; (3) provides support, training, and technical assistance that applies sound prevention principles and systematic processes to enhance public health practice, including program development, implementation, and improvement; (4) applies evidence from translational science and continuous quality improvement to help communities select, adopt, adapt, implement, disseminate, sustain, and scale up programs, strategies, and activities that will lead to successful violence prevention outcomes; (5) identifies findings, lessons learned and evidence from the field and collaborates with internal and external partners to inform research, surveillance, and program evaluation that builds the evidence base for effective violence prevention; (6) synthesizes and translates relevant research, evaluation findings, evidence, and trends and assuring that communication and marketing technologies are applied to the development of practical tools, products, trainings, and guidance that enhances violence prevention programs, strategies, and activities; (7) communicates internally and externally the important work and progress of the staff, grantees, and partners; and (8) collaborates with internal and external partners to disseminate what works to prevent violence into widespread practice.

Division of Unintentional Injury Prevention (CUHD). (1) Provides leadership and coordination of a national program for the prevention and control of non-occupational unintentional injuries through collaborative efforts with federal, state and local agencies, public, private sector organizations and academic institutions; (2) proposes goals and objectives for linking health system and injury control activities with public health activities, including surveillance, prevention, health care and rehabilitation of injury; (3) proposes goals and objectives for the prevention and control of unintentional injuries, monitors and evaluates progress towards their achievement, determines priority recommendations, develops guidelines and facilitates implementation strategies in cooperation with governmental and non-governmental organizations; (4) provides scientific consultation and technical advice to states and localities to increase their capacity to develop, implement, and evaluate injury prevention programs, surveillance activities and the integration of health system and trauma system initiatives in surveillance, prevention, quality improvement with initiatives in the public health system; (5) plans, establishes and evaluates surveillance systems to monitor national trends in mortality, morbidity, disabilities, rehabilitation, and the cost of unintentional injuries; (6) plans, directs, conducts and supports research to assess environmental, social, behavioral, and other risk factors and evaluate intervention activities to prevent and control unintentional injuries; (7) plans and directs strategies to collect, analyze, and interpret scientific findings from surveillance and epidemiologic research activities for use in evaluating trends, setting priorities, and developing intervention strategies for unintentional injuries, (8) plans, directs, supports and evaluates demonstration programs to prevent and control unintentional injuries; (9) supports dissemination of injury prevention and control research findings and transfer technologies to federal, state and local health agencies, and public and private sector organizations with responsibilities and interests related to unintentional injuries and the linkage between health systems and public health; (10) supports training to increase the number and competence of personnel engaged in injury prevention and control research practices; (11) facilitates the development of scientific approaches to injury prevention and control through publication of research findings in professional journals and through participation in national and international meetings, seminars, and conferences; and (12) supports NCIPC through collaborative efforts with NCIPC Divisions and Offices, CDC CIOs, DHHS agencies, and other federal departments and agencies, state and local agencies and professional and private organizations.

Home, Recreation, and Transportation Branch (CUHDB). (1) Provides leadership and coordination of a national program for the prevention and control of non-occupational unintentional injuries that occur at

home, in the community, and during transportation through collaborative efforts with federal, state and local agencies, and public and private sector organizations; (2) proposes goals and objectives for the prevention and control of unintentional injuries, monitors and evaluates progress towards their achievement, determines priority recommendations, develops guidelines, and facilitates implementation strategies in cooperation with other federal agencies, state and local health agencies, academic institutions, public and private sector organizations, and international agencies; (3) provides scientific consultation and technical advice to states and localities to increase their capacity to develop, implement, and evaluate unintentional injury programs and surveillance activities; (4) plans, establishes, and evaluates surveillance systems to monitor national and state-level trends in morbidity, mortality, disabilities, and costs of unintentional injuries; (5) plans, directs, conducts, and supports research to assess environmental, social, behavioral, and other risk factors and to develop and evaluate intervention activities to prevent and control unintentional injuries; (6) plans and directs strategies to collect, analyze, and interpret scientific findings from surveillance, behavioral, and epidemiologic research activities for use in evaluating trends, setting priorities, and developing intervention strategies for unintentional injuries; (7) plans, directs, supports, and evaluates demonstration programs to prevent and control unintentional injuries; (8) supports dissemination of unintentional injury prevention and control research, translation, and implementation to federal, state, and local health agencies, public and private sector organizations, and other national and international groups with responsibilities and interests related to unintentional injury; (9) supports training to increase the number and competence of personnel engaged in unintentional injury prevention and control research and practices; and (10) disseminates scientific findings, evidence-based prevention strategies and unintentional injury prevention guidelines through publication of research findings in professional journals and government reports; through participation in national and international meetings, seminars, and conferences; and through the development of communication initiatives.

Health Systems and Trauma Systems Branch (CUHDC). (1) Conducts research on the impact of health systems and trauma systems in decreasing the burden of injury; (2) works with local and state health programs to determine how to integrate surveillance, injury prevention and quality improvement activities within health systems and trauma systems in order to decrease the burden of injury; (3) uses surveillance systems to monitor traumatic brain injury and poisonings to create incidence rates and prevention programs to provide data for planning in the community and the health systems; (4) conducts research on the medical aspects of injury, disability and health services; (5) supports epidemiologic analysis, applied research, and demonstration projects to improve the effectiveness of healthcare and trauma systems, as well as understand how health and trauma systems can best be integrated with public health prevention efforts; (6) develops scientific agendas for the NCIPC extramural research program; (7) serves as a focal point for traumatic brain injury prevention within CDC; (8) supports training programs and disseminates research findings to strengthen the competence of practitioners and researchers in the areas of traumatic brain injury, poisoning, integration of injury prevention and control within public health systems, health systems and trauma systems; and (9) develops guidelines to reduce or mitigate the impact of poisoning, traumatic brain injury, and to help optimize the treatment of injuries within various health systems.

Division of Analysis Research and Practice Integration (CUHF). (1) Works to reduce injuries and violence by providing high quality and innovative data products, support for state injury prevention and control programs, injury surveillance, program evaluation, and research that promote the dissemination and application of science into program practice at NCIPC and the broader injury and violence prevention field; (2) provides expertise in statistics, computer programming, data management, economics, public health practice, surveillance, evaluation, and research to engage NCIPC and the injury and violence prevention community; (3) produces new scientific knowledge that informs policies, practice, and programs in the injury field; (4) identifies promising or potential best practices in the injury field that may require additional scientific investigation; (5) develops evidence-based public health practices, policies, or programs that prevent or reduce injuries and violence; (6) sustains a public health infrastructure for injury and violence prevention at federal, state, local and tribal levels; and (7) promotes state and local health department's integration of science based public health practice, state-level surveillance, and evaluation with other public health and nonpublic health sectors, such as chronic diseases, HIV/AIDS, transportation initiatives, city or community planning, etc.

Office of the Director (CUHF1). (1) Establishes and interprets policies and determines program priorities; (2) provides national leadership and guidance in injury prevention and control program planning, development, and evaluation; (3) provides administrative, fiscal, and technical support for division programs and units; (4) assures multi-disciplinary collaboration in injury and violence prevention and control program implementation; (5) provides leadership for the development of research to inform policies, practice, and programs in the injury field; (6) prepares and monitors clearance of manuscripts for publication in scientific and technical journals and publications, including articles and guidelines published in the MMWR, and other publications for the public; (7) prepares, tracks and coordinates responses to all inquiries from Congress, the public, and DHHS; (8) collaborates with subject matter experts, program and policy staff, develops and implements communication strategies, campaigns, and plans to meet the needs of division programs and mission; (9) develops tailored messages and materials to promote dissemination of scientific findings, evidence-based prevention strategies, priority recommendations, and guidelines through traditional media outlets, social media, and other channels; (10) coordinates with the NCIPC Office of Communication to execute and support NCIPC and CDC-wide communication initiatives and policies; and (11) establishes linkages and collaborates, as appropriate, with other divisions and offices in NCIPC, other CIOs throughout CDC, and with national partners that impact on injury and violence prevention programs.

Statistics, Programming & Economics Branch (CUHFB). (1) Develops, evaluates, and implements innovative statistical, economic, policy research, computer programming, and data management methods for application to injury surveillance, epidemiologic studies, program evaluation and programmatic activities; (2) provides expert consultation in statistics, economics, policy research, programming, and data management to all NCIPC staff; (3) collaborates with NCIPC scientists on epidemiologic

studies and provides associated technical advice in the areas of study design, sampling, and the collection, management, analysis, and interpretation of injury data; (4) coordinates, manages, maintains and provides tabulations and maps from national surveillance systems and other data sources that contain national, state and local data on injury morbidity, mortality and economic costs; (5) prepares and produces high quality statistical, economic and policy reports and publications material for information presentation and dissemination by NCIPC staff; (6) advises the Office of the Director, NCIPC, in the area of data and systems management and on surveillance and statistical analysis issues relevant to injury program planning and evaluation; and (7) carries out functions listed in numbers (1) to (6) to collaborate with other Divisions/Offices in NCIPC, CDC C/I/Os, PHS agencies, other federal departments and agencies, and private organizations as appropriate.

Practice Integration and Evaluation Branch (CUHFC). (1) Monitors and evaluates programs and policies and disseminates findings to promote program accountability and program improvement; (2) promotes an enhanced and sustained infrastructure for a public health approach to injury and violence prevention at state, local and tribal levels; (3) generates and moves practice based knowledge into program practice and research fields; (4) provides expertise in science based public health practice, state-level injury surveillance, and evaluation to state and local health departments; and (5) collaborates with NCIPC OD offices, Division of Community Safety and Trauma Systems, and the Division of Violence Prevention on cross-cutting injury and violence prevention programs, policies, state-level surveillance, and evaluation.

Dated September 25, 2012.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–24771 Filed 10–10–12; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.612]

Announcement of the Award of a Single-Source Grant to the Native American Fatherhood and Families Association (NAFFA) in Mesa, AZ

AGENCY: Administration for Native Americans, ACF, HHS.

ACTION: Announcement of the award of a single-source grant to Native American Fatherhood and Families Association (NAFFA) in Mesa, AZ, to support activities promoting Responsible Fatherhood in Native American communities.

SUMMARY: The Administration for Children and Families (ACF), Administration for Native Americans (ANA) announces the award of a cooperative agreement in the amount of $250,000 to the Native American Fatherhood and Families Association (NAFFA) in Mesa, AZ to conduct a national outreach campaign focused on promoting the importance of fatherhood in Native communities. Included in the national outreach campaign will be a national conference, regional workshops, webinars, and a Native American Responsible Fatherhood Day that will be promoted and implemented throughout Native American communities during the month of June 2013. The award will be made under ANA's program for Social and Economic Development Strategies.

DATES: The award will be issued for the time period of September 30, 2012 to September 29, 2013.

FOR FURTHER INFORMATION CONTACT: Carmelia Strickland, Director, Division of Program Operations, Administration for Native Americans, 370 L'Enfant Promenade SW., Washington, DC 20047. Telephone: 877–922–9262; Email: *Carmelia.strickland@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: NAFFA, located in Mesa, Arizona, is a Native non-profit organization whose mission is to strengthen Native Families by responsibly involving fathers in the lives of their children, families, and communities and partnering with mothers to provide happy and safe families.

Statutory Authority: This program is authorized under § 803(a) of the Native American Programs Act of 1974 (NAPA), 42 U.S.C. 2991b.

Lillian A. Sparks,

Commissioner, Administration for Native Americans.

[FR Doc. 2012–25018 Filed 10–10–12; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Administration for Community Living (ACL), the authority vested in the Secretary to execute the competitive grant program under Section 1110 of the Social Security Act, 42 U.S.C. 1310, as appropriate. This authority may be re-delegated.

This delegation does not supersede previous delegations of the authority contained herein, including the delegation to the Administrator, Centers for Medicare & Medicaid Services, ''Delegation of Authority Under Title XI of the Social Security Act, as Amended,'' dated March 4, 2011.

This delegation excludes the authority to issue regulations, to establish advisory committees and councils and appoint their members, and to submit reports to Congress and shall be exercised in accordance with the Department's applicable policies, procedures, and guidelines. I hereby affirm and ratify any actions taken by the Administrator, or his or her subordinates, involving the exercise of these authorities prior to the effective date of this delegation. This delegation is effective upon date of signature.

Dated: October 3, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–25013 Filed 10–10–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0018]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Healthcare Professional Survey of Prescription Drug Promotion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

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

DATES: Fax written comments on the collection of information by November 13, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title, ''Healthcare Professional Survey of Prescription Drug Promotion.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

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

Healthcare Professional Survey of Prescription Drug Promotion (0910–New)

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 903(d)(2)(c) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The pharmaceutical industry spends millions of dollars a year promoting their products to American healthcare professionals and to consumers. FDA regulates the promotion of prescription drugs to both professionals and consumers. As such, FDA has an interest in determining the attitudes, perceptions, and opinions of healthcare professionals with prescribing authority regarding such promotion. Direct to consumer (DTC) advertising captures the most public attention, making it an important topic of interest to FDA, but the bulk of industry resources are spent in professional promotion, making this an equally important topic for investigation. The current research is designed to explore prescriber opinions of professional and DTC advertising and promotion as well as other aspects of prescriber experience that relate to the promotion of prescription drugs.

The rise of DTC drug advertising and prescription drug promotion has affected healthcare professionals in a number of ways. First, healthcare professionals regularly encounter patients who have been exposed to DTC ads. Second, healthcare professionals also see and hear such ads directly as mass media consumers themselves. Since clarification of the adequate provision requirement for prescription drug broadcast ads in 1997, FDA has faced numerous questions about the influence of DTC pharmaceutical marketing because such advertising directly engages consumers and potentially affects interactions between patients and their physicians (Refs. 1 and 2). Those questions have grown more urgent with the growth of DTC in recent years (Refs. 3 and 4). In 2002, FDA considered this form of promotion sufficiently important as a force in the physician-patient interaction that they surveyed both patients and physicians regarding their perceptions of DTC (Ref. 5). Now, nearly a decade later, there are critical reasons to return to the field to gather more evidence on the influence of DTC in the examination room and on the relationships between healthcare professionals and patients.

One of the most noteworthy aspects of the current healthcare environment in 2012 is the role now played by various physician extenders. Naylor and Kurtzman (Ref. 6) recently noted that nurses are the single largest group of healthcare professionals in the United States and they argue that nurse practitioners will play an increasingly vital role in primary care delivery. Similarly, physician assistants also bolster the ability of our healthcare system to offer some types of care at lower cost. The aforementioned 2002 FDA study did not include nurse practitioners or physician assistants in the sample; that study focused on general practitioners and specialists in several key areas targeted by DTC. Murray and colleagues (Ref. 7) also conducted a large-scale survey of U.S. physicians regarding their perceptions of DTC, but they also did not include nurse practitioners or physician assistants in their sample. Because DTC likely affects daily interactions between patients and nurse practitioners and physician assistants—similar to the 2002 FDA study that suggested the influence of advertising on physicians' work lives—including these groups in the new sample will further understanding of DTC in the healthcare system.

Another limitation of the 2002 FDA study was the extent to which the results were nationally representative. As FDA has acknowledged, the initial set of results as reported were applicable to survey respondents but were not weighted to reflect national statistics as to the age, sex, and racial composition of the healthcare professional population. Similar to many types of surveys that have struggled in recent decades with declines in cooperation rates (Ref. 8), surveys of healthcare professionals in general often can benefit from weighting to reduce nonresponse bias. The current survey will include weighted responses from respondents that will reflect national demographic patterns.

Over the past decade, researchers have been able to better assess how DTC has unfolded in the United States and determine the questions that warrant further survey work. For example, researchers have worried for a number of years that DTC might produce adverse outcomes, such as clinically inappropriate patient requests for drugs or patient overestimation of the efficacy of advertised medications (Refs. 5, 7, 9, and 10). At the same time, the 2002 FDA survey found that roughly as many physicians thought DTC had a positive effect on their practice as those who thought there had been a negative influence. Moreover, the 2002 FDA survey found that roughly a third of physicians surveyed thought that DTC had essentially no influence on their practice. The question of whether a similar pattern will emerge now, despite the growth of DTC, is a vital one.

In addition, with the proliferation of social media platforms, the emergence of online pharmaceutical marketing, and the evolution of office detailing practices (Refs. 11 and 12), FDA will benefit by knowing more about healthcare professionals' awareness of new and emerging drug promotion sites and practices. The proposed survey will address these issues.

Design Overview

We propose a nationally representative sample of healthcare professionals that will yield 2,000 responses from 500 general practitioners, 500 specialists, 500 nurse practitioners, and 500 physician assistants. Such a design will help to ensure our ability to discuss not only healthcare professional perceptions generally but also to assess potential

variation between different types of healthcare professionals. The data will be weighted to the national population of physicians, nurse practitioners, and physician assistants who have prescribing authority. We will develop weights to adjust for known unequal selection probabilities, for unequal response rates, and for any remaining deviations between the sample and population distributions. In the final step, we will use poststratification to calibrate the sample distribution to known population distribution to reduce the bias due to frame undercoverage. We believe that poststratification should reduce undercoverage bias to some extent for the same reasons that weighting adjustment reduces nonresponse bias. Population counts for use in poststratification will be obtained from the American Medical Association Master List and Medical Marketing Service lists for nurse practitioners and physician assistants. Available variables on which to weight include: State of practice and specialty for nurse practitioners and physician assistants. For physicians, these variables include: Age, gender, specialty, office based/hospital based; degree (MD or DO) and year of medical school graduation.

All parts of this study will be administered over the Internet. Participants will answer questions about their attitudes about DTC and professional prescription drug promotion, their perceptions of the Bad Ad program, and their usage of new technologies, including social media (for complete questionnaire contact Daniel Gittleson (see **FOR FURTHER INFORMATION CONTACT**). Demographic information will also be collected. The entire procedure is expected to last approximately 20 minutes. This will be a one-time (rather than annual) information collection.

In the **Federal Register** of January 17, 2012 (77 FR 2299), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received five public comment submissions which included over 50 comments embedded. In the following section, we outline the observations and suggestions raised in the comments and provide our responses:

(Comment 1) Two comments recommended surveying pharmacists in addition to the health care professionals described in the notice (i.e., general practitioners, specialists, nurse practitioners, and physician assistants).

(Response) We respectfully acknowledge the large role played by pharmacists in the health care system. However, the purpose of our survey is to query health care professionals with prescribing privileges. One comment noted that pharmacists have some limited prescribing privileges in certain States. This is true; pharmacists have certain privileges in Florida, can prescribe controlled substances under Collaborative Drug Therapy Management agreements in seven States, and with specific advanced training can prescribe within the Veterans Administration system. This contrasts with the nearly universal prescribing privileges of nurse practitioners and physician assistants, with varying levels of physician supervision. To maximize our resources, we propose to maintain our current distribution of health care professionals. Given the variety of prescribing privilege rights among physician extenders in different states, however, we will add a screening question to ensure that our respondents do have prescribing privileges.

(Comment 2) One comment mentioned adding a variety of different types of prescribers to our sample, including dentists, doctors of osteopathy, and podiatrists.

(Response) The comment incorrectly notes that the 2002 survey did not include a variety of prescribers. Contrary to the comment, the 2002 survey did include a range of specialties, reflecting those therapeutic areas with the highest amount of DTC advertising at that time. The current survey will include specialists who practice in therapeutic areas for which DTC advertising is or has recently been active: Dermatologists; endocrinologists; allergists/pulmonologists, psychiatrists (all of whom were sampled in 2002); rheumatologists; cardiologists; ear, nose, and throat doctors; urologists; neurologists; and pain specialists.

(Comment 3) One comment recommended that demographic questions be added to the beginning of the survey to attain adequate representation, instead of occurring at the end.

(Response) The Internet panel from which this data will be collected already contains much of the demographic information we need to ensure that participants represent a balanced stratification of demographic variables. When relevant information is not available from the panel, screening questions will be asked prior to the questionnaire to obtain the desired information. We prefer to keep other demographic variables at the end of the survey to avoid distracting participants with questions about personal information before they have answered substantive survey questions. We also prefer to ask our most important questions first to avoid any respondent fatigue that may occur throughout the survey. We expect that respondents will have an easier time answering questions about themselves; therefore, these questions will be less subject to participant fatigue.

(Comment 4) One comment recommended adding open-ended questions in several locations in the survey.

(Response) We appreciate this suggestion and agree that open-ended questions could provide extra, unprompted information from respondents. However, given the current length of the survey, it is likely that adding many open-ended questions would increase respondent demand and, therefore, result in more respondents quitting before completion. Moreover, the addition of several open-ended questions would increase coding burden without adding a commensurate value to our data. Thus, we do not plan to incorporate additional open-ended questions. If we find data that we would like to pursue further, we can incorporate this approach into future studies.

(Comment 5) One comment recommended that we provide ''don't know'' and ''it depends'' responses for many questions.

(Response) We understand the value of providing such responses for items of a factual nature and for items to which health care professionals might not know the answer (our items fall into the second category). The drawback to providing such response options, however, is that we may lose information by allowing respondents to choose an easy response instead of giving the item some thought. Research by Krosnick et al. (Ref. 13) demonstrated that providing ''no opinion'' options likely results in the loss of data without any corresponding increase in the data quality. Thus, we prefer not to add these options to the survey. We plan to cognitively test the questionnaire before fielding the survey, so we will observe whether participants have particular difficulty with any of the questions.

(Comment 6) A comment recommended interpreting the results of this survey cautiously and in tandem with other ongoing research areas.

(Response) We agree that careful interpretation of the data is crucial. We plan to apply the most rigorous standards of analysis and to interpret the findings based on those analyses alone. When relevant, we will assimilate the findings from this project with other research projects we conduct.

(Comment 7) One comment suggested that Q2 (now Q1) be asked as a screening question.

(Response) We intend to screen based on percentage of time prescribers spend with patients. We do not believe additional screening based on the number of patients seen per week is necessary. We will ask only one of the three options provided in the draft questionnaire. Other comments have recommended asking respondents to recall the last *week* in time, so we will use that question to assess their patient volume.

(Comment 8) One comment recommended asking about ''*health and lifestyle changes*'' as an additional question in Q3 (now Q2).

(Response) We have added this item to the questionnaire.

(Comment 9) This comment recommended eliminating the ''almost always'' option from Q3 (now Q2) because it may confuse respondents in terms of exactly what we are asking.

(Response) We have removed this option and have changed the other responses so now the only responses are ''never,'' ''rarely,'' ''sometimes,'' and ''often.'' We believe this better represents the range of options available to answer this question and will make the question easier to answer.

(Comment 10) One comment recommended that we add a response option to Q4 for in-office programming that occurs in waiting rooms.

(Response) We have deleted this question entirely because of survey time constraints.

(Comment 11) Two comments stated that 1 week is a reasonable amount of time to ask prescribers to recall information in Q5 (now Q3).

(Response) As we have done in the screener and as suggested by these comments, we will use 1 week as the time period.

(Comment 12) This comment recommended that we use a more specific probe in Q6 (now Q4) to gather information on why prescribers feel positively or negatively about patients mentioning advertised prescription drugs.

(Response) We have added a followup probe (Q4a) to address why respondents chose their answer.

(Comment 13) This comment recommended asking prescribers how their patients reference advertisements, for example, whether they specifically mention the drug's name, the condition the drug treats, or some element in the ad such as a butterfly or bee (Q8; now Q5).

(Response) While this is a very interesting question, it is more relevant to marketers of these products and outside the scope of what FDA hopes to accomplish with this survey. Given the number of questions in the survey, we respectfully decline to add this question.

(Comment 14) This comment recommended shortening the timeframe in Q9 (now Q6) from 1 month to 1 week.

(Response) Given the feedback from this and other comments, we agree that 1 week is a reasonable amount of time to reference when answering these questions, and we have adjusted the questionnaire to reflect this change.

(Comment 15) One comment recommended wording changes to Q7.

(Response) Q7 has been deleted because of survey time constraints.

(Comment 16) This comment asked that the nature of the request also be added to Q10 (now Q7).

(Response) Although we agree that asking about the nature of the request would be interesting, additional questions would increase the burden on respondents, and we think that other areas of inquiry are more relevant at this time. Please note that we have altered the response option in this one question, which will yield additional information.

(Comment 17) One comment recommended specifying in Q10 (now Q7) that patients have requested a drug after seeing it advertised.

(Response) The purpose of the question is to assess the prescribing behavior of the prescriber, not the source of the patient's request, so we prefer to keep the question as is.

(Comment 18) This comment recommended a change in the response options in Q10 (now Q7) to further delineate the prescriber's behavior.

(Response) We agree that this is a useful change and have implemented this response format. We have made further changes based on peer review comments.

(Comment 19) Two comments indicated that it may be difficult for health care professionals to answer Q12 (now Q9) as written.

(Response) We agree that it might be difficult for prescribers to reliably assess the feelings and emotions of members of another group. We have changed the emphasis in this question from the patient's expectation to the health care professional's feeling of obligation, thus eliminating the issue over response options in the original item. We have altered the question to put the focus back on what prescribers feel rather than what their patients feel. Please note that we have also altered the response options for this question to make the question easier to answer.

(Comment 20) This comment recommended emphasizing the part of the stem of Q13 and Q14 (now Q11) that states, ''As a result of discussion about advertised prescription drugs.''

(Response) Given the survey length, we have deleted original Q13, but this comment applies to current Q11. We have attempted to emphasize the appropriate part of the stem in this question and will be cognizant of this issue when working with the programmers of the actual survey. We will use bolding techniques and color as necessary to make sure that this part of the question is highlighted.

(Comment 21) One comment questioned the utility of asking prescribers about a variety of behaviors they engage in as a result of a conversation about advertised drugs (Q14; now Q11). Their argument is that the prescriber may respond ''never'' because the subject did not come up, not because they did not want to provide that action.

(Response) We agree that this is a possible interpretation of that response and will be careful to include that in interpretations of the data. Nevertheless, we are interested in obtaining information on the number of times these behaviors occur and believe this is a useful measure.

(Comment 22) One comment recommended changing Q14 (now Q11) from ''provided a brochure for the drug'' to ''provided a *patient education* brochure for the drug.''

(Response) We respectfully decline to add this phrase because not all brochures may be considered patient education brochures, and the addition does not improve or clarify the question.

(Comment 23) One comment recommended making Q15 (now Q12) more specific.

(Response) The purpose of this question is to get a general reaction to DTC advertising. Although we cannot statistically compare the results of this survey to FDA's 2002 physician survey for a number of reasons, we plan to descriptively compare results from the new survey with data obtained in 2002; thus, we prefer to keep the question as is. Although we did not make the question more specific, we have altered the wording slightly to make it clearer.

(Comment 24) This comment recommended the addition of several questions about what happens in the prescriber-patient relationship when patients are exposed to advertised prescription drugs (Q16; now Q13).

(Response) We agree that these are useful questions and have revised the questionnaire accordingly.

(Comment 25) One comment suggested adding a question to Q16 (now Q13) about whether DTC advertising increases the likelihood of conversations that the prescriber would not have otherwise had with his or her patients.

(Response) We have included this suggestion in the revised questionnaire.

(Comment 26) This comment recommended that we add ''the patient requests to be taken off the prescribed medicine'' to Q17 (now Q10).

(Response) We agree this is a useful addition and have added it to the revised questionnaire.

(Comment 27) The comment agreed that the item in Q17 (now Q10) asking about patient recall of aspects of advertised drugs they discuss with their prescribers is valuable, but questions whether the item as worded will yield interpretable results.

(Response) We have revised the question and response options and will pay close attention to this when we conduct cognitive testing with nine participants prior to pretesting the instrument.

(Comment 28) The comment recommended removal of the series of questions in Q17 (now Q10) because many factors may enter into the responses to each question. Specifically, the comment refers to personal characteristics of a patient that may influence these answers.

(Response) We agree that patient characteristics may play a role, but we are interested in the overall responses of prescribers to these questions. Other surveys capture patient characteristics that may influence this question (Ref. 14). We have made minor improvements in the wording of these items based on peer review comments.

(Comment 29) Two comments recommended adding questions to Q18, one of which referred to the effect of DTC advertising on prescription drugs patients are already taking.

(Response) We have added questions on these topics to Q18 (now Q14).

(Comment 30) The comment recommended the addition of several items related to cost to Q21 (now Q17).

(Response) These questions are outside the scope of the current project because FDA does not have authority over the cost of prescription drugs. Given the current length of the survey, we have chosen not to include these recommendations.

(Comment 31) One comment recommended the addition of two questions to the question series for Q22.

(Response) We have included the recommendation in Q14 of the revised questionnaire.

(Comment 32) This comment encouraged FDA to cautiously interpret the results of Q22 (now Q14), which asks whether prescribers believe that DTC advertising caused their patients to think drugs work better than they actually do.

(Response) We agree that all responses should be interpreted cautiously and will take care to avoid overinterpreting beyond the data.

(Comment 33) The comment suggested removing the concept of ''less expensive treatments'' from Q22 (now Q15) about whether prescribers thought DTC advertising caused patients to want advertised drugs over others.

(Response) Although we have heard this complaint frequently in focus groups, we have modified this question so that instead of the comparator in the question being ''less expensive treatments,'' the comparator is ''other recommended treatments.''

(Comment 34) This comment recommended deleting the question about the cost of prescription drugs (Q22).

(Response) We have deleted this question from the questionnaire.

(Comment 35) One comment suggested a change in wording to Q23 (now Q16).

(Response) We have replaced the word ''diagnoses'' with the word ''treatment,'' as suggested by the comment.

(Comment 36) This comment refers to Q23 (now Q18) and the questions following it that inquire about patients bringing coupons to their doctors for specific prescription drugs. Coupons and other incentives are frequently used in DTC promotion. This comment recommended rewording the question to assess whether patients are more likely to ask prescribers for drugs with coupons rather than those without.

(Response) We are unsure how prescribers would know this information because they are likely not current with the range of active advertising campaigns at any given time. We maintain that the currently worded question is a useful measure for assessing prescribers' general opinions about the use of incentives in DTC promotion.

(Comment 37) The comment expressed concern about Q23–25 (now Q18–20) because they believe that without clarification we may miss important nuances such as the possibility that a coupon may initiate a quality conversation about an illness.

(Response) As with all questions in this survey, we will carefully interpret the data, making sure not to draw conclusions not supported by the data. Nevertheless, we believe that if the presentation of a coupon resulted in a good doctor-patient conversation, the respondent would indeed select a positive answer to this question.

(Comment 38) Two comments stated that Q25 (now Q20) repeats Q24 (now Q19) in the questionnaire.

(Response) Q24 (now Q19), asked only of respondents who *have* encountered a patient with a coupon, asks how they *did* feel about that. Q25 (now Q20), asked only of respondents who have *not* encountered a patient with a coupon, asks how they *would* feel about that. Respondents will only see one of these two questions, depending on whether a patient has ever asked them about a prescription drug that has been advertised with a coupon. We like the suggested wording in one comment for Q24 (Q19) and have applied it to both questions.

(Comment 39) The comment suggested modifying Q26 to ask whether prescribers have ever had patients become concerned about their medication after seeing an ad for it.

(Response) We believe this would have been a good introductory question for the former Q26; however, because of survey time constraints, we were forced to limit the number of questions in this area. Based on peer review comments, we replaced these questions with a question that more directly asks whether prescribers have ever had a patient refuse to take or to stop taking their medication for these reasons (now Q21).

(Comment 40) One comment recommended adding a response of ''depends on the condition'' to the question of whether there should be more or less information about medical conditions in DTC advertising (Q27).

(Response) Because of survey time constraints, this question has been deleted.

(Comment 41) One comment recommended changing the order of Q28 and Q29.

(Response) Because of survey time constraints, all questions in this series have been deleted except Q29b (now Q22).

(Comment 42) This comment has taken a subsection of the questions about awareness of the Bad Ad program (Q31–37; now Q23–30) and claimed that FDA is using this forum as a way to inform prescribers about the Bad Ad program.

(Response) Looking at the entire set of questions, it is clear that the goal of this series is to assess whether prescribers have heard about the program and to explore their opinions about it. A description of the Bad Ad program is

provided in current Q24 because we want to ask the subsequent questions of all respondents and can only do so if they know about the program. This survey provides a logical vehicle for assessing opinions about the Bad Ad program. Furthermore, because the Bad Ad program is directly related to prescription drug promotion, we believe it is clearly within the scope of the survey. We recognize, however, that we did not make this clear in the introductory section of the **Federal Register** notice, and we have included additional verbiage to remedy this omission. We note that no other comments expressed concern about these questions.

(Comment 43) One comment recommended wording changes to the followup open-ended item about the Bad Ad program (Q34a; now Q27).

(Response) We agree that the revised wording is preferable and have incorporated it into the questionnaire.

(Comment 44) One comment recommended wording changes to Q36/Q37 (now Q29/Q30).

(Response) We agree that changing the wording of these two questions may make them easier for respondents to understand and have done so in the questionnaire.

(Comment 45) This comment recommended deleting Q38–43 (now Q31–36) regarding social media membership and participation, citing the justification that the survey is about DTC advertising and these questions are irrelevant.

(Response) We reiterate that the purpose of the survey is to obtain opinions and responses from a variety of prescribers regarding prescription drug promotion. This topic encompasses both professional and DTC advertising and labeling and a variety of different media through which this promotion occurs. The Agency has an interest in determining the extent of promotion in emerging technologies such as social media, and various stakeholders have pressed the Agency to produce guidance related to new technologies. This survey provides an opportunity to explore prescribers' use of social media sites in order to assess whether future research is warranted regarding these emerging and potentially promotional venues. We have added language to the introduction section to clarify the scope of the survey.

(Comment 46) One comment recommended that we change the word ''post'' to ''comment'' in Q42/Q43 (now Q35/36).

(Response) We have made this change in these two questions. Please note that we have also added a time period to help respondents answer the questions more easily.

(Comment 47) One comment recommended the addition of Internet search engines to Q44 (now Q37a and 37b).

(Response) We have added search engines as an option for this question. We have also separated the question into two parts based on peer review comments to avoid a cognitively demanding ranking task.

(Comment 48) This comment expressed support for FDA's data collection from health care professionals regarding prescription drug promotion. One general issue raised by this comment was the exclusion and inclusion criteria for prescribers.

(Response) Prescribers must see patients at least 50 percent of the time in a non-hospital or non-inpatient setting. Primary care physicians will include internists, general practitioners, family practitioners, and obstetricians/gynecologists (all of whom were sampled in 2002). We will exclude pediatricians because relatively little DTC advertising is aimed at children or their parents. Specialists will include those who practice in therapeutic areas for which DTC advertising is or has recently been active: Dermatologists; endocrinologists; allergists/pulmonologists; psychiatrists (all of whom were sampled in 2002); rheumatologists; cardiologists; ear, nose, and throat doctors; urologists; neurologists; and pain specialists. Nurse practitioners and physician assistants must have prescribing privileges.

(Comment 49) One comment raised the issue of weighting.

(Response) Although we did not provide details on weighting in the 60-day **Federal Register** notice, we agree and have implemented all suggestions provided by this comment. For example, this comment noted that FDA did not explain at what level results will be reported (i.e., aggregate versus each group as a separate sample). Results will be reported both in aggregate and for each group separately, and weights will be adjusted to produce national-level estimates.

(Comment 50) This comment supported FDA's use of equal-sized samples of four different types of health care professionals (general practitioners, specialists, nurse practitioners, and physician assistants) although it suggests that the artificial nature of equal-sized samples may make it difficult to find population parameters and targets to use for weighting purposes.

(Response) We note that the target population is all health care professionals with prescribing authority in the United States. This is considered the inferential population, which is rarely achieved. The proposed sample will be selected from the ''responding population.'' The final survey weights will be constructed to reduce the coverage error and to compensate for nonresponse error and unequal probability of selection to represent the target population.

(Comment 51) This comment expressed skepticism that sample weighting can adjust or correct for noncoverage that results from inadequacies in sampling frames.

(Response) We agree that frame undercoverage cannot completely eliminate noncoverage bias in an estimator completely but will apply poststratification as the primary method for dealing with this undercoverage (Ref. 15). We believe that poststratification should reduce this bias to some extent for the same reasons that weighting adjustment reduces nonresponse bias. We will consider trimming extreme weights and redistributing them to avoid losses in precision.

(Comment 52) With regard to the questionnaire, this comment recommended adding specific questions about the prescriber's practice, including the size of the practice, whether it is part of a managed care organization, whether it is part of an integrated health system that involves hospitals, and whether the practice has a low- or no-access policy with regard to pharmaceutical sales representatives.

(Response) We agree that these may be relevant variables, and these questions are represented in the demographic section.

(Comment 53) One comment suggested adding a series of questions to assess the market dynamics that may affect prescribing decisions.

(Response) Although these are interesting questions, they are outside the scope of the current project. Many of the suggested questions deal with issues of cost and reimbursement, which FDA does not regulate.

(Comment 54) One comment recommended that we should ask particular questions of nurse practitioners and physician assistants to assess their characteristics.

(Response) We agree with the comment and have several questions in the questionnaire, asked of all respondents, that will address some of these questions. We have added a question to the screener to ensure that all respondents have at least some prescribing authority, and we have added a question to the questionnaire to

delve further into how much authority respondents have. We will also ask all respondents how many prescriptions they write in 1 week.

(Comment 55) One comment suggested reexamining the questionnaire from the Office of Prescription Drug Promotion's online DTC promotion study (Docket No. FDA–2011–N–0230) in light of this survey to explore the possibility of comparing responses on similar questions.

(Response) We appreciate this suggestion and will examine the data from both studies to see if any descriptive comparisons can be made.

Please note that in response to all comments received, whether we have adapted the suggestions or not, we will specifically examine the items mentioned in cognitive testing. During this testing, nine respondents will participate in the survey while explaining why and how they have chosen their answers and which questions they find difficult to respond to or to understand.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Screener	3,500	1	3,500	0.03	105
Pretest	25	1	25	0.33	8
Main Study	2,000	1	2,000	0.33	660
Total					773

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

V. References

The following references have been placed on display in the Division of Dockets Management (FDA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Fintor, L., ''Direct-to-Consumer Marketing: How Has it Fared?'' *Journal of the National Cancer Institute,* 94, 329–331, 2002.
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4. Government Accountability Office (GAO). ''Improvements Needed in FDA's Oversight of Direct-to-Consumer Advertising.'' GAO–07–54. Washington, DC: GAO, November 16, 2006.
5. Aikin, K.J., J.L. Swasy, and A.C. Braman, ''Patient and Physician Attitudes and Behaviors Associated With DTC Promotion of Prescription Drugs,'' Washington, DC: Food and Drug Administration, November 19, 2004.
6. Naylor, M.D., and E.T. Kurtman, ''The Role of Nurse Practitioners in Reinventing Primary Care.'' *Health Affairs,* 29, 893–899, 2010.
7. Murray, E., B. Lo, L. Pollack, K. Donelan, and K. Lee, ''Direct-to-Consumer Advertising: Physicians' Views of its Effects on Quality of Care and the Doctor-Patient Relationship.'' *Journal of the American Board of Family Practice,* 16, 513–524, 2003.
8. Dey, E.L., ''Working With Low Survey Response Rates: The Efficacy of Weighting Adjustments.'' *Research in Higher Education,* 38, 215–227, 1997.
9. Mintzes, B., M.L. Barer, R.L. Kravitz, A. Kazanjian, K. Bassett, J. Lexchin, R.G. Evans, R. Pan, and S.A. Marion, ''Influence of Direct to Consumer Pharmaceutical Advertising and Patients' Requests on Prescribing Decisions: Two Site Cross Sectional Study.'' *British Medical Journal,* 324, 278–279, 2002.
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11. Donohue, J.M., M. Cevasco, and M.B. Rosenthal, ''A Decade of Direct-to-Consumer Advertising of Prescription Drugs.'' *New England Journal of Medicine,* 357, 673–681, 2007.
12. Chew, L.D., T.S. O'Young, T.K. Hazlet, K.A. Bradley, C. Maynard, and D.S. Lessler, ''A Physician Survey of the Effect of Drug Sample Availability on Physician's Behavior.'' *Journal of General Internal Medicine,* 15, 478–483, 2000.
13. Krosnick, J.A., A.L. Holbrook, M.K. Berent, R.T. Carson, W.M. Hanemann, R.J. Kopp, M. Conaway, ''The Impact of 'No Opinion' Response Options on Data Quality: Non-attitude Reduction or an Invitation to Satisfice?'' *Public Opinion Quarterly,* 66, 371–403, 2002.
14. *Prevention Magazine.* (2011). *http://www.rodaleinc.com/newsroom/12th-annual-survey-iconsumer-reaction-dtc-advertising-prescription-drugsi-reveals.* Last accessed March 29, 2012.
15. Korn, E.L., and B.I. Graubard, ''Analysis of Health Surveys'' (p. 42, lines 10–16). John Wiley & Sons: New York, NY, 1999.

Dated: October 4, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–24973 Filed 10–10–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1025]

The Science of Small Clinical Trials; Notice of Course

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA), together with the National Institutes of Health (NIH) Office of Rare Diseases Research, National Center for Advancing Translational Sciences, is announcing a course entitled ''The Science of Small Clinical Trials.'' The course is intended to present an overall framework and provide training in the scientific aspects of designing and analyzing clinical trials based on small study populations. The course will bring together subject experts and stakeholders to identify when such trials should be conducted, along with strategies and trial designs that are conducive to overcoming the challenges they present.

The goal of this course is to engage and educate FDA reviewers, NIH scientists, clinicians, academics and industry representatives with experience in human subject research, seeking to build upon their existing knowledge and to obtain a broader

context of what is known about small clinical trials across medical products (e.g. drugs, biologics, and devices).

Date and Time: The course will be held on November 27, 2012, from 8 a.m. to 5 p.m., and November 28, 2012, from 8 a.m. to 3 p.m.

Location: The course will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Section A, Silver Spring, MD 20993–0002. Entrance for course participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* A live Web cast will be made available for FDA participants only. For participants who cannot attend the live course, a recorded Web cast will be made available after the course.

Contact: For information regarding this notice: Francesca Joseph, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5264, Silver Spring, MD 20993–0002, 301–796–6805, FAX: 301–847–8621, email: *Francesca.Joseph@fda.hhs.gov.*

For information regarding the course and registration: Megan McNamee, ICF International, 530 Gaither Rd., suite 500, Rockville, MD 20850, 301–407–6627, email: *Megan.Mcnamee@icfi.com.*

Registration: Interested participants may register for this course at the following Web site: *https://events-support.com/events/FDA–NIH_Science_Small_Clinical_Trials.*

If you need sign language interpretation during this course, please contact Francesca Joseph at *Francesca.Joseph@fda.hhs.gov* by October 26, 2012.

The FDA–NIH Science of Small Clinical Trials Course is presented by FDA's Office of Orphan Product Development, Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research, Center for Devices and Radiological Health; the NIH Office of Rare Disease Research, National Center for Advancing Translational Sciences; and will also include participation from outside experts in the field. This educational event will consist of live presentations provided by FDA experts from various Centers and Offices, as well as from outside experts. It will also include case studies of regulatory trials and interactive panel discussions. The course will be recorded for subsequent posting on FDA's Web site.

(FDA has verified the Web site addresses throughout this document, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Dated: October 4, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–24977 Filed 10–10–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 1, 2012, from 8 a.m. to 6 p.m.

Location: Hilton, Washington, DC North/Gaithersburg, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301–977–8900.

Contact Person: LCDR Avena Russell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1535, Silver Spring, MD 20993–0002, 301–796–3805, *Avena.Russell@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On November 1, 2012, the committee will discuss current knowledge about the safety and effectiveness of the CoAxia NeuroFlo Catheter device for the intended use of diverting cardiac output to the cerebral vasculature via partial occlusion of the descending aorta, including in patients with acute ischemic stroke within 14 hours of symptom onset.

The CoAxia NeuroFlo Catheter is a 7F multi-lumen device with two balloons mounted near the distal tip. The proximal end has a multi-port manifold which provides access for the guidewire, monitoring of blood pressure, and independent inflation of the individual balloons. The device is placed in the descending aorta. On March 30, 2005, a Humanitarian Device Exemption application for the CoAxia NeuroFlo Catheter was approved for the following indication for use:

> The CoAxia NeuroFlo Catheter is intended for the treatment of cerebral ischemia resulting from symptomatic vasospasm following aneurismal subarachnoid hemorrhage (SAH), secured by either surgical or endovascular intervention for patients who have failed maximal medical management.

Of note, the CoAxia Neuroflo Catheter is identical in design to the Coaxia FloControl which is currently cleared for the following general indications for use:

- The CoAxia FloControl Catheter is intended for use in selectively stopping or controlling flow in the peripheral vasculature (K023914).
- The CoAxia FloControl Catheter is intended for use in selectively stopping or controlling flow in the peripheral vasculature, which includes the descending aorta (K090970).

CoAxia has submitted a de novo application for the NeuroFlo Catheter for the following indication:

> The CoAxia NeuroFlo Catheter is intended for use in diversion of cardiac output via partial occlusion of the descending aorta, including patients with acute ischemic stroke within 14 hours of symptom onset. The CoAxia NeuroFlo Catheter is also intended for use in selectively stopping or controlling blood flow in the peripheral vasculature, which includes the descending aorta.

FDA is convening this committee to seek expert scientific and clinical opinion on the risks and benefits of this device based on the available premarket and postmarket data. In particular, the panel will be asked to discuss the safety and effectiveness data from the ''Safety and Efficacy of NeuroFlo Technology in Ischemic Stroke (SENTIS)'' clinical trial

as they relate to the proposed indications for use.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 16, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 5, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 9, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Ann Marie Williams, Committee Management Staff, 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 3, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–24974 Filed 10–10–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Office of Research Infrastructure Programs Special Emphasis Panel; Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities, Special Emphasis Panel.

Date: November 7–8, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Martha F. Matocha, Ph.D., Scientific Review Officer, Office of Grants Management & Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Blvd., Dem. 1, Room 1070, Bethesda, MD 20892–4874, 240–271–4890, *matocham@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 4, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–24939 Filed 10–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the information provided in the **Federal Register** of the Council of Councils, October 29, 2012, 11 a.m. to October 29, 2012, 1 p.m., National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD, 20892 which was published in the **Federal Register** on October 3, 2012, 77FR60445.

This notice is being amended to correct the room number for the Executive Secretary to Room 260 and to remove statements on the original notice that do not apply to closed meetings. Since the entire meeting will be closed to the public in accordance with provisions set forth in sections 552(b)(c)(4) and 552b(c)(9)(B), the agenda and proposals will not be posted on the Council of Councils home page. The public procedures for filing comments or attending the meeting were also included in error.

Dated: October 4, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–24940 Filed 10–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIIAAA Member Conflict Applications: Epidemiology, Prevention & Treatment.

Date: October 26, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: October 4, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–24942 Filed 10–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Social Science and Population Studies A: Special Topics.

Date: October 23, 2012.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 4, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–24944 Filed 10–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Therapeutics.

Date: November 5, 2012.

Time: 7:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Careen K Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301)435–3504, *tothct@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Multidisciplinary Studies of HIV/AIDS and Aging.

Date: November 9, 2012.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos; 93.306, Comparative Medicine; 93.333, Clinical Research 93.306, 93.333; 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 4, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–24945 Filed 10–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genomic Medicine RFAs.

Date: November 19–20, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH Events Management, 5635 Fishers Lane, Suite T500, Rockville, MD.

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 4, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–24943 Filed 10–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environmental Health Sciences Review Committee.

Date: November 15, 2012.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Institutional Research Training Grants.

Date: November 15, 2012.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Janice B Allen, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, P. O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 4, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–24941 Filed 10–10–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0908]

Facility Security Officer Training Requirements

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Coast Guard announces a public meeting to receive comments on the development of a Facility Security Officer training program, with the primary focus on developing the curriculum for such a program. Section 821 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) requires the Secretary of Homeland Security to establish comprehensive FSO training requirements, and to coordinate with the Maritime Administrator of the Department of Transportation in developing the FSO training curriculum. The purpose of the public meeting is to obtain public comment on a draft model FSO training course and other elements of the FSO training program.

DATES: A public meeting will be held on Friday, November 9, 2012 from 8:30 a.m. to 12:30 p.m. to provide an opportunity for oral comments. Seating is limited, so please RSVP as soon as possible using the method described under the **ADDRESSES** section below, but no later than November 2, 2012. Written comments and related material may be submitted to Coast Guard personnel specified at that meeting. Written comments may also be submitted in response to this notice by following the instructions under the **ADDRESSES** section below. The comment period for this notice will close on November 23, 2012. All written comments and related material submitted before or after the meeting must either be submitted to our online docket via *http://www.regulations.gov* on or before November 23, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: The public meeting will be held at the Department of Transportation Headquarters, Oklahoma Room, 1200 New Jersey Avenue SE., Washington, DC 20590. Please note that due to building security requirements, each visitor must present two valid, government-issued photo identifications in order to gain entrance to the Department of Transportation Headquarters building. The building is accessible by taxi, public transit, and privately owned conveyance. However, public parking in the vicinity of the building is extremely limited.

This meeting is open to the public. Please note that the session may adjourn early if all business, concerns, and questions are addressed. A live video feed of the meeting will also be available via the following link: *http://trial4.cdn.level3.net/USCGLivePlayer_040611.htm.*

You may submit written comments identified by docket number USCG–2012–0908 before or after the meeting using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. Our online docket for this notice is available on the Internet at *http://www.regulations.gov* under docket number USCG–2012–0908.

To RSVP for the meeting, fill out the RSVP form using the following link *https://einvitations.afit.edu/inv/anim/cfm?i=123867&k=036341017D50.*

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting, please call or email LTJG Lindsey Musselwhite, Commandant (CG–FAC–2), Coast Guard; telephone 202–372–1136, email *Lindsey.A.Musselwhite@uscg.mil* or LCDR José Ramírez, Commandant (CG–FAC–2), Coast Guard; telephone 202–372–1150, email *Jose.L.Ramirez@uscg.mil.* If you have questions on viewing or submitting

material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Maritime Transportation Security Act of 2002 (Pub. L. 107–295, codified at 46 U.S.C. 70101 *et seq.*) (MTSA) provided the Coast Guard with statutory authorities and mandates to advance the Coast Guard's maritime security mission. Pursuant to its authority under MTSA, the Coast Guard promulgated regulations in 33 CFR part 105 that apply to certain maritime facilities listed in 33 CFR 105.105. Among the requirements in 33 CFR part 105, owners and operators of regulated facilities must designate a Facility Security Officer (FSO) (33 CFR 105.200). Coast Guard regulations also set forth FSO qualifications and responsibilities (33 CFR 105.205). Under current regulations, FSOs are not required to undergo a formal training and certification process.

Section 821 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) requires the Secretary of Homeland Security (Secretary) to establish comprehensive FSO training requirements designed to provide full security training that would lead to certification of such officers. The Coast Guard is in the process of considering a rulemaking to implement this portion of section 821.

Section 821 also requires the Secretary to coordinate with the Maritime Administrator of the Department of Transportation in developing the FSO training curriculum. The Coast Guard and the Maritime Administrator believe that a public meeting would be beneficial at this stage in the process to engage the public and obtain comments on a draft model FSO training course as well as other aspects of the FSO training program. A draft model FSO training course will be available for viewing on the Coast Guard Homeport Web site (*https://homeport.uscg.mil/mtsa*) as well as in the online docket two weeks prior to the meeting. Topics to be discussed at the meeting include the following:

(1) Draft model FSO training course;

(2) Computer-based training and distance learning;

(3) Provisional FSO certification;

(4) FSO continuing education;

(5) FSO refresher course;

(6) Interim policy to provide curriculum guidelines for potential FSO training course providers; and

(7) Any additional topics of concern with respect to the FSO training program, certification, and the development and provision of training.

The Coast Guard believes that a public meeting would also benefit the impacted community by providing a forum to raise relevant issues. This will further enable the Coast Guard to craft policy that takes into account public concerns.

You may view the written comments and supporting documents (if any) in the online docket by going to *http://www.regulations.gov* and using ''USCG–2012–0908'' as your search term. Locate this notice among the search results and use the filters on the left side of the page to search for specific types of documents. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LTJG Lindsey Musselwhite at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding the development of an FSO training program on Friday, November 9, 2012 from 8:30 a.m. to 12:30 p.m., at the Department of Transportation Headquarters, Oklahoma Room, 1200 New Jersey Ave SE., Washington, DC 20590. We will provide a written summary of the meeting and comments in the docket.

Authority: This notice is issued under the authority of 46 U.S.C. 70125(d) and 5 U.S.C. 552(a).

Dated: October 4, 2012.

A.E. Tucci,

Captain, U.S. Coast Guard, Chief, Office of Port and Facility Compliance (CG–FAC).

[FR Doc. 2012–25055 Filed 10–10–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0031; OMB No. 1660–0085]

Agency Information Collection Activities: Proposed Collection; Comment Request, Crisis Counseling Assistance and Training Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Crisis Counseling Assistance and Training Program which provides funding in response to a State's request for crisis counseling services for a presidentially declared disaster.

DATES: Comments must be submitted on or before December 10, 2012.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2012–0031. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tanya Stevenson, Program Specialist, FEMA, Individual Assistance Division, Community Services and Volunteer Agency Coordination Branch, (202) 212–5719 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: Section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Stafford Act) (42 U.S.C. 5183) Public Law 93–288, as amended, authorizes the President to provide financial assistance to States, U.S. Territories, and Federally Recognized Tribes for professional counseling services to survivors of major disasters to relieve mental health problems caused by or aggravated by a major disaster or its aftermath. FEMA has codified Section 416 of the Stafford Act at section 44 CFR 206.171 entitled Crisis Counseling Assistance and Training. Under Section 416 of the Stafford Act and 44 CFR 206.171, the President has designated the Department of Health and Human Services—Center for Mental Health Services (HHS–CMHS) to coordinate with FEMA in administering the Crisis Counseling Assistance and Training Program (CCP). FEMA and HHS–CMHS signed an interagency agreement under which HHS–CMHS provides program oversight, technical assistance and training to States applying for CCP funding.

Collection of Information

Title: Crisis Counseling Assistance and Training Program.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0085.

FEMA Forms: FEMA Form 003–0–1, Crisis Counseling Assistance and Training Program, Immediate Services Program Application; FEMA Form 003–0–2, Crisis Counseling Assistance and Training Program, Regular Services Program Application.

Abstract: The CCP consists of two grant programs, the Immediate Services Program (ISP) and the Regular Services Program (RSP). The ISP and the RSP provide supplemental funding to States, U.S. Territories, and Federally Recognized Tribes following a Presidentially-declared disaster. Services include community outreach, public education and counseling techniques. State Disaster Mental Health Coordinators are required to submit an application that provides information on Needs Assessment, Plan of Service, Program Management, and an accompanying Budget.

Affected Public: State, local or Tribal Government.

Number of Respondents: 24 respondents.

Number of Responses: 57 responses.

Estimated Total Annual Burden Hours: 2,580 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate *	Total annual respondent cost
State Disaster Mental Health Coordinator.	CCP/ISP application and training/ FEMA Form 003–0–1.	15	1	72	1,080	$55.30	$59,724.00
State Disaster Mental Health Coordinator.	Final Report Narrative/No form #.	15	1	10	150	55.30	8,295.00
State Disaster Mental Health Coordinator.	CCP/RSP application and training/ FEMA Form 003–0–2.	9	1	60	540	55.30	29,862
State Disaster Mental Health Coordinator.	Quarterly Report Narrative/No form #.	9	1	30	270	55.30	14,931
State Disaster Mental Health Coordinator.	Final Report Narrative/No form #.	9	1	60	540	55.30	29,862
Total	.....	57	.....	.....	2,580	.....	$142,674

* Note: The "Average Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $142,674. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital cost. The cost to the Federal Government is $139,654.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: October 4, 2012.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–25033 Filed 10–10–12; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4080–DR; Docket ID FEMA–2012–0002]

Louisiana; Amendment No. 13 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4080–DR), dated August 29, 2012, and related determinations.

DATES: *Effective Date:* October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 29, 2012.

The parishes of Allen, Morehouse, and St. Martin for Individual Assistance (already designated Public Assistance [Categories A and B], including direct federal assistance).

The parishes Catahoula, Franklin, Lafayette, Morehouse, St. Landry, St. Martin, Union, and Vermillion for Public Assistance [Categories C–G] (already designated for Public Assistance [Category A and B], including direct federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–25057 Filed 10–10–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4079–DR; Docket ID FEMA–2012–0002]

New Mexico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–4079–DR), dated August 24, 2012, and related determinations.

DATES: *Effective Date:* October 3, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Mexico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 24, 2012.

Los Alamos County and the Mescalero Apache Tribe for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–25058 Filed 10–10–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4082–DR; Docket ID FEMA–2012–0002]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–4082–DR), dated September 21, 2012, and related determinations.

DATES: *Effective Date:* October 3, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2012.

Covington, Dallas, Geneva, Monroe, and Perry Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–25031 Filed 10–10–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Cancellation; Federal Advisory Committee Meeting: Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of meeting cancellation.

SUMMARY: The meeting of the Board of Visitors for the National Fire Academy (Board) scheduled for Friday, October 5, from 8:30 a.m. to 5 p.m. EST, and Saturday, October 6, 2012, from 9 a.m. to 1:30 p.m. EST is cancelled. Notice of this meeting was published in the September 17, 2012, issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Cindy Wivell, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447–1157, fax (301) 447–183473, and email *Cindy.Wivell@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this cancellation of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended, 5 U.S.C. App. Notice of this meeting was published in the September 17, 2012, issue of the **Federal Register** at 77 FR 57102.

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (Academy) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, regarding the operation of the Academy and any improvements therein that the Board deems appropriate.

Dated: October 3, 2012.

Denis G. Onieal,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2012–25095 Filed 10–10–12; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0106]

Agency Information Collection Activities: Petition for Qualifying Family Member of a U–1 Nonimmigrant, Form Number I–929; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on June 27, 2012, at 77 FR 38308 with a correction published on July 6, 2012, at 77 FR 40078, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 13, 2012. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at *uscisfrcomment@uscis.dhs.gov,* to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2009–0010. When submitting comments by email, please make sure to add 1615–0106 in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

NOTE: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Qualifying Family Member of a U–1 Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–929; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Section 245(m) of the Immigration and Nationality Act (Act) allows certain qualifying family members who have never held U nonimmigrant status to seek lawful

permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of status or seek immigrant visas, the U–1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I–929. Form I–929 is necessary for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 respondents with an estimated average burden per response of 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: October 2, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–24961 Filed 10–10–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0001]

Agency Information Collection Activities: Petition for Alien Fiancé(e), Form I–129F, Revision of a Currently Approved Collection

ACTION: 60-Day Notice.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until December 10, 2012.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security, USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2006–0028.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or that is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for Alien Fiancé(e).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129F, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. Form I–129F must be filed with USCIS by a citizen of the United States in order to petition for an alien fiancé(e), spouse, or his/her children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 46,936 responses at 1 hour and 35 minutes (1.58 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 74,158 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–8377.

Dated: October 4, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–24963 Filed 10–10–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–C–64]

Notice of Submission of Proposed Information Collection to OMB Housing Counseling Program

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Correction.

SUMMARY: On September 17, 2012, at 77 FR 57103, HUD published Housing Counseling Program and reference to the NOFA charts were excluded. Nonprofit Housing Counseling organizations

submit information to HUD through Grants.gov when applying for grant funds to provide housing counseling assistance to eligible homebuyers to find and purchase affordable housing; Housing Counseling organizations also assist eligible homeowners to avoid foreclosures; The Housing Counseling organizations also use grant funds to assist renters to avoid evictions; help the homeless find temporary or permanent shelter; report fair housing and discrimination. HUD uses the information collected to evaluate applicants competitively and then select qualified organizations to receive funding that supplement their housing counseling program. Post-award collection, such as quarterly reports, will allow HUD to evaluate grantees' performance. This collection of information includes renewal of various HUD forms, including the HUD–9900 which is the Housing Counseling Approval Application, and form HUD–9902, Housing Counseling Agency Activity Report. Additionally, it covers the collection of client level activities, client financial leverage data, and agency profile information.

DATES: *Comments Due Date:* November 13, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0261) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Housing Counseling Program.

OMB Approved Number: 2502–0261.

Form Numbers: SF–424, SF–424Supp, SF–424CB, SF–LLL, HUD–27300, HUD–2880, HUD–2990, HUD–2991, HUD–2994, HUD–96010, HUD–9902 and NOFA charts.

Description of the need for the information and its proposed use: Nonprofit Housing Counseling organizations submit information to HUD through Grants.gov when applying for grant funds to provide housing counseling assistance to eligible homebuyers to find and purchase affordable housing; Housing Counseling organizations also assist eligible homeowners to avoid foreclosures; The Housing Counseling organizations also use grant funds to assist renters to avoid evictions; help the homeless find temporary or permanent shelter; report fair housing and discrimination. Through the NOFA charts, HUD uses the information collected to evaluate applicants competitively and then select qualified organizations to receive funding that supports their housing counseling program. The NOFA charts include data fields covering agency knowledge and capacity, need for the service (target population), historical performance and projections, leveraging and program outcomes. Post-award collection, such as quarterly reports, will allow HUD to evaluate grantees' performance. This collection of information includes renewal of various HUD forms, including the HUD–9900 which is the Housing Counseling Approval Application, and form HUD–9902, Housing Counseling Agency Activity Report. Additionally, it covers the collection of client level activities, client financial leverage data, and agency profile information.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	12,402	3.305		0.907	37,213

Total estimated burden hours: 37,213.

Status: Extension without change of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 3, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–24962 Filed 10–10–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–70]

Notice of Submission of Proposed Information Collection to OMB Generic Customer Satisfaction Surveys

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Executive Order 12862, ''Setting Customer Service Standards'' requires that Federal agencies provide the highest quality service to our customers by identifying them and determining what they think about our services. The surveys covered in the request for a generic clearance will provide HUD a means to gather this data directly from our customers. HUD will conduct various customer satisfaction surveys to gather feedback and data directly from our customers to determine the kind

and quality of services and products they want and expect to receive.

DATES: *Comments Due Date:* November 13, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2535–0116) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Generic Customer Satisfaction Surveys.

OMB Approval Number: 2535–0116.

Form Numbers: None.

Description of the need for the information and proposed use: Executive Order 12862, ''Setting Customer Service Standards'' requires that Federal agencies provide the highest quality service to our customers by identifying them and determining what they think about our services. The surveys covered in the request for a generic clearance will provide HUD a means to gather this data directly from our customers. HUD will conduct various customer satisfaction surveys to gather feedback and data directly from our customers to determine the kind and quality of services and products they want and expect to receive.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	10	11724		0.1128	13,229

Total estimated burden hours: 13,229

Status: Reinstatement with change of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 3, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–24965 Filed 10–10–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Shakopee Mdewakanton Sioux Community—Liquor Ordinance To Allow for On-Sale Liquor Transactions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Shakopee Mdewakanton Sioux Community—Liquor Ordinance to Allow for On-Sale Liquor Transactions (Ordinance). The Ordinance regulates and controls the sale, consumption and possession of liquor within the Shakopee Mdewakanton Sioux Community's Indian country. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within its Indian country and at the same time will provide an important source of revenue and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Act is effective as of October 11, 2012.

FOR FURTHER INFORMATION CONTACT: David Christensen, Tribal Operations Officer, Midwest Regional Office, Bureau of Indian Affairs, Norman Pointe II, 5600 West American Boulevard, Bloomington, MN 55437, Telephone (612) 725–4554; Fax (612) 713–4401; or De Springer, Office of Indian Services, 1849 C Street NW., MS/4513/MIB, Washington, DC 20240; Telephone (202) 513–7626; Fax (202) 208–5113.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953; Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Shakopee Mdewakanton Sioux Community Business Council adopted the Liquor Ordinance to Allow for On-Sale Liquor Transactions, by Business Council Resolution No. 08–15–12–01, on August 15, 2012.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Business Council duly adopted the Liquor Ordinance to Allow for On-Sale Liquor Transactions on August 15, 2012.

Dated: October 5, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

The Shakopee Mdewakanton Sioux Community Liquor Ordinance to Allow for On-Sale Liquor Transactions shall read as follows:

Section I. Title

This Ordinance shall be known as the Shakopee Mdewakanton Sioux Community On-Sale Liquor Ordinance. This Ordinance is intended to replace and supersede the Shakopee Mdewakanton Sioux Community Resolution and Ordinance Providing for On-Sale Transactions of Intoxicating Beverages enacted by the Shakopee Mdewakanton Sioux Community General Council on September 21, 1983 and published in the **Federal Register** on April 10, 1984. It is enacted pursuant to Article V, § 1(h) of the Community Constitution.

Section II. Purpose

The purpose is to authorize, regulate and control the sale and serving of on-sale alcoholic beverages within the territory of the Shakopee Mdewakanton Sioux Community in accordance with federal law, the laws of the Tribe and the laws of the State of Minnesota.

Section III. Definitions

A. ''Business Council'' shall mean the body composed of the members of the Tribe's Business Council, duly elected and serving in accordance with the provisions of the Constitution of the Tribe.

B. ''General Council'' shall mean the governing body of the Tribe, in accordance with the provisions of the Constitution of the Tribe.

C. ''License'' shall mean permission to sell liquor for consumption at a Tribally-owned property located within the jurisdiction of the Shakopee Mdewakanton Sioux Community regardless of Reservation status which is issued in accordance with the provisions of this Ordinance.

D. ''Licensed premises'' shall mean: (1) Locations where Tribal gaming or gaming-related activity is authorized and where the Tribal Gaming Enterprise may be authorized to sell liquor if such sales have been authorized by the Shakopee Mdewakanton Sioux Community Gaming Ordinance; (2) designated locations authorized by this Ordinance other than by subsection (1); or (3) gaming or non-gaming locations on other Tribally-owned property.

E. ''Liquor'' shall mean any alcoholic beverage.

F. ''Non-gaming Location'' shall mean those areas of the Reservation or under the jurisdiction of the Tribe where gaming is not authorized. A non-gaming location shall include areas within a Tribal Gaming Enterprise not designated by the Gaming Commission as gaming space within a Tribal Gaming Enterprise location.

G. ''On-sale'' shall mean the sale of liquor for consumption on licensed premises only.

H. ''Tribe'' shall mean the Shakopee Mdewakanton Sioux Community, a federally recognized Indian Tribe organized under Section 16 of the Indian Reorganization Act of 1934.

I. ''Tribal Gaming Enterprise'' shall mean the Tribal department created by Tribal Ordinance and delegated the responsibility to operate and conduct bingo, the sale of pull tabs, gaming in general and the conduct of other games of chance, including but not limited to video games of chance, blackjack, card games, and any other lawful games of chance and to oversee the Tribe's gaming and gaming-related activity.

J. ''Tribal Gaming Location'' shall mean those areas operated and overseen by the Tribal Gaming Enterprise where gaming is authorized and conducted on the Shakopee Mdewakanton Sioux Community Reservation.

Section IV. Business Council Oversight Authority and Reporting Requirements

A. The Business Council of the Tribe shall oversee liquor licensing, sales, and operations on Tribally-owned property located within the jurisdiction of the Shakopee Mdewakanton Sioux Community regardless of Reservation status.

B. All on-sale liquor operations conducted by any Tribally authorized entity on Tribally-owned property within the jurisdiction of the Shakopee Mdewakanton Sioux Community regardless of Reservation status shall report at least annually to the General Council on all on-sale liquor operations.

Section V. Licenses

An annual license for on-sale liquor may be issued only to: (1) The Tribal Gaming Enterprise if it has received authorization as set forth in Section III(D)(1); or (2) a Tribal enterprise provided for in III(D)(3);

A. Any on-sale liquor operation authorized by this Ordinance, including authorization for the Tribal Gaming Enterprise, must apply on behalf of each individual location within the Tribe's jurisdiction for the on-sale liquor license and no sale shall be allowed unless the location has been duly licensed.

B. Licenses shall be for the term of one year, running from the date of issuance through December 31 of the calendar year.

C. Application procedure:

1. A Tribal enterprise including the Tribal Gaming Enterprise, if so authorized, shall complete an application form as provided by the Business Council. The application form shall require details, including but not limited to, the exact location or locations intended to become licensed premises.

2. The Business Council shall be authorized to issue a license for the sale of alcohol for consumption at the following locations: (a) The amphitheater; (b) the Meadows Golf Course; and (c) any areas not designated by the Gaming Commission as gaming space within a Gaming Enterprise location.

3. The Business Council may issue an on-sale liquor license if and when it is determined that all applicable Tribal and Federal requirements are satisfied.

Section VI. Operation Under License

A. A license issued hereunder shall authorize on-sale operations for the sale and consumption of liquor.

B. Plan of Operation:

1. Prior to any sale of liquor, an on-sale liquor operation, other than the Tribal Gaming Enterprise, and those locations identified in Section V (C)(2) above, must submit a specific and detailed plan of operation, including information required by Section V(C)(1) above, for approval by the General Council. No sales shall occur until the General Council has approved the plan. Any alteration of the plan of operation, including any changes regarding locations of alcohol sales and consumption, will require approval from the General Council.

2. If the Tribal Gaming Enterprise has been duly authorized to sell liquor, it shall submit the required plan to the Shakopee Gaming Enterprise Board of Directors for approval.

C. Pursuant to federal law requirements, any on-sale liquor operation must conform its operations to those applicable laws of the State of Minnesota relating to the sale or possession or consumption of alcoholic beverages as required by the applicable Minnesota Statutes Annotated.

D. Any and all on-sale transactions and consumption of liquor shall be confined to licensed premises.

E. All authorized on-sale and consumption liquor operations must keep complete and accurate records of inventory and sales, and provide such information in its report to the General Council.

F. The Business Council may suspend or revoke a license under this Ordinance for violation of any of the terms of this Ordinance; provided that an applicant shall be given notice and an opportunity to request a hearing before the Business Council prior to the suspension or revocation.

Section VII. Sovereign Immunity

Nothing contained in this Ordinance is intended to nor does it in any way limit, alter, restrict, or waive the Tribe's sovereign immunity.

Section VIII. Severability

If any part of this Ordinance shall be found inoperable by operation of law, all surviving parts of this Ordinance shall remain in effect.

Section IX. Jurisdiction

The Tribal Court of the Shakopee Mdewkanton Sioux Community shall

have jurisdiction over disputes arising from this law. Such jurisdiction shall be exclusive to the Tribal Court of the Shakopee Mdewakanton Sioux Community.

Section X. Secretarial Approval

This law shall become effective when it is certified by the Secretary of Interior and published in the **Federal Register**.

[FR Doc. 2012–25025 Filed 10–10–12; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Preparation of the 2013 American Indian Population and Labor Force Report

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Informational Sessions and Tribal Consultation Sessions.

SUMMARY: Indian Affairs will conduct two informational sessions and four leader-to-leader sessions with Indian tribes to obtain oral and written comments concerning preparation of the 2013 American Indian Population and Labor Force Report.

DATES: Written comments are due November 12, 2012. See the **SUPPLEMENTARY INFORMATION** section of this notice for dates of the information sessions and leader-to-leader consultation sessions.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section of this notice for the locations of the informational sessions and leader-to-leader consultation sessions. Submit comments by email to: *consultation@bia.gov* or by U.S. mail to: Office of the Assistant Secretary—Indian Affairs, U.S. Department of the Interior, attn: Steven Payson, Mail Stop 4141 MIB, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For further technical information regarding preparation of the 2013 Labor Force Report, please contact Steven Payson, Economist, Office of the Assistant Secretary—Indian Affairs, at (202) 513–7745. For all other information, please contact Mr. Jonodev Chaudhuri, Counselor to the Assistant Secretary—Indian Affairs, at (202) 208–7613.

SUPPLEMENTARY INFORMATION: Indian Affairs will conduct two informational sessions and four leader-to-leader sessions with Indian tribes to obtain oral and written comments concerning preparation of the 2013 American Indian Population and Labor Force Report.

Informational sessions. Two information sessions on this topic will be held to coincide with the Alaska Federation of Natives Conference and National Congress of American Indians Convention. In addition to an exchange of information, we welcome informal comments during the two informational sessions.

- Annual Alaska Federation of Natives Conference, Room #3, second floor at the Dena'ina Center, 600 W. 7th Avenue, Anchorage, Alaska, Saturday, October 20, 2012, from 9 a.m. to 12 noon AKST (a teleconference line will be available for this informational session and can be accessed at (866) 723–7478, and with participant code #1572466.
- National Congress of American Indians 69th Annual Convention, in Room #305 at the Sacramento Convention Center, 1400 J Street, Sacramento, California, on Wednesday, October 24, 2012, from 6 p.m. to 8 p.m. PST.

Leader-to-leader consultation sessions. As part of our consultation efforts, we will be hosting four leader-to-leader sessions—three in-person sessions and one session via national conference. The four leader-to-leader sessions will build upon the informational sessions and focus on leader-to-leader dialogue. We will develop a transcript for the following leader-to-leader sessions.

- Monday, October 29, 2012, 8:30 a.m. to 12:30 p.m. CST—in the Hilton Garden Inn located at 801 South Meridian, Oklahoma City, Oklahoma. You may contact the hotel at (405) 942–1400.
- Tuesday, October 30, 2012, 1 p.m. to 4 p.m. MST—at the Bureau of Indian Affairs' Western Regional office in the fourth floor Eagle and Buffalo Rooms located at 2600 North Central Avenue, Phoenix, Arizona. Signs will be posted in the lobby and on the fourth floor. The Regional Director's Office will validate parking for the garage located directly behind 2600 North Central Avenue.
- Thursday, November 1, 2012, 8:30 a.m. to 12:30 p.m. MST—Holiday Inn Rushmore Plaza 505 North 5th Street, Rapid City, South Dakota. The Holiday Inn will provide a block of rooms for a limited time. You may contact the hotel at (605) 348–4000.
- Friday, November 9, 2012, from 1 p.m. to 3 p.m. EST at (877) 716–4290, and with participant code 5074051. For any technical assistance during the national call, please contact (202) 208–7163.

Background

Accurate information on the population and employment levels of tribes is critically important for understanding the social and economic circumstances that tribes face and identifying the best policies and strategies for promoting economic development in Indian Country. Congress recognized this importance in the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended, (Pub. L. 102–477, § 17), by requiring the Department of the Interior to publish, at least once every two years, the *American Indian Population and Labor Force Report*. The Act specifically requires:

> [A] report on the population, by gender, eligible for the services which the Secretary provides to Indian people. The report shall include, but is not limited to, information at the national level by State, Bureau of Indian Affairs Service Area, and tribal level for the—
> (1) total service population;
> (2) the service population under age 16 and over 64;
> (3) the population available for work, including those not considered to be actively seeking work;
> (4) the employed population, including those employed with annual earnings below the poverty line; and
> (5) the numbers employed in private sector positions and in public sector positions.

The Department is expected to produce the next *American Indian Population and Labor Force Report* in 2013. In preparation, the Department would like tribes' input on the questions regarding how to define certain terms and how best to obtain the information required by the Act. In the past, Interior has obtained the Labor Force Report information required by the Act by surveying Tribes. Another option to obtain this data would be to acquire it from the U.S. Census Bureau. We are seeking Tribes' input on these options for collecting data, and other issues, including:

(1) To what extent do you have the above-listed population and employment information readily available to respond to a survey?

(2) Would you be willing to respond to such a survey?

(3) Is there other information, beyond that which is specifically required by the Act, that you would be willing to provide in a survey, if the information will help federal or Tribal programming?

(4) Should Interior use information from the Census Bureau to answer the questions for the report? If so, what kind of information should be acquired from the Census Bureau's published statistics? If not, is it a matter of the

availability of the Census Bureau's statistics or a matter of their accuracy (or both)?

(5) If Interior can obtain all of the information needed for the report from the Census Bureau, should it still conduct a survey to ask Tribes for this or other information?

(6) Regardless of whether Interior uses a survey or Census Bureau data for future reports, Interior is considering using information from the Census Bureau, rather than a survey, for the 2013 report to meet the 2013 deadline. What are your views on this approach?

(7) Are there other options for obtaining this information that Interior should consider?

(8) How should ''service population'' by the ''Tribal level'' be defined for this report? For example:

(a) Should it include individuals in the Tribe's general location, or should it include individuals enrolled in the Tribe who may not be in the Tribe's location but may still be eligible for services?

(b) If people are in an area where they may receive services from more than one Tribe, should they be counted only as in the service population of the Tribe in which they are enrolled?

(c) Should service population be measured in terms of geography as opposed to Tribal enrollment?

Dated: September 28, 2012.

Donald E. Laverdure,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 2012–24960 Filed 10–10–12; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP0000 L13110000.XH0000]

Notice of Public Meeting, Pecos District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Pecos District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting is on November 13–14, 2012, from 9 a.m.–4 p.m.

ADDRESSES: The meeting will be at the Bureau of Land Management Carlsbad Field Office, 620 E. Greene, Carlsbad, NM, on November 13, with a tour for RAC members of range improvements on upland and riparian areas on November 14. The public may send written comments to the RAC, 2909 W. 2nd Street, Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: Betty Hicks, Pecos District, Bureau of Land Management, 2909 W. 2nd Street, Roswell, NM 88201, 575–627–0242. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member RAC advises the Secretary of Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico.

Planned agenda items include BLM Application for Permit to Drill (APD) process, State Land Office APD process, Resource Management Plan update, Draft Secretary's Potash Order, Hunting unitization, and Public Land Access.

A half-hour public comment period during which the public may address the Council is scheduled to begin at 3 p.m. on November 13. All RAC meetings are open to the public. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

Douglas J. Burger,

District Manager.

[FR Doc. 2012–25017 Filed 10–10–12; 8:45 am]

BILLING CODE 4310–VA$–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11258; 2200–1100–665]

Notice of Intent to Repatriate Cultural Items: Maxey Museum, Whitman College, Walla Walla, WA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of Maxey Museum, Whitman College, Walla Walla, WA that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice removes two of the unassociated funerary objects published in a Notice of Intent to Repatriate in the **Federal Register** (77 FR 13622–13622, March 7, 2012). The two objects were not included due to a cataloguing error.

In the **Federal Register** (77 FR 13622–13622, March 7, 2012), paragraph six, sentence two is corrected by substituting the following sentence:

> The unassociated funerary objects are: 25 stone implements; 3 pestle fragments; 1 pounding stones; 1 grooved stone; 1 mortar; 2 pestles; 1 bone awl; and 1 lot of metal beads.

In the **Federal Register** (77 FR 13622–13622, March 7, 2012), paragraph 11, sentence one is corrected by substituting the following sentence:

> • Pursuant to 25 U.S.C. 3001(3)(B), the 35 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals.

Additional Requestors

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Gary Rollefson, Maxey Museum, Whitman College, 345 Boyer Avenue, Walla Walla, WA 99362, telephone (509) 527–4938, before November 13, 2012. Repatriation of the unassociated funerary objects to the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe, Idaho (previously listed as Nez Perce Tribe of Idaho) (hereafter referred to as ''The Tribes''); and the Wanapum Band, a non-Federally recognized Indian group, may proceed after that date if no additional claimants come forward.

Maxey Museum, Whitman College is responsible for notifying The Tribes and the Wanapum Band, a non-Federally

recognized Indian group, that this notice has been published.

Dated: September 11, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–25048 Filed 10–10–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11269; 2200–1100–665]

Notice of Inventory Completion: Washington State Parks and Recreation Commission, Olympia, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Washington State Parks and Recreation Commission has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Washington State Parks and Recreation Commission. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Washington State Parks and Recreation Commission at the address below by November 13, 2012.

ADDRESSES: Alicia Woods, Washington State Parks and Recreation Commission, P.O. Box 42650, Olympia, WA 98504–2650, telephone (360) 902–0939.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Washington State Parks and Recreation Commission. The human remains were removed from three different locations in Pacific County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the state agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Washington State Parks and Recreation Commission professional staff in consultation with representatives of the Shoalwater Bay Tribe of the Shoalwater Bay Reservation, Washington, and the Chinook Nation, Washington (a non-Federally recognized Indian group). The Confederated Tribes of the Chehalis Reservation, Washington, were contacted by mail and telephone but declined formal consultation unless neither of the aforementioned groups made a claim.

History and Description of the Remains

Sometime prior to 1958, human remains representing, at minimum, one individual were removed from a house in the town of Ilwaco, in Pacific County, WA. The human remains consist of a partial cranium. The Ralph Wilson family discovered the remains under their house and donated them to the Washington State Parks and Recreation Commission, at Fort Columbia State Park. No known individuals were identified. No associated funerary objects are present.

Sometime prior to 1958, human remains representing, at minimum, one individual were removed from an unknown site located in the town of Ilwaco, in Pacific County, WA. The human remains consist of a mandible and mandibular dentition. Dr. W. Iles discovered the remains and donated them to the Washington State Parks and Recreation Commission, at Fort Columbia State Park. No known individuals were identified. No associated funerary objects are present.

Sometime prior to 2001, human remains representing, at minimum, one individual were removed from a site believed to be located in or near Fort Columbia, in Pacific County, WA. The human remains consist of one nearly complete cranium. As the remains were located in the Fort Columbia State Park collections and were undocumented, they are believed to have originated either from Fort Columbia or from one of three nearby sites. No known individuals were identified. No associated funerary objects are present.

Following examination by a physical anthropologist, the human remains described above were determined to be consistent with Native American heritage based cranial and dental morphological characteristics. All of the remains were removed from locations near Fort Columbia State Park, in Chinook, Pacific County, WA. Fort Columbia was built as a U.S. military installation at Chinook Point beginning in 1896, was completed in 1904, and became a state park in 1950. During its construction, an undocumented number of Native American burials were discovered. Since that time, additional burials have been located in documented sites surrounding the park boundaries.

Fort Columbia State Park is located on the north bank of the Columbia River, along the eastern leg of Baker Bay, east of Chinook Point and at the base of Scarborough Hill. The lands around Baker Bay and along Chinook Point were the aboriginal lands of the lower-river Chinook Indians. Scarborough Hill, along with Chinook Point, has figured prominently in lower-river Chinook Indian legends and served as one of many burial grounds in the area for the Indians. Early explorers Captain Robert Gray (1792), Captain George Vancouver (1792), and Captains Meriwether Lewis and James Clark (1805) documented the lower-river Chinookan Indians, including their traditional habitation of the north bank of the Columbia River during spring and summer months. Throughout the next two centuries, additional documentation of the lower-river Chinook people was produced by explorers, pioneers, anthropologists, and visitors to the region. Based on the location of the remains, the Washington State Parks and Recreation Commission has determined that the Chinook Indians, a non-Federally recognized Indian group, maintains the closest cultural and ancestral connection to these By the end of the nineteenth century, lower-river Chinook society had been all but decimated, and by 1900, some of the remaining Chinook Indians merged with Indians to their north, in the Shoalwater Bay region (now named Willapa Bay). Based on this history, the Washington State Parks and Recreation Commission has determined that the Shoalwater Bay Tribe of the Shoalwater Bay Reservation, Washington, is the Indian tribe having the closest shared group identity with the human remains.

Determinations Made by the Washington State Parks and Recreation Commission

Officials of the Washington State Parks and Recreation Commission have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group

identity that can be reasonably traced between the Native American human remains and the Shoalwater Bay Tribe of the Shoalwater Bay Reservation.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Alicia Woods, Washington State Parks and Recreation Commission, P.O. Box 42650, Olympia, WA 98504–2650, telephone (360) 902–0939, before November 13, 2012. Repatriation of the human remains jointly to the Shoalwater Bay Tribe of the Shoalwater Bay Reservation, Washington, and the Chinook Nation, a non-Federally recognized Indian group, may proceed after that date if no additional claimants come forward.

The Washington State Parks and Recreation Commission is responsible for notifying the Confederated Tribes of the Chehalis Reservation, Washington; the Shoalwater Bay Tribe of the Shoalwater Bay Reservation, Washington; and the Chinook Nation, a non-Federally recognized Indian group, that this notice has been published.

Dated: September 12, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–25046 Filed 10–10–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–11268; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 8, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 26, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 12, 2012.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ILLINOIS

Peoria County

U.S. Post Office and Courthouse, 100 NE. Monroe St., Peoria, 12000878

MINNESOTA

Otter Tail County

United States Post Office and Courthouse, 118 S. Mill St., Fergus Falls, 12000879

NEW JERSEY

Monmouth County

Gregory Primary School, 157 N. 7th Ave., Long Branch, 12000880

NORTH DAKOTA

Cass County

Wilson, Woodrow, School, 315 N. University Dr., Fargo, 12000881

SOUTH CAROLINA

Spartanburg County

Drayton Mill, 1802 Drayton Rd., Spartanburg, 12000882

UTAH

Davis County

Lagoon Carousel, (Lagoon Amusement Park, Farmington, Utah MPS) 375 Lagoon Dr., Farmington, 12000883

Lagoon Flying Scooter, (Lagoon Amusement Park, Farmington, Utah MPS) 375 N. Lagoon Dr., Farmington, 12000884

Lagoon Roller Coaster, (Lagoon Amusement Park, Farmington, Utah MPS) 375 N. Lagoon Dr., Farmington, 12000885

[FR Doc. 2012–24959 Filed 10–10–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–11231; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 1, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 26, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 6, 2012.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Cochise County

Camp Naco Historic District, Jct. of Willson Rd. & Newell St., Naco, 12000853

Pima County

University Indian Ruin Archaeological Research District, 2799 N. Indian Ruins Rd., Tucson, 12000854

ARKANSAS

Benton County

Rogers Commercial Historic District, (Benton County MRA) 300 blk. S. 1st, 100 blk. S. 2nd, 200 blk. W. Walnut, & 200 blk. W. Elm Sts., Rogers, 12000855

Lawrence County

Building Number 29, (World War II Home Front Efforts in Arkansas, MPS) 162 N. Beacon Rd., Walnut Ridge, 12000856

Pulaski County

South Main Street Residential Historic District (Boundary Increase), 2006–2008, 2014 S. Scott, & 114, 116, 118 E 21st Sts., Little Rock, 12000857

Woodruff County

Gregory House, 300 S. 2nd St., Augusta, 12000858

CALIFORNIA

Los Angeles County

CA–LAN–1258, (Rock Art Sites of the Angeles National Forest, California) Address Restricted, Canyon Country, 12000861

CA–LAN–1302, (Rock Art Sites of the Angeles National Forest, California) Address Restricted, Azusa, 12000862

CA–LAN–1946, (Rock Art Sites of the Angeles National Forest, California) Address Restricted, Acton, 12000860

CA–LAN–441, (Rock Art Sites of the Angeles National Forest, California) Address Restricted, Castaic, 12000863

CA–LAN–540, (Rock Art Sites of the Angeles National Forest, California) Address Restricted, Agua Dulce, 12000859

DISTRICT OF COLUMBIA

District of Columbia

Maycroft, The, (Apartment Buildings in Washington, DC, MPS) 1474 Columbia Rd. NW., Washington, 12000864

FLORIDA

Manatee County

Palmetto Armory, 810 6th St., W., Palmetto, 12000865

Wakulla County

Mount Beasor Primitive Baptist Church, 120 Mount Beasor Rd., Sopchoppy, 12000866

HAWAII

Honolulu County

East—West Center Complex, 1601 East-West Rd., Honolulu, 12000867

KANSAS

Riley County

Walters, Daniel and Maude, House, (Late 19th and Early 20th Century Residential Resources in Manhattan, Kansas MPS) 100 S. Delaware Ave., Manhattan, 12000868

Rush County

Miller Farmstead, (Agriculture-Related Resources of Kansas) 2913 KS 4, La Crosse, 12000869

MICHIGAN

Wayne County

Campau, Jos., Historic District, Bounded by Holbrook, Pulaski, Casmere, & Lehman Sts., Hamtramck, 12000870

MINNESOTA

Itasca County

Bigfork Village Hall, (Federal Relief Construction in Minnesota MPS) 200 Main Ave., Bigfork, 12000871

McLeod County

Glencoe Grade and High School, 1107 11th St., E., Glencoe, 12000872

MISSOURI

Saline County

Fitzgibbon Hospital, 868 S. Brunswick Ave., Marshall, 12000874

St. Louis Independent city

Central High School, (St. Louis Public Schools of William B. Ittner MPS) 3616 Garrison, St. Louis (Independent City), 12000873

NEW MEXICO

Santa Fe County

Baumann, Jane and Gustave, House and Studio, 409 Camino de Las Animas, Santa Fe, 12000875

NEW YORK

Essex County

Putnam Camp, 1196 NY 73, Saint Huberts, 12000876

OREGON

Clackamas County

Roehr, Osco C., House, 128 North Shore Cir., Lake Oswego, 12000877

[FR Doc. 2012–24958 Filed 10–10–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below. The meeting of the Council is open to the public.

DATES: The Council will convene the meeting on Wednesday, November 7, 2012, at 3 p.m. and recess at approximately 6 p.m. The Council will reconvene the meeting on Thursday, November 8, 2012, at 8:30 a.m. and adjourn the meeting at approximately 11 a.m.

ADDRESSES: The meeting will be held at the Central Arizona Water Conservation District Office, 23636 North 7th Street, Phoenix, Arizona. Send written comments to Mr. Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; facsimile (801) 524–3847; email at: *kjacobson@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; facsimile (801) 524–3847; email at: *kjacobson@usbr.gov.*

SUPPLEMENTARY INFORMATION: Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided at least 5 days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

The purpose of the meeting is to discuss the accomplishments of Federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities, the contents of the reports, and the Basin States Program created by Public Law 110–246, which amended the Act.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, please be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 14, 2012.

Larry Walkoviak,

Regional Director, Upper Colorado Region.

[FR Doc. 2012–25014 Filed 10–10–12; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Notice of Meeting

AGENCY: Office on Violence Against Women, United States Department of Justice.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming public meeting of the Task Force on Research on Violence Against American Indian and Alaska Native Women (hereinafter ''the Task Force'').

DATES: The meeting will take place on October 30 and 31, 2012 from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will take place at the Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., 3rd Floor Ballroom, Washington, DC 20531. The public is asked to pre-register by October 23, 2012 for the meeting due to security considerations and so that there is adequate space (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 145 N Street NE., Suite 10W.121, Washington, DC 20530; by telephone at: (202) 514–8804; email: *Lorraine.edmo@usdoj.gov;* or fax: (202) 307–3911. You may also view information about the Task Force on the Office on Violence Against Women Web site at: *http://www.ovw.usdoj.gov/section904-taskforce.html.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. Title IX of the Violence Against Women Act of 2005 (VAWA 2005) requires the Attorney General to establish a Task Force to assist the National Institute of Justice (NIJ) to develop and implement a program of research on violence against American Indian and Alaska Native women, including domestic violence, dating violence, sexual assault, stalking, and murder. The program will evaluate the effectiveness of the Federal, state, and tribal response to violence against Indian women, and will propose recommendations to improve the government response. The Attorney General, acting through the Director of the Office on Violence Against Women, established the Task Force on March 31, 2008.

This meeting will include an update on NIJ's program of research, an overview of NIJ's Federal Response Study, an overview of the Center for Disease Control's 2010 General Population National Intimate Partner and Sexual Violence Surveillance Study (NISVS) and NIJ's American Indian and Alaska Native NISVS Oversample Study, an overview of NIJ's proposed sampling plan for a baseline study, and a presentation on refinement and field implementation of the Tribal Study of Public Safety and Public Health Issues Facing American Indian and Alaska Native Women as well as facilitated Task Force member discussion. In addition, the Task Force is also welcoming public oral comment at this meeting and has reserved an estimated 15 minutes on October 30 and 31 for this purpose. Members of the public wishing to address the Task Force must contact Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 145 N Street NE., Suite 10W.121, Washington, DC 20530; by telephone at: (202) 514–8804; email: *Lorraine.edmo@usdoj.gov;* or fax: (202) 307–3911.

The meeting will take place on October 30 and 31, 2012 from 8:30 a.m. to 5 p.m. and will include lunch breaks. Time will be reserved for public comment from 11:45 a.m. to 12 p.m. on October 30 and 31. See the section below for information on reserving time for public comment.

Access: This meeting will be open to the pubic but registration on a space available basis and for security reasons is required. All members of the public who wish to attend must register in advance of the meeting by October 23, 2012 by contacting Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, by email: *Lorraine.edmo@usdoj.gov*; or fax: (202) 307–3911. All attendees will be required to sign in and be processed through Security at the Lobby Visitors Desk. Please bring photo identification and allow extra time prior to the start of the meeting.

All members of the press who wish to attend and/or record any part of the meeting must register in advance of the meeting by October 23, 2012 by contacting Lorraine Edmo as noted above. In addition to being processed through Security at the Lobby Visitors Desk, all members of the press are required to sign in at meeting registration and must present government-issued photo I.D. (such as a driver's license) as well as valid media credentials. Please allow extra time prior to the start of the meeting for registering.

The meeting site is accessible to individuals with disabilities. Individuals who require special accommodation in order to attend the meeting should notify Lorraine Edmo no later than October 23, 2012.

Written Comments: Interested parties are invited to submit written comments by October 23, 2012 to Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 145 N Street NE., Suite 10W.121, Washington, DC 20530 by mail; or by email: *Lorraine.edmo@usdoj.gov;* or by fax: (202) 307–3911.

Public Comment: Persons interested in participating during the public comment period of the meeting are requested to reserve time on the agenda by contacting Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, by email: *Lorraine.edmo@usdoj.gov;* or fax: (202) 307–3911 by October 23, 2012. Requests must include the participant's name, organization represented, if appropriate, and a brief description of the subject of the comments. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit written copies of their comments at the meeting. Comments that are submitted to Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 145 N Street NE., Suite 10W.121, Washington, DC 20530 by mail; by email: *Lorraine.edmo@usdoj.gov;* or fax: (202) 307–3911 before October 23, 2012 will be circulated to Task Force members prior to the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible. Persons unable to obtain reservations to speak during the meeting are encouraged to submit written comments, which will be accepted at the meeting location or may be mailed to the attention of Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 145 N Street NE., Suite 10W.121, Washington, DC 20530.

Dated: October 3, 2012.

Bea Hanson,

Acting Director, Office on Violence Against Women.

[FR Doc. 2012–24984 Filed 10–10–12; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on September 10, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Trihydro, Laramie, WY, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on July 5, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 5, 2012 (77 FR 54612).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–24992 Filed 10–10–12; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Heterogeneous System Architecture Foundation

Notice is hereby given that, on August 31, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Heterogeneous System Architecture Foundation (''HSA Foundation'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Advanced Micro Devices Inc, Austin, TX; ARM, Ltd., Cambridge, UNITED KINGDOM; Imagination Technologies Group plc, Kings Langley, Hertfordshire, UNITED KINGDOM; MediaTek Inc., Hsinchu City, Taiwan, PEOPLE'S REPUBLIC OF CHINA; and Texas Instruments Inc., Dallas, TX.

The general area of HSA Foundation's planned activity shall include, but not be limited to, building and promoting the common business interests of the semiconductor industry by encouraging the broad and open industry adoption of the heterogeneous system architecture and stimulating a free exchange of information benefitting the industry.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–24997 Filed 10–10–12; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that, on September 10, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between May to September 2012 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on May 11, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 8, 2012 (77 FR 34069).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–24995 Filed 10–10–12; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Data Sharing Agreement Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, ''Data Sharing Agreement Program,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before November 13, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: An important aspect of the mission of the BLS is to disseminate to the public the maximum amount of information possible; however, not all data are publicly available, because of the importance of maintaining the confidentiality of BLS data. The BLS has opportunities available, on a limited basis, for eligible researchers to access confidential data for purposes of conducting valid statistical analyses that further the mission of the BLS, as permitted by the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA).

In order to provide access to confidential data, the BLS must determine that the researcher's project will be exclusively statistical in nature and that the researcher is eligible based on guidelines set out in the CIPSEA, OMB implementation guidance on the CIPSEA, and BLS policy. This information collection provides the vehicle through which the BLS will obtain the necessary details to ensure all researchers and projects comply with appropriate laws and policies. The BLS has made some clarifying revisions to forms in this collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0180. The current approval is scheduled to expire on October 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on May 17, 2012 (77 FR 29367).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0180. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Data Sharing Agreement Program.

OMB Control Number: 1220–0180.

Affected Public: Individuals and Households.

Total Estimated Number of Respondents: 172.

Total Estimated Number of Responses: 172.

Total Estimated Annual Burden Hours: 633.

Total Estimated Annual Other Costs Burden: $0.

Dated: October 4, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–24986 Filed 10–10–12; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Agreement Approval Process for Use of Functional Affirmative Action Programs

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Federal Contract Compliance Programs (OFCCP) sponsored information collection request (ICR) proposal titled, ''Agreement Approval Process for Use of Functional Affirmative Action Programs,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before November 13, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OFCCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The regulations implementing Executive Order 11246 permit Federal supply and service contractors to develop affirmative action programs (AAPs) that are based on business functions or business units rather than AAPs based on establishments. *See* 41 FR 60–2.1(d)(4). Functional affirmative action programs (FAAPs) are designed to provide contractors with the option of creating AAPs that better fit their business needs. To develop and implement a FAAP, a Federal contractor must receive written approval from the Director of the OFCCP. This ICR addresses the collection of information associated with the process for obtaining, modifying, updating, and renewing an agreement that allows a contractor to develop and use a FAAP.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5

CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on May 22, 2012 (77 FR 30327).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201205–1250–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OFCCP.

Title of Collection: Agreement Approval Process for Use of Functional Affirmative Action Programs.

OMB Control Number: 201205–1250–001.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 121.

Total Estimated Number of Responses: 121.

Total Estimated Annual Burden Hours: 926.

Total Estimated Annual Other Costs Burden: $175.

Dated: October 4, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–24989 Filed 10–10–12; 8:45 am]

BILLING CODE 4510–45–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Medical Support Notice—Part B

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''National Medical Support Notice—Part B,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before November 13, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Employee Retirement Income Security Act (ERISA) section 609(a), 29 U.S.C. 1169(a), and regulations 29 CFR 2590.609–2 establish a National Medical Support Notice to provide group health benefits coverage pursuant to Qualified Medical Child Support Orders. Part B, *Medical Support Notice to Plan Administrator,* is a notice from an employer to a benefits plan administrator to implement coverage of children under ERISA covered group health plans.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0113. The current approval is scheduled to expire on October 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on June 25, 2012 (77 FR 37920).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0113. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: National Medical Support Notice—Part B.

OMB Control Number: 1210–0113.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 492,000.

Total Estimated Number of Responses: 12,400,000.

Total Estimated Annual Burden Hours: 1,000,000.

Total Estimated Annual Other Costs Burden: $6,800,000.

Dated: October 3, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–24993 Filed 10–10–12; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Investment Act Adult and Dislocated Worker Programs Gold Standard Evaluation Follow-Up Surveys, Veterans Study, and Cost Data

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) proposal titled, ''Workforce Investment Act Adult and Dislocated Worker Programs Gold Standard Evaluation Follow-Up Surveys, Veterans Study, and Cost Data,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before November 13, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR covers two follow-up surveys conducted 15 and 30 months after randomly assigning a sample of approximately 6,000 Workforce Investment Act (WIA) customers included in the WIA Evaluation into control or treatment groups; cost data collected on three forms—a program costs questionnaire, a staff activity log, and a resource room sign-in sheet—for use in estimating the costs of WIA services received by sample members for the benefit-cost analysis; and collection of veterans data—consisting of qualitative data on veterans served at the 28 Local Workforce Investment Areas (LWIAs) participating in the WIA Evaluation. For the Veterans Supplemental Study (VSS) qualitative analysis, additional questions and several activities will be added to the WIA Evaluation's second round of site visits to the 28 LWIAs. A separate quantitative analysis will use two sets of administrative data that States already report to the DOL–WIA Standardized Record Data and Wagner-Peyser data. Because the data are already reported to the DOL, there is no additional burden associated with this quantitative data collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on June 25, 2012 (77 FR 37923).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201208–1205–012. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Workforce Investment Act Adult and Dislocated Worker Programs Gold Standard Evaluation Follow-Up Surveys, Veterans Study, and Cost Data.

OMB ICR Reference Number: 201208–1205–012.

Affected Public: Individuals or Households and State, Local and Tribal Governments.

Total Estimated Number of Respondents: 12,488.

Total Estimated Number of Responses: 13,159.

Total Estimated Annual Burden Hours: 2,581.

Total Estimated Annual Other Costs Burden: $0.

Dated: October 2, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–25006 Filed 10–10–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Lower Living Standard Income Level (LLSIL); Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; correction.

SUMMARY: The Employment and Training Administration (ETA) published in the **Federal Register** on Wednesday, March 28, 2012 an announcement of the 2012 LLSIL (Vol. 77, No. 60, page 18865, see *http://www.gpo.gov/fdsys/pkg/FR-2012-03-28/pdf/2012-7377.pdf*). The announcement included a reassignment of the Virgin Islands (VI) to the South jurisdiction. This correction returns the VI to the Northeast region, and is retroactive to March 28, 2012.

No other corrections are made, and the remainder of the LLSIL tables published on March 28, 2012 remain the same.

DATES: This Notice is effective on March 28, 2012.

For Further Information Or Questions On LLSIL: Please contact Samuel Wright, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C–44510, Washington, DC 20210; Telephone: 202–693–2870; Fax: 202–693–3015 (these are not toll-free numbers); Email address: *wright.samuel.e@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via Text Telephone (TTY/TDD) by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

Signed at Washington, DC, this 1st day of October, 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012–25007 Filed 10–10–12; 8:45 am]

BILLING CODE 4510–FT–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering (CEOSE); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: October 30, 2012, 10 a.m.–5:30 p.m.; October 31, 2012, 9 a.m.–12:30 p.m.

Place: National Science Foundation (NSF), 4201 Wilson Boulevard, Arlington, VA 22230.

To help facilitate your entry into the building, contact the individual listed below. Your request should be received by email (*banderso@nsf.gov*) on or prior to October 25, 2012.

Type of Meeting: Open.

Contact Person: Dr. Bernice T. Anderson, Senior Advisor and CEOSE Designated Federal Officer, Office of International and Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone Numbers: (703) 292–5151, (703) 292–8040 email: *banderso@nsf.gov.*

Minutes: Meeting minutes and other information may be obtained from the Senior Advisor and CEOSE Designated Federal Officer at the above address or the Web site at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

Tuesday, October 30, 2012

Opening Statement by the CEOSE Chair

Presentations and Discussions

- Concurrence on the CEOSE Minutes of the June 19–20, 2012 Meeting
- Presentation of Key Points from the Meeting among the National Science Foundation Director and CEOSE officers
- A Conversation with Dr. Subra Suresh, Director and Dr. Cora B. Marrett, Deputy Director of the National Science Foundation
- Reports of CEOSE Liaisons to NSF Advisory Committees
- Discussion by Federal Agency Liaisons and working group representatives about interagency broadening participation activities
- Discussion about the 2011–2012 biennial CEOSE report

Wednesday, October 31, 2012

Opening Statement by the CEOSE Chair

Presentations, Discussions, and Reports

- Broadening Participation Activities of NSF Centers and MRI Program
- NSF Diversity and Inclusion Strategic Plan
- Discussion about the biennial report continued
- Discussion on CEOSE Unfinished Business and New Business

Dated: October 4, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–24933 Filed 10–10–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275, 50–323; NRC–2012–0234]

Pacific Gas and Electric; Diablo Canyon Power Plant, Units 1 and 2; Application for Amendment to Facility Operating License

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal.

ADDRESSES: Please refer to Docket ID NRC–2012–0234 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0234. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS *Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sebrosky, Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1132; email: *Joseph.Sebrosky@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has granted the request of Pacific Gas and Electric (the licensee) to withdraw its application dated October 24, 2011 (ADAMS Accession No. ML11326A070), as supplemented by letters dated March 30, April 12, April 30, and June 18, 2012 (ADAMS Accession Nos. ML12093A043, ML12104A022, ML12122A012, and ML12171A233, respectively), for a proposed amendment to Facility Operating License Nos. DPR–80 and DPR–82 for the Diablo Canyon Power Plant, Units 1 and 2, located in San Luis Obispo County, California.

The proposed amendment would have modified the facility Technical Specification 3.3.5, ''Loss of Power Diesel Generator Start Instrumentation,'' to correct the nonconservative first level undervoltage relays limits contained in Surveillance Requirement 3.3.5.3; revise the Final Safety Analysis Report Update (FSARU) Appendix 6.2D and Sections 6.3, 15.3, and 15.4; revise the loss-of-coolant accident control room operator and offsite dose analysis of record described in the FSARU; and provide a

new process for revising input values to this analysis.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 15, 2012 (77 FR 28632). However, by letter dated September 27, 2012 (ADAMS Accession No. ML12272A098), the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 24, 2012, as supplemented by letters dated March 30, April 12, April 30, and June 18, 2012, and the licensee's letter dated September 27, 2012, which withdrew the application for license amendment.

Dated at Rockville, Maryland, this 3rd day of October, 2012.

For the Nuclear Regulatory Commission.

Joseph M. Sebrosky,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–24996 Filed 10–10–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee On US–APWR; Notice of Meeting

The ACRS Subcommittee on US–APWR will hold a meeting on October 18–19, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is propriety pursuant to 5 U.S.C. 552(c)(4). The agenda for the subject meeting shall be as follows:

Thursday, October 18, 2012—8:30 a.m. Until 5 p.m.; Friday, October 19, 2012—8:30 a.m. Until 12 p.m.

The Subcommittee will review Chapter 4, ''Reactor,'' of the Safety Evaluation Reports associated with the US–APWR design certification and the Comanche Peak Combined License Application (COLA). They will also review the following Topical Reports: MUAP–07008–P, ''Mitsubishi Fuel Design Criteria and Methodology'' and MUAP–7010–P, ''Non-LOCA Methodology,'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Luminant Generation Company, LLC, Mitsubishi Heavy Industries (MHI), and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or email: *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: October 3, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–25003 Filed 10–10–12; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

System of Records; Presidential Management Fellows Program

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of amendment to system of records.

SUMMARY: OPM has amended an existing system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a). This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of system of records maintained by the agency (5 U.S.C. 552a(e)(4)). One category of information is no longer necessary to collect, and two categories of information are being added to the systems notice. In addition, Presidential Management Fellows Program data formerly collected by the Office of Personnel Management Human Resource Solutions will now be collected by a contractor. A routine use was added to permit releases from the system to OPM or other government contractors who need access to the system.

DATES: The amendments to the systems notice will become effective 40 days after the date of publication in the **Federal Register** unless comments are received that result in further changes to the notice. The system has been operational for 14 years. Comments will be accepted until November 20, 2012.

ADDRESSES: Written comments must be sent to the U.S. Office of Personnel Management, Presidential Management Fellows Program, ATTN: Juanita Wheeler (OPM\Central–11), 1900 E Street NW., Room 6500, Washington, DC 20415 or email *PMF@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Todd Hewell, (202) 606–1040, fax (202) 606–3040, or email to *pmf@opm.gov.* Please include your complete mailing address with your request.

SUPPLEMENTARY INFORMATION: This notice serves to update and amend collection and maintenance of OPM\Central–11 (Presidential Management Fellows Program) as a result of new program regulations as well as a change from a government-operated Talent Acquisition System (TAS) to a contractor operated system. The PMF Program authority changed with Executive Order 13562, Recruiting and Hiring Students and Recent Graduates (Presidential Management Fellows Program), signed by President Barack Obama on December 27, 2010. Changes to data collection listed within

the categories of records for this system include the following: (1) Elimination of nominations by accredited educational institutions (hence, the elimination of Nominee status for applicants); (2) the added collection of academic transcripts for verification of eligibility; and (3) the collection of Applicant Flow Data in the TAS in accordance with the approved Office of Management and Budget Approval #3046–0046. As part of its effort to revamp the PMF Program, the program office sought to improve the applicant experience and improve the data collection systems by contracting with a private talent acquisition system provider. Pursuant to the contract with OPM, that provider is required to comply with any applicable requirements of the Privacy Act.

In addition, pursuant to the terms of the contract, each contract employee who has access to the PMF system is required to undergo an adjudication of their fitness to have access to work of this nature and to assess their fitness to perform this work, based upon an appropriate background investigation. Beginning in November 2012, data for the Class of 2013 will be collected by the contractor. During the initial six months of operation, the existing OPM Human Resource Services (HRS) operated system in Macon, GA will continue to function in parallel with the new system and will remain the system of record for 2012 and prior Presidential Management Fellows. By March 2013, all data contained in the HRS system in Macon will be migrated to the contractor. A routine use has been added to this systems notice to permit release of records to contractors working on the system pursuant to a contract with OPM or the Federal government.

U.S. Office of Personnel Management.

John Berry,

Director.

OPM\CENTRAL–11

SYSTEM NAME:

Presidential Management Fellows (PMF) Program Records.

SYSTEM LOCATION:

Presidential Management Fellows Program Office, U.S. Office of Personnel Management, 1900 E Street NW., Room 6500, Washington, DC 20415. Electronic records will be stored at contractor facilities located in Ashburn, VA (Primary site) and McLean, VA (Alternate site).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on current and former PMFs; students pursuing or recently completing an advanced degrees, such as a masters or professional degree; as well as contact information for Program stakeholders (e.g., Agency PMF Coordinators, supervisors of PMFs).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about the covered individuals relating to name, Social Security Number, academic background, home address, telephone numbers, email addresses, employment history, veterans' preference, academic transcripts and other personal information needed during the application, assessment, and selection processes, and as needed for training and development opportunities impacting PMFs and participating agencies. The system will also contain applicant flow data collected in accordance with the Office of Management and Budget Approval #3046–0046. This system will contain confidential evaluation information and assessment scores not available to the public, to applicants, to academic institutions, and to participating Federal Agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 13562, signed by President Barack Obama on December 27, 2010.

PURPOSE(S):

These records are used by program personnel for the following reasons:

a. To determine basic program eligibility and to evaluate applicants in a structured assessment process conducted by OPM.

b. To group the interested individuals into various categories (e.g., Candidates, Applicants, Eligibles, Ineligibles, Semi-Finalists, Finalists, Non-Selectees, Fellows, Former Fellows, and Alumni) and make a final determination as to those applicants who will be referred (as Finalists to become Fellows) to participating Federal Agencies for employment consideration.

c. For program evaluation functions to determine the effectiveness of the program and to improve program operations.

d. To facilitate interaction and communication between PMF Program participants and alumni.

e. To track PMF appointments, certifications, conversions, reappointments, withdrawals, resignations, extensions, and waivers.

f. To track agency reimbursements for PMF appointments.

g. To schedule and track PMF participation in Program-sponsored training and development events (e.g., orientation, forums, graduation).

h. To track contact information of Applicants (at all stages), Agency PMF Coordinators, PMF supervisors, Pathways Program Officers, and other relevant stakeholders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To refer pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order when there is an indication of a violation or potential violation of civil or criminal law or regulation.

2. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

3. To disclose information to another Federal Agency, a Court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal Agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

4. To disclose information to the U.S. Department of Justice or in a proceeding before a court, adjudicative body or other administrative body before which OPM is authorized to appear, when:

a. OPM, or any component thereof; or

b. Any employee of OPM in his or her official capacity; or

c. Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or

d. The United States, when OPM determines that litigation is likely to affect OPM or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

5. To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

6. To disclose information to the Equal Employment Opportunity Commission, when requested, in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal Agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

7. To disclose information to the Federal Labor Relations Authority or its General Counsel, when requested, in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

8. To refer candidates to Federal Agencies for employment consideration.

9. To refer candidates to State and local governments, congressional offices, international organizations, and other public offices, with permission of the candidates, for the purpose of employment consideration and developmental opportunities.

10. To refer Fellows for consideration for reassignment, reappointment, and/or promotion within the employing Federal Agencies.

11. As a data source for management information of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel research functions or manpower studies, or to locate individuals for personnel research.

12. To request information from a Federal, State, or local agency maintaining civil, criminal or other information relevant to an agency decision concerning the hiring or retention of a candidate.

13. To provide an academic institution with information on a recent graduate's participation in the PMF Program, covering application, selection and appointment to a Federal position at a certain grade level, and graduation (completion of the PMF Program).

14. To disclose information to contractors performing or working on a contract on behalf of OPM, or job for the Federal Government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All data stored within the contractor hosting and backup facilities is encrypted utilizing data at rest encryption technologies. A complete data backup is stored on a weekly basis and is then replicated to a physically separate datacenter location and kept for the duration of the retention period.

Paper copies of the scoring for the in-person assessments are maintained in lockable metal file cabinets or in a secured office suite at OPM Headquarters, 1900 E Street NW., Washington, DC and in computerized systems accessible to only those program staff whose official duties necessitate such access. Up until electronic records are migrated to the contractor system, OPM computerized systems adhere to current information technology and security policies and requirements and include confidential passwords for access to these automated records.

RETRIEVABILITY:

These records are indexed by name of applicants, maiden name (if applicable), graduate schools, State of residence, Social Security Number, professional/graduate/undergraduate degree, veterans' preference, status in PMF Program (e.g., Candidate, Applicant, Eligible, Ineligible, Semi-Finalist, Finalist, Non-Selectee, Fellow, Former Fellow, and Alumni), citizenship, foreign language(s), geographic employment preference(s), skill sets/competencies, and any combination of these.

SAFEGUARDS:

Proper safeguards are in place within both the primary and alternate hosting facilities. Each facility leverages security equipment, techniques, and procedures to control, monitor, and record access to the facility, including customer cage areas. Data centers are staffed at all times, i.e., even during the night, on weekends, and on holidays. All perimeter doors have biometric with card access readers. Each door is also equipped with sensors to alert security staff of forced entries and is monitored by closed-circuit television. Records are maintained in a secured space and in computerized systems accessible to only those program staff whose official duties necessitate such access. Confidential passwords are required for access to these automated records. Computerized systems adhere to current information technology and security policies and requirements. All contractor personnel with a need to access data records in this system will undergo a background security investigation prior to being granted access. All of that provider's officials having access to the PMF system will undergo an adjudication, pursuant to the terms of the contract, of their fitness to have access to work of this nature and to assess their fitness to perform this work, based upon an appropriate background investigation. In addition, contractor personnel are required by the terms of the contract to adhere to relevant provisions of the Privacy Act.

RETENTION AND DISPOSAL:

Application files are maintained for a maximum of three (3) years; the automated data base of PMF participant information will be destroyed when no longer needed for administrative purposes.

The PMF Program Office maintains a database system tracking all applicant history and program status from 1997 to the present. All hardcopies are maintained in lockable filing cabinets and are archived in accordance with OPM's Records Management Handbook and records retention schedules.

MEDIA SANITIZATION AND DISPOSAL

The contractor has adopted and implemented policies and procedures to address removal of confidential information including protected data from electronic media before the media are made available for re-use, and final disposition of confidential information including protected data and/or the hardware or media on which it is stored. Destruction is done on-site through specialized services.

SYSTEM MANAGER(S) AND ADDRESS:

Presidential Management Fellows Program Office, Attn: Rob Timmins, U.S. Office of Personnel Management, 1900 E Street NW., Room 6500, Washington, DC 20415, Office (202) 606–1040, Fax (202) 606–3040, Email *pmf@opm.gov*.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager. You must furnish the following information for your records to be located and identified:

a. Full Name at Time of Application

b. Maiden Name (if applicable)

c. Home Address referenced at Time of Application

d. Advanced Academic Degree referenced at Time of Application

e. Year Applied to Program

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to and amendment of records. The section of the notice, titled Systems Exempted from Certain Provisions of the Act, indicates the kinds of materials exempted and the reasons for exempting them from access.

Current or former applicants who wish to gain access to their non-exempt

records should direct such a request in writing to the system manager. You must furnish the following information for your records to be located and identified.

a. Full Name at Time of Application

b. Maiden Name (if applicable)

c. Home Address referenced at Time of Application

d. Advanced Academic Degree referenced at Time of Application

e. Year Applied to Program

Individuals must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURE:

Specific material in this system has been exempted from Privacy act provisions at 5 U.S.C. 552a(d), regarding access to and amendment of records. The section of the notice titled Systems Exempted from Certain Provisions of the Act, indicates the kinds of materials exempted and the reasons for exempting them from amendment.

Current or applicants wishing to request amendment of their non-exempt records should contact the OPM PMF system manager. You must furnish the following information for your records to be located and identified:

a. Full Name at Time of Application

b. Maiden Name (if applicable)

c. Home Address referenced at Time of Application

d. Advanced Academic Degree referenced at Time of Application

e. Year Applied to Program

Individuals must also comply with OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual to whom it applies;

b. Colleges and Universities;

c. Federal officials involved in the screening and selection process;

d. Employing Federal Agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. OPM has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records, for any such testing or examination materials in the system.

[FR Doc. 2012–25030 Filed 10–10–12; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67976; File No. SR–Phlx–2012–105]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Regarding Treasury Securities Options

October 4, 2012.

I. Introduction

On August 7, 2012, NASDAQ OMX PHLX LLC (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new rules in the Exchange's 1000D Series to permit the listing and trading of options on Treasury securities. The proposed rule change was published for comment in the **Federal Register** on August 23, 2012.[3] On September 25, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The Exchange proposes to adopt rules that would, in conjunction with current applicable Exchange rules and procedures, permit the listing and trading of options on Treasury securities.[5] The Exchange intends to list and trade standardized options on two specific types of marketable on-the-run Treasury securities: notes and bonds. Treasury securities options will be designated by reference to the issuer of the underlying Treasury security, principal amount, expiration month (and year for the longest term option series), exercise price, type (put or call), stated rate of interest, and stated date of maturity or nominal term to maturity.

Pricing and Transparency. Treasury securities are initially sold in a scheduled auction process and thereafter trade in a secondary market. The Exchange asserts that the prices of Treasury securities are widely disseminated, active, and visible to traders and investors. In addition, the Exchange represents that it intends to obtain real-time Treasury prices from a market data provider so that it can use these data in support of the Exchange's market, regulatory, and surveillance operations, as well as for opening and determining settlement values for Treasury options. The Exchange has represented that, 30 days prior to the start of trading Treasury security options, it will make an announcement, via an Options Trader Alert, to its member organizations regarding the details of the proposed real-time Treasury price offering. The Exchange has represented that, on the basis of the real-time Treasury data that the Exchange is able to get, it may offer an alternative Treasury data feed to Exchange members that may desire to acquire such data from the Exchange.

The Exchange would list options only on on-the-run Treasury securities. The Exchange believes that these securities are extremely liquid and afford excellent price discovery because on-the-run (as opposed to off-the-run) Treasury securities are the most recently issued U.S. Treasury bonds or notes and are the most frequently traded securities of a maturity. Further, the Exchange notes that on-the-run Treasury securities are readily quoted and offered by numerous public sources and broker-dealers, and that prices are also available from exchanges that trade derivatives on Treasuries.

Trading Rules. Treasury securities options will trade on the Exchange's electronic options platform, Phlx XL,[6] and settle like equity options on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67683 (August 17, 2012), 77 FR 51088 (August 23, 2012) (''Notice'').

[4] In Amendment No. 1, the Exchange proposed minor wording changes to substitute the phrase ''options listing timeframe'' for the certain other phrases throughout the rule text and Exhibit 1. Amendment No. 1 is technical in nature, and therefore the Commission is not publishing Amendment No. 1 for public comment.

[5] Subsection (a)(1) of proposed Rule 1001D defines the term ''Treasury security'' as a bond or note or other evidence of indebtedness that is a direct obligation of, or an obligation guaranteed as to principal or interest by, the United States or a corporation in which the United States has a direct or indirect interest (except debt securities guaranteed as to timely payment of principal and interest by the Government National Mortgage Association). Securities issued or guaranteed by individual departments or agencies of the United States are sometimes referred to by the title of the department or agency involved (*e.g.,* a ''Treasury security'' is a debt instrument that is issued by the U.S. Treasury).

[6] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32) (order approving Phlx XL II).

Exchange. Exchange rules applicable to equity options trading generally will be applicable to Treasury securities options unless a specific rule in the 1000D Series is to the contrary or supplements an existing rule. Trading hours will correspond to the hours during which equity options are normally traded on the Exchange, which currently are 9:30 a.m. to 4 p.m. ET.

Terms and Criteria for Listing and Trading. Treasury securities may be initially approved by the Exchange as underlying securities for Exchange transactions in specific CUSIP options, subject to requirements as to size of original issuance (the original public sale of an underlying Treasury security must be at least $1 billion in principle), aggregate principal amount outstanding, and years to maturity. Additionally, approval will extend only to the settled, on-the-run Treasury securities.[7] The Exchange will not approve a subsequent on-the-run Treasury security until after the expiration of all the options that are listed pursuant to this described options listing timeframe.

The expiration month and exercise price of each series will be determined by the Exchange at the time that the series is first opened for trading. The Exchange will open a minimum of one expiration month and series for each class of options. The Exchange may open and add Treasury options in one or all of the months in the options listing timeframe. Treasury security options opened for trading on the Exchange will expire on a monthly basis.

Minimum Price Variation. Treasury securities options will have a minimum increment of $0.01.[8] The Exchange asserts that the proposed $0.01 increment is appropriate for Treasury securities options to allow traders to make the most effective use of the product for hedging purposes. The Exchange also represents that the proposed $0.01 increments will not cause any capacity problems.

Series Open for Trading. The Exchange proposes that the exercise price of each series of Treasury security options will be fixed at a price denominated in $0.50 increments. The exercise price will be reasonably close to, and no more than 20% away from, the price at which the underlying security is traded in the primary market at the time the series of options is first opened for trading.

Settlement. Treasury securities options will be physically settled, European-style options that may be exercised only on the day that they expire. Trading in Treasury securities options ordinarily will cease on the business day (usually a Friday) preceding the expiration date. The expiration date will be the Saturday immediately following the third Friday of the expiration month. The settlement process for Treasury securities options will be the same as the settlement process for equity options under current Exchange rules (*e.g.,* Phlx Rule 1044). Payment of the aggregate exercise price must be accompanied by payment of accrued interest on the underlying Treasury security.

Additional information relating to options on Treasury securities—including definitions, listing standards, expiration, exercise, settlement, margin rules, positions limits, doing business with the public, and surveillance—can be found in the Notice.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal appropriately balances, on the one hand, the Exchange's desire to offer a new product to investors with, on the other hand, the necessity of having appropriate rules for listing, trading and margin, among other considerations relevant under the Act. The Commission notes that it has previously approved similar rules permitting other options exchanges to list and trade options on Treasury securities.[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2012–105), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24955 Filed 10–10–12; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* Phlx Rule 1006D. The proposal is designed to ensure that a Treasury security is eligible for underlying options only during its most liquid on-the run period. Options on a newly settled (subsequent) on-the-run Treasury security can be listed only after all the options that are listed pursuant to the preceding options listing timeframe expire. This minimizes or negates overlap and proliferation of Treasury options. An on-the run Treasury security in the options listing timeframe becomes off-the-run when there is a subsequent auction for the Treasury security and as a result the newly settled security becomes on-the-run. The Exchange will not list options on the subsequent on-the-run Treasury security until all options listed within the options listing timeframe on the immediately preceding on-the-run Treasury security (which has become off-the-run) expire.

[8] *See* Phlx Rule 1013D.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Chicago Board Options Exchange (''CBOE'') rules 21.1–21.31. *See also* Securities Exchange Act Release No. 18371 (December 23, 1981), 46 FR 63423 (December 31, 1981) (approving SR–Amex–81–1 and SR–CBOE–81–27).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67987; File No. SR–NYSEARCA–2012–110]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Amend the Fees Charged for Routing Orders to the New York Stock Exchange LLC

October 4, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 28, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') to modify the fees that it charges for routing orders to the New York Stock Exchange LLC (''NYSE''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to modify the fees that it charges for routing orders to the NYSE. The Exchange proposes to implement the fee changes on October 1, 2012.[4]

The NYSE has proposed modifications to its transaction fee structures, including changes to the rates for taking liquidity, to become effective on October 1, 2012.[5] The Exchange's current fees for routing orders in securities with a per share price of $1.00 or more to the NYSE are closely related to the NYSE's fees for taking liquidity in such securities, and the Exchange is proposing an adjustment to its routing fees to maintain the existing relationship to the new fees in place at the NYSE.

Currently, the NYSE charges a transaction fee for certain transactions in securities with a per share price of $1.00 or more based on the characteristics of the transaction, including order type.[6] Among other changes, the NYSE Fee Filing proposed to increase the charge for transactions that do not have a specified per share charge based on their characteristics (''all other'' transactions). The NYSE Fee Filing proposed to increase the per share charge for all other non-floor broker transactions (i.e., when taking liquidity from the Exchange) from $0.0023 to $0.0025 per transaction.

Currently, for NYSE Arca Tier 1, Tier 2, Tier 3, Step Up Tier 1, and Step Up Tier 2 customers, the fee for routing orders in Tape A securities to the NYSE outside the book is equal to the NYSE fee of $0.0023 per share for all other non-floor broker transactions in securities with a per share price of $1.00 or more, and the fee for routing such orders to the NYSE for non-tier (i.e., Basic Rate) customers is $0.0025 per share.[7] Consequently, the Exchange is proposing to increase each of those fees by $0.0002 to $0.0025 per share and $0.0027 per share, respectively, consistent with the $0.0002 increase in the NYSE fee for all other non-floor broker transactions.

In addition, the Exchange currently charges $0.0021 per share for Primary Sweep Orders[8] in Tape A securities that are routed outside the book to the NYSE that remove liquidity from the NYSE.[9] In order to maintain the existing relationship to the other Exchange routing fees that are being adjusted upward, the Exchange is also proposing to increase this fee by $0.0002, to $0.0023 per share.

Finally, for Primary Only Plus (''PO+'') orders,[10] the current Exchange fee for orders routed to the NYSE that remove liquidity from the NYSE is $0.0023 per share, which is equal to the current NYSE fee for all other non-floor broker transactions in securities with a per share price of $1.00 or more.[11] Consequently, the Exchange is proposing to increase its fees for routing PO+ orders to the NYSE that remove liquidity by the same amount ($0.0002) as the increase in the corresponding NYSE fees. The proposed new fee for PO+ orders routed to the NYSE that remove liquidity is $0.0025 per share. This change would maintain the current relationship with the NYSE rates.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[12] in general, and furthers the objectives of Section 6(b)(4) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes are reasonable because the Exchange's fees for routing orders to the NYSE are closely related to the NYSE's fees for its members for taking liquidity, and the fee increases are consistent with the changes proposed by the NYSE to increase its fees for taking liquidity. The proposed changes will result in maintaining the existing relationship between the two sets of fees. In addition, the Exchange believes that the proposed rule change is reasonable, equitable, and not unfairly discriminatory because it would result in an increase in the per share fee for orders, Primary Sweep Orders, and PO+ Orders routed to the NYSE, thereby aligning the rate that the

[4] The Exchange filed a separate fee filing, which the Exchange proposes to implement on October 1, 2012. *See* SR–NYSEArca–2012–104 (Sept. 24, 2012).

[5] *See* SR–NYSE–2012–50 (Sept. 26, 2012) (the ''NYSE Fee Filing'').

[6] For example, the NYSE charges $0.0005 per share (subject to a monthly cap) for at the opening or at the opening only orders, $0.0055 per share per transaction for all market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders from any member organization executing an average daily volume of MOC/LOC activity on the NYSE in that month of at least 14 million shares, and $0.0095 per share per transaction for all other MOC and LOC orders.

[7] The other tiers in the Fee Schedule (e.g., the Tape B and C Step Up Tiers, Investor Tiers, Cross-Asset Tier and Retail Order Tier) do not specify a fee for routing orders in Tape A securities to the NYSE outside the book. However, such tiers provide that if a fee (or credit) is not included in the tier, the relevant tiered or Basic Rate applies based on a firm's qualifying levels. Accordingly, for orders in Tape A securities routed to the NYSE outside the book, ETP Holders and Market Makers that qualify for another tier would default to the Tier 1, Tier 2, Tier 3, Step Up Tier 1, Step Up Tier 2 or Basic Rate that applied to them based on their qualifying levels.

[8] A Primary Sweep Order is a Primary Only (''PO'') Order (i.e., a market or limit order that is to be routed to the primary market) that first sweeps the NYSE Arca book. *See* NYSE Arca Equities Rules 7.31(x) and (kk).

[9] This charge is included in the provisions for Tier 1, Tier 2, and the Basic Rate. The other tiers in the Fee Schedule do not specify a fee for Primary Sweep Orders in Tape A securities that are routed outside the book to the NYSE that remove liquidity from the NYSE. Accordingly, for such orders ETP Holders and Market Makers that qualify for another tier would default to the Tier 1, Tier 2 or Basic Rate that applied to them based on their qualifying levels. *See* note 7, *supra.*

[10] A PO+ Order is a PO Order that is entered for participation in the primary market, other than for participation in the primary market opening or primary market re-opening. *See* NYSE Arca Equities Rule 7.31(x)(3).

[11] This charge is included in the provisions for Tier 1, Tier 2, and the Basic Rate. The other tiers in the Fee Schedule do not specify a fee for PO+ orders routed outside the book to the NYSE that remove liquidity. Accordingly, for such orders ETP Holders and Market Makers that qualify for another tier would default to the Tier 1, Tier 2 or Basic Rate that applied to them based on their qualifying levels. *See* note 7, *supra.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

Exchange charges to ETP Holders with the rate that the Exchange is charged by the NYSE. Accordingly, the Exchange is proposing this increase so that the rate it charges to ETP Holders reflects the rate that the Exchange is charged by the NYSE. In addition, the proposed changes are equitable and not unfairly discriminatory because the fee increases apply uniformly across pricing tiers and all similarly situated ETP Holders would be subject to the same fee structure.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–110. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–110 and should be submitted on or before November 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24970 Filed 10–10–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67981; File No. SR–EDGX–2012–45]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

October 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2012 the EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). Text of the proposed rule change is attached as Exhibit 5 at *http://www.directedge.com/Regulation/ExchangeRuleFilings/EDGX.aspx.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Footnote 12 to the Exchange's fee schedule states that a removal rate of $0.0029 per share applies where a Market Participant Identifier's (''MPID'') add liquidity ratio is equal to or greater than 10%. The add liquidity ratio is defined as ''added'' flags/(''added'' flags + ''removal'' flags) × 100, where added flags are defined as Flags B, HA, V, Y, MM, RP, 3, or 4 and removal flags are defined as Flags BB, MT, N, W, PI, PR, or 6. Where a Member does not meet the add liquidity ratio of at least 10%, then the Exchange will charge the default removal rate of $0.0030 per share, where ''default'' refers to the standard rates assessed by the Exchange to Members for orders that remove liquidity absent Members qualifying for additional volume tiered pricing.[4] The Exchange proposes to delete Footnote 12 in its entirety and any references thereto.

Currently, the Exchange's fee schedule displays a discounted removal rate of $0.0029 per share as the rate for removing liquidity and the rate for Flags N, W, 6, BB, and PI subject to the volume thresholds in Footnotes 1 and 12.[5] Because the Exchange proposed to delete Footnote 12 in its entirety, the Exchange proposes to amend the rates displayed for removing liquidity on the fee schedule to $0.0030 per share, which represents the current default rate. Accordingly, the Exchange proposes to amend the displayed rate for removing liquidity on the EDGX fee schedule and the removal rates for Flags N, W, 6, BB, and PI from $0.0029 per share to $0.0030 per share, and these rates will continue to remain subject to the volume tier requirements of the Mega Tier in Footnote 1.

Currently, Footnote 11 on the Exchange's fee schedule states that for Flags EA or ER, if a Member internalizes more than 4% of their average daily volume (''ADV'') on EDGX (added, removed, and routed liquidity) and the Member, at a minimum, meets the criteria for the Mega Tier rebate of $0.0032 per share as described in Footnote 1, then the Member receives the applicable rebate in Footnote 1 for adding liquidity, or is charged the applicable removal rate in Footnote 1 or 12. Because the Exchange proposes to eliminate the discounted removal rate for achieving the volume tier requirements in Footnote 12 in its entirety, the Exchanges also proposes to eliminate the discounted removal rate for achieving the volume tier requirements in Footnote 12 provided for in Footnote 11. Therefore, the Exchange will charge the default removal rate of $0.0030 per share regardless of the Member's add liquidity ratio unless that Member qualifies for the discounted removal rate of $0.0029 per share, as described in the Mega Tier of Footnote 1, should that Member achieve the volume tier requirements.

The Exchange proposes to assess a fee of $0.0025 per share in lieu of the current fee of $0.0023 per share for Members' orders that are routed or re-routed to the New York Stock Exchange (''NYSE'') and remove liquidity, yielding Flag D. This proposed change represents a pass-through of the rate that Direct Edge ECN LLC d/b/a DE Route (''DE Route''), the Exchange's affiliated routing broker dealer, is charged for routing orders to NYSE, in response to the pricing changes in NYSE's filing with the Securities and Exchange Commission (the ''SEC'').[6]

The Exchange proposes to implement these amendments to its fee schedule on October 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange currently offers Members a discounted removal rate of $0.0029 per share where their add liquidity ratio is equal to or greater than 10%, as described in Footnote 12. The Exchange proposes to eliminate the discounted removal rate for achieving the volume tier requirements of Footnote 12 in its entirety and any references thereto, and the Exchange proposes to charge Members the default removal rate of $0.0030 per share regardless of their add liquidity ratio. The Exchange believes that its proposal to eliminate the discounted removal rate for achieving the volume tier requirements of Footnote 12 in its entirety represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because the Exchange will use the additional $0.0001 per share revenue generated from removing this volume tier to offset the administrative and infrastructure costs associated with operating a national securities exchange. In addition, the Exchange's proposal is reasonable because it will allow the Exchange to assess a fee for removing liquidity from EDGX that is competitive with other market centers.[9] The Exchange also notes that with the removal of this tier, Members will continue to be subject to the other fees and tiers listed on the Exchange's fee schedule. Lastly, the Exchange believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange currently offers Members a discounted removal rate of $0.0029 per share, as described in Footnote 11 and subject to the volume tier requirements in Footnotes 1 and 12, where the Member internalizes more than 4% of their ADV on EDGX (added, removed, and routed liquidity) and the Member, at a minimum, meets the criteria for the Mega Tier rebate of $0.0032 per share in Footnote 1. Because the Exchange proposed to eliminate the discounted removal rate for achieving the volume tier requirements of Footnote 12 in its entirety and any references thereto, the Exchange also proposes to eliminate the discounted removal rate for achieving the volume tier requirements of Footnote 12 provided for in Footnote 11. Accordingly, the Exchange proposes to charge the default removal rate of $0.0030 per share regardless of a Member's add liquidity ratio unless that Member qualifies for a discounted removal rate of $0.0029 per share, as described in Footnote 11 and pursuant to the volume tier requirements in the Mega Tier in Footnote 1. The Exchange believes that its proposal to eliminate the discounted removal rate for achieving the volume tier requirements of Footnote 12, as described in Footnote 11, represents an equitable allocation of

[4] The Exchange notes that Members may qualify for a removal rate of $0.0029 per share for Flags N, W, 6, BB and PI where they satisfy the volume tier requirements for the Mega Tier in Footnote 1.

[5] The Exchange notes that the default removal rate remains $0.0030 per share.

[6] *See* NYSE's Trader Update at *http://www.nyse.com/pdfs/NYSE%20Client%20Notice%20Fees%2010%201%202012.pdf* (discussing NYSE's fee changes effective October 1, 2012).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See* NASDAQ OMX Group, Inc., Price List—Trading & Connectivity, *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#remove.* The NASDAQOMX Group Inc.'s default rate for removing liquidity in Tape A, B and C securities for all MPIDs is $0.0030 per share. *See also* BATS BZX Exchange, Inc., BATS BZX Exchange Fee Schedule (effective September 10, 2012), *http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf.* BATS BZX Exchange, Inc.'s default rate for removing liquidity in Tape A, B and C securities for all MPIDs is $0.0029 per share.

reasonable dues, fees and other charges among its Members and other persons using its facilities because the Exchange will use the additional $0.0001 per share revenue generated from removing this volume tier to offset the administrative and infrastructure costs associated with operating a national securities exchange. In addition, the Exchange's proposal is reasonable because it will allow the Exchange to assess a fee for removing liquidity from EDGX that is competitive with other market centers.[10] The Exchange also notes that with the removal of this tier, Members will continue to be subject to the other fees and tiers listed on the Exchange's fee schedule. Lastly, the Exchange believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The rates associated with routing orders to NYSE through DE Route on the Exchange's fee schedule are pass-through rates from DE Route to the Exchange and represent an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NYSE through DE Route. The Exchange notes that routing through DE Route is voluntary. Currently, for orders yielding Flag D, NYSE charges DE Route a fee of $0.0023 per share, which, in turn, is passed through to the Exchange. The Exchange, in turn, charges its Members a fee of $0.0023 per share as a pass-through. In NYSE's pricing changes for October 1, 2012, NYSE increased the rate it charges its customers, such as DE Route, from $0.0023 per share to a charge of $0.0025 per share for orders that are routed or re-routed to NYSE and remove liquidity. Therefore, the Exchange believes that the proposed change for Flag D from a fee of $0.0023 per share to a fee of $0.0025 per share is equitable and reasonable because it accounts for the pricing changes on NYSE. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed or re-routed to NYSE and remove liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2012–45 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2012–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2012–45 and should be submitted on or before November 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24980 Filed 10–10–12; 8:45 am]

BILLING CODE 8011–01–P

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67980; File No. SR–EDGA–2012–45]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

October 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2012 the EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). Text of the proposed rule change is attached as Exhibit 5 at *http://www.directedge.com/Regulation/ExchangeRuleFilings/EDGA.aspx.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On the Exchange's fee schedule, the Exchange currently charges a Member $0.0020 per share for orders that yield Flag Q, where the Member's order is routed using the ROUQ [4] or ROUC [5] routing strategy and executes at non-exchange destinations. The pricing of Flag Q is also subject to the volume tiers detailed in Footnote 16, which currently states that where a Member posts greater than or equal to 0.30% of the Total Consolidated Volume (''TCV'') in Average Daily Volume (''ADV'') on EDGA and routes 2.5 million shares via Flag Q, then the Member's rate for Flag Q decreases to $0.0015 per share. Footnote 16 also states that where a Member posts greater than or equal to 0.30% of the TCV in ADV on EDGA and routes 5 million shares via Flag Q, then the Member's rate for Flag Q decreases to $0.0010 per share. The Exchange proposes to expand the volume tiers in Footnote 16 to add additional criteria to achieve a lower rate of $0.0015 per share. Specifically, Members will be assessed a charge of $0.0015 per share for orders that yield Flag Q where a Member executes greater than or equal to an average daily volume of 12 million shares using the ROUC routing strategy and yields Flags C, D, I, K, Q, X, BY, CR and MT. The Exchange notes that Flags C, D, I, K, Q, X, BY, CR and MT correspond to the destinations on the System routing table [6] where orders using the ROUC routing strategy may be executed; therefore, the Exchange proposes to count the volume generated from these flags in the proposed volume tier for Flag Q as described in Footnote 16.

The Exchange proposes to amend the description of Flag Q on the Exchange's fee schedule in order to provide Members additional transparency that orders that are routed using ROUQ or ROUC may execute at non-exchange destinations, yielding Flag Q. Therefore, the Exchange proposes to revise the description of Flag Q to state that Flag Q encompasses orders routed using the ROUQ or ROUC routing strategy that execute at non-exchange destinations on the System routing table. The Exchange notes that its proposal does not modify the existing routing functionality associated with Flag Q; but rather, the Exchange's proposal clarifies that orders yielding Flag Q are executed at non-exchange destinations.

The Exchange proposes to amend the description of Flag MT on the Exchange's fee schedule in order to provide Members additional transparency. Currently, the Exchange's fee schedule states that orders routed to EDGX Exchange, Inc., (''EDGX'') Mid-Point Match (''MPM'') using the IOCM or ROCO routing strategies, as defined in Exchange Rule 11.9(b)(3), will yield Flag MT. The Exchange proposes to revise the description of Flag MT on the Exchange's fee schedule to include ICMT and ROUC, as defined in Exchange Rule 11.9(b)(3), among the routing strategies listed. Accordingly, Members' orders that are routed to EDGX MPM using ICMT, IOCM, ROCO or ROUC routing strategies will yield Flag MT. The Exchange notes that its proposal does not modify the existing routing functionality associated with Flag MT; but rather, the Exchange's proposal modifies the fee schedule to reflect the specific routing strategies utilized and yielding Flag MT.

Currently, the Exchange offers Members a rebate of $0.0005 per share for orders that are routed to NASDAQ OMX BX, Inc. (the ''BX'') and remove liquidity, yielding Flag C. The Exchange proposes to increase the rebate earned by Members' orders that yield Flag C to a $0.0014 per share rebate.[7] The Exchange also proposes to remove Footnote 7 in its entirety, which is appended to Flag C, thereby removing the condition that requires Members to post an ADV of 25,000 shares to the BX (yielding Flag RB) because the Exchange is proposing a rebate of $0.0014 per share for all Members' orders that yield Flag C.

The Exchange proposes to assess a fee of $0.0025 per share in lieu of the current fee of $0.0023 per share for Members' orders that are routed or re-routed to the New York Stock Exchange (''NYSE'') and remove liquidity, yielding Flag D. This proposed change represents a pass-through of the rate that Direct Edge ECN LLC d/b/a DE Route (''DE Route''), the Exchange's affiliated routing broker dealer, is charged for routing orders to NYSE, in response to the pricing changes in NYSE's filing with the Securities and Exchange Commission (the ''SEC'').[8]

The Exchange proposes to implement these amendments to its fee schedule on October 1, 2012.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).

[4] As defined in Exchange Rule 11.9(b)(3)(c)(iv).

[5] As defined in Exchange Rule 11.9(b)(3)(a).

[6] Exchange Rule 11.9(b)(3) defines the ''System routing table'' as the proprietary process for determining the specific trading venues to which the System, as defined in Exchange Rule 1.5(cc), routes orders and the order in which the System routes to them.

[7] Currently, the Exchange offers Members a default rebate of $0.0005 per share for orders that yield Flag C, where ''default'' refers to the standard rebate offered by the Exchange to Members for orders that yield Flag C absent Members qualifying for additional volume tiered pricing. The Exchange offered Members a rebate of $0.0014 per share where Members posted an ADV of 25,000 shares to the BX (yielding Flag RB).

[8] *See* NYSE's Trader Update at *http://www.nyse.com/pdfs/NYSE%20Client%20Notice%20Fees%2010%201%202012.pdf* (discussing NYSE's fee changes effective October 1, 2012).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that its proposal to expand the volume tiers in Footnote 16 to also assess a charge of $0.0015 per share for orders that yield Flag Q where a Member executes greater than or equal to an average daily volume of 12 million shares using the ROUC routing strategy, which yields Flags C, D, I, K, Q, X, BY, CR and MT, represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The ROUC routing strategy initially routes orders to non-exchange destinations on the System routing table, which are associated with higher rebates and lower fees, before the orders are routed to higher cost exchange destinations. The Exchange believes that by initially routing orders to non-exchange destinations, the likelihood of the order being executed at the non-exchange destination increases. Accordingly, the Exchange proposes to pass along the potential cost savings to Members that DE Route achieves in the form of a reduced charge for orders that yield Flag Q where those orders are routed to and executed on these non-exchange destinations.

In addition, the Exchange also believes that charging Members a lower rate for achieving volume tiers in Footnote 16 will incentivize liquidity to the Exchange by increasing the use of the ROUC routing strategy, which is consistent with EDGA's low cost exchange model because ROUC offers the Exchange potential cost savings that it can pass on to its Members given that ROUC routes to a series of low cost destinations on the System routing table. Such increased volumes increase potential revenue to the Exchange, and allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, which results in lower per share costs. The Exchange may then pass on these savings to Members in the form of lower charges. The increased liquidity also benefits all investors by deepening EDGA's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based discounts such as these have been widely adopted in the cash equities markets, and are equitable because volume-based discounts are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Lastly, the Exchange believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that the proposed tier is equitable and reasonable when compared with the existing tier in Footnote 16 that also offers a discounted rate of $0.0015 per share because the Exchange regards the criteria of each tier as equally stringent: Members posting greater than or equal to 0.30% of the TCV in ADV on EDGA and routing 2.5 million shares via Flag Q or Members posting greater than or equal to an average daily volume of 12 million shares using the ROUC routing strategy and yielding a variety of flags (i.e., Flags C, D, I, K, Q, X, BY, CR and MT). As discussed above, because of the potential cost savings to the Exchange where Members use the ROUC routing strategy, the Exchange can offer Members a reduced charge of $0.0015 per share and require less volume than in the existing tier to achieve this rate given that these two tiers are equally beneficial to the Exchange in terms of their contribution towards liquidity.

The Exchange believes that its proposal to amend the description of Flag Q on the Exchange's fee schedule to state that Flag Q encompasses orders routed using ROUQ or ROUC and executed at non-exchange destinations represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because it supports the Exchange's efforts to provide additional transparency to Members when reading the fee schedule. Accordingly, the proposed revised description will advise Members that Flag Q encompasses orders routed using the ROUQ or ROUC routing strategy that execute at non-exchange destinations on the System routing table and yield Flag Q. The Exchange also believes that its proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to amend the description of Flag MT on the Exchange's fee schedule represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because it supports the Exchanges' efforts to provide additional transparency to Members when reading the fee schedule. Currently, the Exchange's fee schedule states that orders routed to EDGX MPM using the IOCM or ROCO routing strategies will yield Flag MT. The Exchange proposes to revise the description of Flag MT on the Exchange's fee schedule to include ICMT and ROUC among the routing strategies listed. Accordingly, the proposed revised description will advise Members that orders that are routed to EDGX MPM using ICMT, IOCM, ROCO or ROUC routing strategies will yield Flag MT. The Exchange also believes that its proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to increase the rebate earned by Members' orders that yield Flag C from $0.0005 per share to $0.0014 per share represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange notes that it will provide to its Members the $0.0014 per share rebate regardless of whether DE Route achieves the BX tier that requires posting an ADV of 25,000 shares. The Exchange believes that its proposal to increase the rebate earned by Members' orders that yield Flag C from $0.0005 per share to $0.0014 per share is also reasonable given that the BATS BZX Exchange, Inc., the BATS BYX Exchange, Inc., and NASDAQ OMX Group, Inc. also offer their customers a rebate of $0.0014 per share for orders that are routed to the BX.[11] The Exchange also notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange currently offers Members a more favorable rebate of $0.0014 per share for removing liquidity from BX where Members post an ADV of 25,000 shares to BX, as described in Footnote 7. The Exchange proposes to

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] *See* NASDAQ OMX Group, Inc., Price List—Trading & Connectivity at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2. See also* BATS BZX Exchange, Inc., BATS BZX Exchange Fee Schedule (Effective September 10, 2012) and BATS BYX Exchange, Inc., BATS BYX Exchange Fee Schedule (effective September 10, 2012), *http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf.*

eliminate the volume tier requirement in Footnote 7 in its entirety and any references thereto, and the Exchange proposes to offer Members a rebate of $0.0014 per share regardless of their volume. The Exchange believes that its proposal to delete Footnote 7 from the Exchange's fee schedule represents an equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities because the Exchange is proposing to amend the rate for orders that yield Flag C to a rebate of $0.0014 per share. The Exchange also notes that with the deletion of this tier, Members will continue to be subject to the other fees and tiers listed on the Exchange's fee schedule, and routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The rates associated with routing orders to NYSE through DE Route on the Exchange's fee schedule are pass-through rates from DE Route to the Exchange and represent an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NYSE through DE Route. The Exchange notes that routing through DE Route is voluntary. Currently, for orders yielding Flag D, NYSE charges DE Route a fee of $0.0023 per share, which, in turn, is passed through to the Exchange. The Exchange, in turn, charges its Members a fee of $0.0023 per share as a pass-through. In NYSE's pricing changes for October 1, 2012, NYSE increased the rate it charges its customers, such as DE Route, from $0.0023 per share to a charge of $0.0025 per share for orders that are routed or re-routed to NYSE and remove liquidity. Therefore, the Exchange believes that the proposed change for Flag D from a fee of $0.0023 per share to a fee of $0.0025 per share is equitable and reasonable because it accounts for the pricing changes on NYSE. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed or re-routed to NYSE and remove liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2012–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2012–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2012–45 and should be submitted on or before November 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24979 Filed 10–10–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67986; File No. SR–NYSEArca–2012–104]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

October 4, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 24, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') to (i) increase the credit for executions of Mid-Point Passive Liquidity (''MPL'') Orders that provide liquidity on the Exchange in certain active Tape C Securities, and (ii) eliminate the credit that is currently applicable to Passive Liquidity (''PL'') Orders in Tape B Securities that provide liquidity on the Exchange. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) increase the credit for executions of MPL Orders that provide liquidity on the Exchange in certain active Tape C Securities, and (ii) eliminate the credit that is currently applicable to PL Orders in Tape B Securities that provide liquidity on the Exchange. The Exchange proposes to implement the fee changes on October 1, 2012.

A PL Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price.[4] An MPL Order is a PL Order executable only at the midpoint of the Protected Best Bid and Offer.[5] In this regard, PL Orders, including MPL Orders, allow for additional opportunities for passive interaction with trading interest on the Exchange and are designed to offer potential price improvement to incoming marketable orders submitted to the Exchange.[6]

Currently, MPL Orders that provide liquidity on the Exchange receive a $0.0015 per share credit, regardless of whether the order is for a Tape A, B, or C Security. The Exchange proposes to increase this credit to $0.0025 per share for MPL Orders that provide liquidity on the Exchange in the following Tape C Securities, which were selected based on year-to-date consolidated average daily volume (''CADV''):

Company name	Symbol
Cisco Systems, Inc	CSCO
Dell Inc	DELL
Facebook, Inc	FB
Intel Corporation	INTC
Microsoft Corporation	MSFT
Micron Technology Inc	MU
Oracle Corporation	ORCL
Research In Motion Limited	RIMM
SIRIUS XM Radio Inc	SIRI
Zynga, Inc	ZNGA

These securities would be deemed ''Active Tape C Securities'' for purposes of the Fee Schedule.[7] The Exchange believes that this proposed change would incentivize ETP Holders to submit additional MPL Orders in the Active Tape C Securities. This would increase the liquidity available on the Exchange in the Active Tape C Securities and, therefore, could increase the potential price improvement to incoming marketable orders submitted to the Exchange.

Separately, PL Orders in Tape B Securities that provide liquidity on the Exchange currently receive a per share credit.[8] The Exchange proposes to eliminate this Tape B PL Order credit, such that PL Orders in Tape B Securities that provide liquidity on the Exchange would neither receive a credit nor be charged a fee. The credit for PL Orders in Tape B securities that provide liquidity to the Exchange was originally designed to incentivize ETP Holders to submit orders that provide liquidity on the Exchange in such securities.[9] The Exchange has determined to eliminate the Tape B PL Order credit because it has generally not incentivized ETP Holders to submit additional liquidity in Tape B Securities in the form of PL Orders. The Exchange notes that PL Orders in Tape A and C Securities that provide liquidity on the Exchange are currently neither provided with a credit nor charged a fee, as is proposed for Tape B Securities. Accordingly, this proposed change would align the treatment of PL Orders in Tape B securities that provide liquidity on the Exchange with that of Tape A and C Securities in the Exchange's Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because the increased credit of $0.0025 per share would incentivize ETP Holders to submit additional MPL Orders in Active Tape C Securities. This would increase

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rule 7.31(h)(4).

[5] *See* Rule 7.31(h)(5).

[6] *See, e.g.,* Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR–PCX–2005–53).

[7] Any change to the list of Active Tape C Securities would be made by submitting a proposed rule change to the Commission.

[8] The credit is currently $0.0015 per share for Tier 1 and Step Up Tier 1 and $0.0010 per share for Tier 2, Tier 3, Step Up Tier 2 and Basic Rates. For Investor Tiers 1–4, the applicable credit is based on a firm's qualifying levels.

[9] *See* Securities Exchange Act Release No. 67180 (June 11, 2012), 77 FR 36027 (June 15, 2012) (SR–NYSEArca–2012–56).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

the liquidity available on the Exchange in Active Tape C Securities and, therefore, could increase the potential price improvement to incoming marketable orders submitted to the Exchange. In this regard, the selection by the Exchange of the particular Active Tape C Securities is reasonable because the Exchange's market for such securities would improve as a result of the increase in liquidity that the Exchange anticipates resulting from the proposed credit increase. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would apply equally to MPL Orders from all ETP Holders in Active Tape C Securities. Additionally, the proposed change is equitable and not unfairly discriminatory because, by applying to Active Tape C Securities, all market participants will have an opportunity to interact in such names, as opposed to thinly traded securities that might be less liquid.

The Exchange also believes that the proposed change is reasonable because eliminating the Tape B PL Order credit would remove a pricing feature from the Fee Schedule that has generally not incentivized ETP Holders to submit additional PL Orders in Tape B Securities, as was originally intended. In this regard, the PL Order credit was originally designed to incentivize ETP Holders to provide additional liquidity on the Exchange in Tape B Securities and, therefore, to potentially increase the quality of the Exchange's market in these securities.[12] Removal of the Tape B PL Order credit is also equitable and not unfairly discriminatory because it would be eliminated for all ETP Holders. The Exchange also notes that PL Orders in Tape A and C Securities that provide liquidity on the Exchange are currently neither provided with a credit nor charged a fee, as is proposed for Tape B Securities. Accordingly, this proposed change would align the treatment of PL Orders in Tape B securities that provide liquidity on the Exchange with that of Tape A and C Securities for purposes of the Exchange's Fee Schedule.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[13] of the Act and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2012–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–104. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–104 and should be submitted on or before November 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24969 Filed 10–10–12; 8:45 am]

BILLING CODE 8011–01–P

[12] *See supra* note 9.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67985; File No. SR–NYSEArca–2012–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series Under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02

October 4, 2012.

I. Introduction

On August 16, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant

to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the iShares 2018 S&P AMT-Free Municipal Series (''2018 Fund'') and iShares 2019 S&P AMT-Free Municipal Series (''2019 Fund'' and, collectively, ''Funds''). The proposed rule change was published for comment in the **Federal Register** on August 30, 2012.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Funds pursuant to NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units (''Units'') based on fixed income securities indexes. The Funds are two series of iShares Trust (''Trust'').[4] Blackrock Fund Advisors (''Investment Adviser'') is the investment adviser for the Funds. SEI Investments Distribution Co. is the Funds' distributor (''Distributor'').

iShares 2018 S&P AMT-Free Municipal Series

The 2018 Fund will seek investment results that correspond generally to the price and yield performance, before fees and expenses, of the S&P AMT-Free Municipal Series 2018 Index™ (''2018 Index'').[5] The 2018 Fund will not seek to return any predetermined amount at maturity. The 2018 Index measures the performance of investment-grade U.S. municipal bonds maturing in 2018. According to the Exchange, as of May 1, 2012, there were 1,443 issues in the 2018 Index.

The 2018 Index includes municipal bonds primarily from issuers that are state or local governments or agencies (including the Commonwealth of Puerto Rico and U.S. territories such as the U.S. Virgin Islands and Guam) such that the interest on the bonds is exempt from U.S. federal income taxes and the federal alternative minimum tax (''AMT''). According to the exchange, each bond eligible for inclusion in the 2018 Index must have a rating of at least BBB− by S&P, Baa3 by Moody's Investors Service, Inc. (''Moody's''), or BBB− by Fitch, Inc., and must have a minimum maturity par amount of $2 million. To remain in the 2018 Index, bonds must maintain a minimum par amount greater than or equal to $2 million as of each rebalancing date. All bonds in the 2018 Index will mature between June 1 and August 31 of 2018. When a bond matures in the 2018 Index, an amount representing its value at maturity will be included in the 2018 Index throughout the remaining life of the 2018 Index, and any such amount will be assumed to earn a rate equal to the performance of the S&P's Weekly High Grade Index, which consists of Moody's Investment Grade-1 municipal tax-exempt notes that are not subject to federal AMT. By August 31, 2018, the 2018 Index is expected to consist entirely of cash carried in this manner. The 2018 Index is a market value weighted index and is rebalanced after the close on the last business day of each month.

The Exchange submitted this proposed rule change because the 2018 Index for the 2018 Fund does not meet all of the ''generic'' listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Units based on fixed income securities indexes. The 2018 Index meets all such requirements except for those set forth in Commentary .02(a)(2).[6] Specifically, as of May 1, 2012, only 9.95% of the weight of the 2018 Index components have a minimum original principal amount outstanding of $100 million or more.

According to the Exchange, the 2018 Fund generally will invest at least 80% of its assets in the securities of the 2018 Index, except during the last months of such Fund's operations, as described below. The 2018 Fund may at times invest up to 20% of its assets in cash and cash equivalents (including money market funds affiliated with the Investment Adviser), as well as in municipal bonds not included in the 2018 Index, but which the Investment Adviser believes will help the 2018 Fund track the 2018 Index. For example, the 2018 Fund may invest in municipal bonds not included in the 2018 Index in order to reflect prospective changes in the 2018 Index (such as 2018 Index reconstitutions, additions, and deletions). The 2018 Fund will generally hold municipal bond securities issued by state and local municipalities whose interest payments are exempt from U.S. federal income tax, the federal AMT and, effective beginning in 2013, a federal Medicare contribution tax of 3.8% on ''net investment income,'' including dividends, interest, and capital gains. In addition, the 2018 Fund may invest any cash assets in one or more affiliated municipal money market funds. In the last months of operation, as the bonds held by the 2018 Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including without limitation, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, and municipal commercial paper. These cash equivalents may not be included in the 2018 Index. On or about August 31, 2018, the 2018 Fund will wind up and terminate, and its net assets will be distributed to then-current shareholders.

iShares 2019 S&P AMT-Free Municipal Series

The 2019 Fund will seek investment results that correspond generally to the price and yield performance, before fees and expenses, of the S&P AMT-Free Municipal Series 2019 Index™ (''2019 Index'').[7] The 2019 Fund will not seek to return any predetermined amount at maturity. The 2019 Index measures the performance of investment-grade U.S. municipal bonds maturing in 2019. As of May 1, 2012, there were 1,157 issues in the 2019 Index.

The 2019 Index includes municipal bonds primarily from issuers that are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67729 (August 24, 2012), 77 FR 52776 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On June 29, 2012, the Trust filed with the Commission Post-Effective Amendment No. 745 (with respect to the 2018 Fund, ''2018 Registration Statement'') and Post-Effective Amendment No. 746 (with respect to the 2019 Fund, ''2019 Registration Statement'') to the Trust's registration statement on Form N–1A under the Securities Act of 1933 and the 1940 Act (File Nos. 333–92935 and 811–09729) (collectively, ''Registration Statements''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 27608 (December 21, 2006) (File No. 812–13208).

[5] Each of the 2018 Index and 2019 Index (as defined below) (collectively, ''Underlying Indexes'') is sponsored by an organization (''Index Provider'') that is independent of the Funds and the Investment Adviser. The Index Provider determines the composition and relative weightings of the securities in the Underlying Indexes and publishes information regarding the market value of the Underlying Indexes. The Index Provider with respect to the Underlying Indexes is Standard & Poor's Financial Services LLC (a subsidiary of The McGraw-Hill Companies) (''S&P''). The Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Indexes.

[6] Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[7] S&P is the 2019 Fund's Index Provider. *See* note 5, *supra.*

state or local governments or agencies (including the Commonwealth of Puerto Rico and U.S. territories such as the U.S. Virgin Islands and Guam) such that the interest on the bonds is exempt from U.S. federal income taxes and the federal AMT. According to the Exchange, each bond must have a rating of at least BBB− by S&P, Baa3 by Moody's, or BBB− by Fitch, Inc. and must have a minimum maturity par amount of $2 million to be eligible for inclusion in the 2019 Index. To remain in the 2019 Index, bonds must maintain a minimum par amount greater than or equal to $2 million as of each rebalancing date. All bonds in the 2019 Index will mature between June 1 and August 31 of 2019. When a bond matures in the 2019 Index, an amount representing its value at maturity will be included in the 2019 Index throughout the remaining life of the 2019 Index, and any such amount will be assumed to earn a rate equal to the performance of the S&P's Weekly High Grade Index, which consists of Moody's Investment Grade-1 municipal tax-exempt notes that are not subject to federal AMT. By August 31, 2019, the 2019 Index is expected to consist entirely of cash carried in this manner. The 2019 Index is a market value weighted index and is rebalanced after the close on the last business day of each month.

The Exchange submitted this proposed rule change because the 2019 Index for the 2019 Fund does not meet all of the ''generic'' listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of Units based on fixed income securities indexes. The 2019 Index meets all such requirements except for those set forth in Commentary .02(a)(2).[8] Specifically, as of May 1, 2012, 9.62% of the weight of the 2019 Index components have a minimum original principal amount outstanding of $100 million or more.

According to the Exchange, the 2019 Fund generally will invest at least 80% of its assets in the securities of the 2019 Index, except during the last months of the 2019 Fund's operations, as described below. The Fund may at times invest up to 20% of its assets in cash and cash equivalents (including money market funds affiliated with the Investment Adviser), as well as in municipal bonds not included in the 2019 Index, but which the Investment Adviser believes will help the 2019 Fund track the 2019 Index. For example, the 2019 Fund may invest in municipal bonds not included in the 2019 Index in order to reflect prospective changes in the 2019 Index (such as 2019 Index reconstitutions, additions, and deletions). The 2019 Fund will generally hold municipal bond securities issued by state and local municipalities whose interest payments are exempt from U.S. federal income tax, the federal AMT and, effective beginning in 2013, a federal Medicare contribution tax of 3.8% on ''net investment income,'' including dividends, interest, and capital gains. In addition, the 2019 Fund may invest any cash assets in one or more affiliated municipal money market funds. In the last months of operation, as the bonds held by the 2019 Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including without limitation, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, and municipal commercial paper. These cash equivalents may not be included in the 2019 Index. On or about August 31, 2019, the 2019 Fund will wind up and terminate, and its net assets will be distributed to then-current shareholders.

Additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statements, as applicable.[9]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[13] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. The 2018 Index and 2019 Index values, calculated and disseminated at least once daily, as well as the components of the 2018 Index and 2019 Index and their percentage weightings, will be available from major market data vendors. In addition, an Intraday Indicative Value (''IIV'') for the Shares of each Fund will be disseminated at least every 15 seconds during the Core Trading Session (9:30 a.m. to 4 p.m. Eastern Time) by one or more major market data vendors.[14] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The Funds' Web site at *www.iShares.com* will also include a form of the prospectus for the Funds, information relating to net asset value (''NAV''), and other applicable quantitative information. Additionally, the portfolio of securities held by the Funds will be disclosed on the Funds' Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that the Index Provider is not a broker-dealer or affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the

[8] *See* note 6, *supra.*

[9] *See* Notice and Registration Statements, *supra* notes 3 and 4, respectively.

[10] 15 U.S.C. 78f.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[14] *See* NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(c). According to the Exchange, several major market data vendors widely disseminate IIVs taken from the CTA or other data feeds. *See* Notice, *supra* note 3, at 52778, n.12.

Underlying Indexes.[15] Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. With respect to trading halts, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. In addition, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange represents that, if the IIV or the Underlying Index values are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Underlying Index value occurs. If the interruption to the dissemination of the applicable IIV or Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading. Moreover, trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Further, trading in the Shares will be subject to NYSE Arca Equities Rule 7.34, which sets forth additional circumstances under which Shares of the Funds may be halted. The Exchange states that it has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Based on the Exchange's representations, the Commission believes that both the 2018 Index and 2019 Index are sufficiently broad-based and liquid to deter potential manipulation. As of May 1, 2012, there were 1,443 issues in the 2018 Index and 1,157 issues in the 2019 Index. As of the same date, 81.50% of the weight of the 2018 Index components and 81.66% of the weight of the 2019 Index components were comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the 2018 Index was approximately $16.59 billion, and the average dollar amount outstanding of issues in the 2018 Index was approximately $11.50 million. The total dollar amount outstanding of issues in the 2019 Index was approximately $13.50 billion, and the average dollar amount outstanding of issues in the 2019 Index was approximately $11.67 million. Further, the most heavily weighted component represents 4.06% of the weight of the 2018 Index, and the five most heavily weighted components represent 8.20% of the weight of the 2018 Index.[16] The most heavily weighted component represents 3.67% of the weight of the 2019 Index, and the five most heavily weighted components represent 9.62% of the weight of the 2019 Index.[17] In addition, the average daily notional trading volume for 2018 Index components for the period April 1, 2011 to April 30, 2012 was $12,417,528, and the sum of the notional trading volumes for the same period was approximately $3.38 billion. The average daily notional trading volume for 2019 Index components for the period April 1, 2011 to April 30, 2012 was $14,434,454, and the sum of the notional trading volumes for the same period was approximately $3.93 billion. As of May 1, 2012, 54.78% of the 2018 Index weight and 52.52% of the 2019 Index weight consisted of issues with a rating of AA/Aa2 or higher.

In support of this proposal, the Exchange has made representations, including:

(1) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Funds currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3).

(2) The continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares.

(3) The Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information, such as the value of the Underlying Indexes and the applicable value of the IIV, rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers, and the Information Bulletin to Equity Trading Permit Holders (each as described in more detail herein and in the Notice and Registration Statements, as applicable), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.

(4) The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(5) For initial and continued listing of the Shares, the Trust is required to comply with Rule 10A–3 under the Act.[18]

(6) The 2018 Fund generally will invest at least 80% of its assets in the securities of the 2018 Index, and the 2019 Fund generally will invest at least 80% of its assets in the securities of the 2019 Index.

(7) The Investment Adviser expects that over time each Fund's tracking error[19] will not exceed 5%.

(8) The 2018 Fund may at times invest up to 20% of its assets in cash and cash equivalents (including money market funds affiliated with the Investment

[15] The Commission also notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Investment Adviser and its personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[16] Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[17] *See id.*

[18] *See* 17 CFR 240.10A–3.

[19] Tracking error is the difference between the performance (return) of a Fund's portfolio and that of the applicable Underlying Index.

Adviser), as well as in municipal bonds not included in the 2018 Index, but which Investment Adviser believes will help the 2018 Fund track the 2018 Index. The 2019 Fund may at times invest up to 20% of its assets in cash and cash equivalents (including money market funds affiliated with Investment Adviser), as well as in municipal bonds not included in the 2019 Index, but which the Investment Adviser believes will help the 2019 Fund track the 2019 Index.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [20] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSEArca–2012–92) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24957 Filed 10–10–12; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67984; File No. SR–BOX–2012–015]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on BOX

October 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2012, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BOX Options Exchange LLC (the ''Exchange'') proposes to add language to its Fee Schedule for trading on its options facility, BOX Market LLC (''BOX'') to specifically reference certain order types. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at *http://boxexchange.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes additional language in Section I (Exchange Fees) of its Fee Schedule for trading on its options facility, BOX Market LLC (''BOX'') to specifically reference Auction Transaction [5] order types, PIP Orders and Agency Orders. A PIP Order is a Customer Order (an agency order for the account of a Public Customer, Professional Customer, or a broker-dealer) designated for the BOX Price Improvement Period (''PIP''). An Agency Order is a block-size order that a BOX Order Flow Provider seeks to facilitate as agent through the BOX Facilitation Auction or Solicitation Auction mechanism.[6] These Auction Transaction order types were assessed an Exchange Fee on BOX prior to May 14, 2012, and have continued to be assessed an Exchange Fee since the launch of trading on BOX on May 14, 2012. Note that prior to May 14, 2012, BOX was operated by Boston Options Exchange Group, LLC as an options trading facility of NASDAQ OMX BX, Inc. Upon the commencement of the Exchange's operations as a national securities exchange on May 14, 2012, the same automated trading system is now operated by BOX Market LLC as a facility of the Exchange. As such, the operation and functionalities of the system are the same as was in effect under the rules of the Boston Options Exchange Group, LLC facility. Additionally, the Exchange stated in its proposed rule change to establish fees for trading on BOX that all of the BOX fees as of May 14, 2012, were identical to fees in place prior to that date on the Boston Options Exchange Group, LLC options trading facility of NASDAQ OMX BX, Inc.[7] The Exchange Fee for Auction Transactions for Broker-Dealers ($0.35) and Market Makers (a tiered fee set forth in Section I.B. of the fee schedule based on the Market Maker's average daily volume on BOX) were in place on the Boston Options Exchange Group, LLC facility and the Exchange fully intended for these Exchange Fees to be carried over and included on the BOX Market LLC facility of the Exchange. Similarly, the Exchange Fees for customer orders in Auction Transactions ($0.00 for Public Customers and Professional Customers) were inadvertently omitted from the initial Exchange fee schedule. This proposal will correct these clerical errors as of the date of this filing.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Auction Transactions are those transactions executed on BOX through the Price Improvement Period (''PIP''), the Solicitation Auction mechanism, and Facilitation Auction mechanism.

[6] Note that the addition of the definitions of these order types in proposed footnote 2 cause the remaining footnotes on the fee schedule to be renumbered to 3 through 5.

[7] *See* Securities Exchange Act Release No. 66979 (May 14, 2012) 77 FR 29740 (May 18, 2012) (Notice of Immediate Effectiveness of Proposed Rule Change To Adopt the Fee Schedule For Trading on BOX).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

and, in general, to protect investors and the public interest.

The Exchange believes the exchange fees for agency orders in Auction Transactions are reasonable. The proposed fee structure is intended to attract order flow to BOX, and the PIP in particular, by offering market participants incentives to submit their agency orders to BOX.

Additionally, the Exchange believes it is equitable and not unfairly discriminatory for BOX Market Makers to have the opportunity to benefit from a potentially discounted fee less than that charged to broker-dealers. Market Makers have obligations that other Participants do not. In particular, they must maintain active two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements. As such, the Exchange believes it is appropriate that Market Makers be charged potentially lower transaction fees on BOX when they provide greater volumes of liquidity to the market.

Further, the Exchange believes that the proposed tiered and potentially discounted fees for Market Makers that on a daily basis, trade an average daily volume (as calculated at the end of the month) of 10,000 contracts or more on BOX represents a fair and equitable allocation of reasonable dues, fees, and other charges as it is aimed at incentivizing these participants to provide a greater volume of liquidity to the market. The Exchange believes that giving incentives for this activity results in increased volume on BOX. Such increased volume increases potential revenue to BOX, and would allow BOX and the Exchange to spread its administrative and infrastructure costs over a greater number of transactions, leading to lower costs per transaction.

The Exchange also believes it is equitable and not unfairly discriminatory that Public and Professional Customers not be charged fees for their agency orders in Auction Transactions as compared to broker-dealers on BOX. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for customer benefit. As such, the Exchange believes the exchange fees for Public and Professional Customer Auction Transactions are appropriate and not unfairly discriminatory. The Exchange believes comparably lower customer transaction fees are reasonable. The Exchange believes it promotes the best interests of investors to have lower transaction costs for Public and Professional Customer orders in Auction Transactions, and that the low fees attract participants to submit order flow to the BOX Auction Transactions. The Exchange believes the fees charged to broker-dealers, and market makers are reasonable because they are designed to be comparable to the fees that such accounts would be charged at competing venues.[10]

Moreover, the Exchange believes the exchange fees for broker-dealer customer orders in Auction Transactions are reasonable. As stated above, BOX operates within a highly competitive business. The fees charged to broker-dealers are designed to be comparable to the fees that such accounts would be charged at competing venues. As stated, the Exchange believes it is equitable and not unfairly discriminatory to charge broker-dealer proprietary accounts comparably higher fees than BOX Market Makers and customers. As discussed, Market Makers have obligations that other Participants do not. In particular, they must maintain active two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements. As such, the Exchange believes it is appropriate that Market Makers be charged lower fees on BOX. The Exchange also believes it is equitable and not unfairly discriminatory that customers, including Professionals, be charged lower exchange fees for their customer orders in Auction Transactions than broker-dealers. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for customer benefit. As such, the Exchange believes the proposed fees for broker-dealers, as compared to customers, is appropriate and not unfairly discriminatory.

The Exchange believes that the BOX Exchange Fees for customer orders in Auction Transactions will keep BOX competitive with other exchanges as well as apply in such a manner so as to be equitable among BOX Participants. The Exchange believes the BOX Exchange Fees are fair, reasonable, and competitive with fees in place on other exchanges. Further, the Exchange believes that this competitive marketplace impacts the fees proposed for BOX.

[10] *See e.g.,* Taker Fees or Fees for Removing Liquidity on the ISE Fee Schedule and NASDAQ Options Pricing as of September 2012.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [11] and Rule 19b–4(f)(2) thereunder,[12] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2012–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2012–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2012–015 and should be submitted on or before November 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24956 Filed 10–10–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67979; File No. SR–NASDAQ–2012–108]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Fee Pilot Program for NASDAQ Last Sale

October 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale (''NLS'') market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the ''NASDAQ Last Sale for NASDAQ'' and ''NASDAQ Last Sale for NYSE/Amex'' data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority (''FINRA''). The purpose of this proposal is to extend the existing pilot program for three months, from October 1, 2012 to December 31, 2012.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [July] *October* 1, 2012, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1)–(2) No change.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program, subject to the same fee structure as is applicable today.

NLS consists of two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ'' data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the ''NASDAQ Last Sale for NYSE/Amex'' data product provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the securities information processors (''SIPs'') that provide ''core'' data consolidate last sale information from all exchanges and trade reporting facilities (''TRFs''). Thus, NLS replicates a subset of the information provided by the SIPs.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms are eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product. Firms that are unable to maintain username/password entitlement systems and/or quote counting mechanisms also have multiple options for purchasing the NASDAQ Last Sale data. These firms choose between a ''Unique Visitor'' model for internet delivery or a ''Household'' model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

NASDAQ also established a cap on the monthly fee, currently set at $50,000 per month for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee applies to all distributors and does not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the internet and television.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data. In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

NASDAQ believes that its NASDAQ Last Sale market data products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[5]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (DC Cir. 2010), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoalition,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[6]

The Court in *NetCoalition,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSEArca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.[7] Moreover, NASDAQ further notes that the product at issue in this filing—a NASDAQ last sale data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSEArca depth-of-book data product at issue in *NetCoalition.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ's ability to price its Last Sale Data Products is constrained by (1) Competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[6] *NetCoalition,* at 535.

[7] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. Although this change in the law does not alter the Commission's authority to evaluate and ultimately disapprove exchange rules if it concludes that they are not consistent with the Act, it unambiguously reflects a conclusion that market data fee changes do not require prior Commission review before taking effect, and that a proceeding with regard to a particular fee change is required only if the Commission determines that it is necessary or appropriate to suspend the fee and institute such a proceeding.

and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[8] In NASDAQ's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are *the* source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as NLS can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

[8] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSEAmex, NYSEArca, BATS, and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, and (ii) free SIP data products with a 15-minute time delay, and finds a close substitute in last-sale products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. Today, BATS and Direct Edge provide data at no charge in order to attract order flow, and use market data revenue rebates from the resulting executions to maintain low execution charges for their users. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for products such as NLS is borne out by the performance of the market. In May 2008, the internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote data) provided by BATS Trading. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an ''enterprise cap'' of $100,000 for customers receiving only one of the NLS products, and $150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSEArca announced the launch of a competitive last sale product with an enterprise price of $30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to $50,000 (*i.e.,* a reduction of $100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while the internet portal Yahoo! continues to disseminate only the BATS last sale product, Google disseminates only NASDAQ's product.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS would impair the willingness of distributors to take a

product for which there are numerous alternatives, impacting NLS data revenues, the value of NLS as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to NLS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NLS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at *http://www.sec.gov/comments/sr-nasdaq-2006–060/nasdaq2006060.shtml.* In addition, in response to prior filings to extend the NLS pilot,[9] the Securities Industry and Financial Markets Association (''SIFMA'') and NetCoalition filed comment letters contending that the SEC should suspend and institute disapproval proceedings with respect to the filing. Last year, SIFMA and NetCoalition filed a petition seeking review by the United States Court of Appeals for the District of Columbia Circuit with respect to the NLS pricing pilots in effect from July 1, 2011 through September 30, 2011 and from October 1, 2011 through December 31, 2011. These appeals have been stayed pending resolution of the consolidated case *NetCoalition* v. *SEC,* Nos. 10–1421, 10–1422, 11–1001, and 11–1065 (''*NetCoalition II*''), which is scheduled for oral argument in November 2012.

While containing a few superficial modifications from prior letters, SIFMA and NetCoalition's most recently submitted letter continues to mischaracterize the import of the original *NetCoalition* case. Specifically, the court made findings about the extent of the Commission's record in support of determinations about a depth-of-book product offered by NYSEArca. In making this limited finding, the court nevertheless squarely rejected contentions that cost-based review of market data fees was required by the Act:

> The petitioners believe that the SEC's market-based approach is prohibited under the Exchange Act because the Congress intended ''fair and reasonable'' to be determined using a cost-based approach. The SEC counters that, because it has statutorily-granted flexibility in evaluating market data fees, its market-based approach is fully consistent with the Exchange Act. We agree with the SEC.[10]

While the court noted that cost data could sometimes be relevant in determining the reasonableness of fees, it acknowledged that submission of cost data may be inappropriate where there are ''difficulties in calculating the direct costs * * * of market data,'' *Id.* at 539. That is the case here, due to the fact that the fixed costs of market data production are inseparable from the fixed costs of providing a trading platform, and the marginal costs of market data production are minimal or even zero. Because the costs of providing execution services and market data are not unique to either of the provided services, there is no meaningful way to allocate these costs among the two ''joint products''—and any attempt to do so would result in inherently arbitrary cost allocations.[11]

SIFMA and NetCoalition further contend the prior filing lacked evidence supporting a conclusion that the market for NLS is competitive, asserting that arguments about competition for order flow and substitutability were rejected in *NetCoalition.* While the court did determine that the record before it was not sufficient to allow it to endorse those theories on the facts of that case, the court did not itself make any conclusive findings about the actual presence or absence of competition or the accuracy of these theories: rather, it simply made a finding about the state of the SEC's record. Moreover, analysis about competition in the market for depth-of-book data is only tangentially relevant to the market for last sale data. As discussed above and in prior filings, perfect and partial substitutes for NLS exist in the form of real-time core market data, free delayed core market data, and the last sale products of competing venues, additional competitive entry is possible, and evidence of competition is readily apparent in the pricing behavior of the venues offering last sale products and the consumption patterns of their customers. Thus, although NASDAQ believes that the competitive nature of the market for all market data, including depth-of-book data, will ultimately be established, SIFMA and NetCoalition's letters not only mischaracterize the *NetCoalition* decision, they also fail to address the characteristics of the product at issue and the evidence already presented.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[9] Securities Exchange Act Release No. 67376 (July 9, 2012), 77 FR 41467 (July 13, 2012) (SR–NASDAQ–2012–078); Securities Exchange Act Release No. 65488 (October 5, 2011), 76 FR 63334 (October 21, 2011) (SR–NASDAQ–2011–132); Securities Exchange Act Release No. 64856 (July 12, 2011), 76 FR 41845 (July 15, 2011) (SR–NASDAQ–2011–092); Securities Exchange Act Release No. 64188 (April 5, 2011), 76 FR 20054 (April 11, 2011) (SR–NASDAQ–2011–044).

[10] *NetCoalition,* 615 F3d. at 534.

[11] The court also explicitly acknowledged that the ''joint product'' theory set forth by NASDAQ's economic experts in *NetCoalition* (and also described in this filing) could explain the competitive dynamic of the market and explain why consideration of cost data would be unavailing. The court found, however, that the Commission could not rely on the theory because it was not in the Commission's record. *Id.* at 541 n.16. For the purpose of providing a complete explanation of the theory, NASDAQ is further submitting as Exhibit 3 to this filing a study that was submitted to the Commission in SR–NASDAQ–2011–010. *See* Statement of Janusz Ordover and Gustavo Bamberger at 2–17 (December 29, 2010).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–108. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–108 and should be submitted on or before November 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24968 Filed 10–10–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13288 and #13289]

California Disaster #CA–00190

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of a disaster for the State of California dated 09/14/2012.

Incident: Brawley Earthquakes.

Incident Period: 08/26/2012 through 09/09/2012.

Effective Date: 10/03/2012.

Physical Loan Application Deadline Date: 11/13/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 06/14/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Administrator's disaster declaration for the State of California, dated 09/14/2012 I hereby amended to establish the incident period for this disaster as beginning on 08/26/2012 and continuing through 09/09/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 3, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–24950 Filed 10–10–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8059]

30-Day Notice of Proposed Information Collection: Petition To Classify Special Immigrant as an Employee or Former Employee of the U.S. Government Abroad

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection request described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations.

DATE(S): Submit comments directly to the Office of Management and Budget (OMB) up to November 13, 2012.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Sydney Taylor, Office of Visa Services, U.S Department of State, 2401 E. Street NW., L–630, Washington, DC who may be reached at 202–663–3721.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Petition to Classify Special Immigrant Under INA 203(b)(4) as an employee or former employee of the U.S. Government Abroad
- *OMB Control Number:* 1405–0082
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* CA/VO/L/R
- *Form Number:* DS–1884
- *Respondents:* Aliens petitioning for immigrant visas under INA 203(b)(4) as a special immigrant described in INA section 101(a)(27)(D)
- *Estimated Number of Respondents:* 300
- *Estimated Number of Responses:* 300
- *Average Time per Response:* 10 minutes
- *Total Estimated Burden Time:* 50 hours
- *Frequency:* Once per petition
- *Obligation To Respond:* Required to obtain benefits

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: DS–1884 solicits information from petitioners claiming employment-based immigrant visa preference under section 203(b)(4) of the Immigration and Nationality Act on the basis of qualification as a special immigrant described in INA section 101(a)(27)(D). A petitioner may file the DS–1884 petition within one year of notification by the Department of State that the Secretary has approved a recommendation that such special immigrant status be accorded to the alien. DS–1884 solicits information that will assist the consular officer in ensuring that the petitioner is statutorily qualified to receive such status, including meeting the years of service and exceptional service requirements.

Methodology: This form can be obtained from posts abroad or through the Department's eForms intranet site. The application available through eForms allows the applicant to complete the application online and then print the application. Most applicants are current federal government employees abroad and have access to the intranet system. Once the form is printed, it is submitted to post.

Dated: October 3, 2012.

Don Heflin,

Acting Deputy Assistant Secretary, Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2012–25028 Filed 10–10–12; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee: Request for Comments From the Public Regarding Granting Certain Trade Benefits to Aruba, Curaçao, Sint Maarten, the Turks and Caicos Islands, the Bahamas, Dominica, Grenada, Montserrat, St. Kitts and Nevis and St. Vincent and the Grenadines

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for public comment.

SUMMARY: The Trade Policy Staff Committee (TPSC) is seeking comments from the public on whether Curaçao, Sint Maarten, and the Turks and Caicos Islands should be designated as eligible to receive benefits under the Caribbean Basin Economic Recovery Act (CBERA) as amended by the Caribbean Basin Trade Partnership Act (CBTPA) (19 U.S.C. 2701 *et seq.*) and whether Aruba, the Bahamas, Dominica, Grenada, Montserrat, St. Kitts and Nevis and St. Vincent and the Grenadines (''St. Vincent'') should be designated as eligible to receive benefits under CBTPA. Although Congress identified the Turks and Caicos Islands as potentially eligible for benefits in 1983, the Turks and Caicos Islands did not request beneficiary status until July 2012. Similarly, although the Congress identified the Bahamas, Grenada, Montserrat, St. Kitts and Nevis and St. Vincent for benefits under CBERA in 1983 and CBTPA in 2000, these countries did not request benefits under CBTPA until 2012. Aruba was designated as a beneficiary country of CBERA benefits effective as of January 1, 1986 upon becoming independent of the Netherlands Antilles in 1986, and requested CBTPA benefits in October 2012. As a result of the dissolution of the Netherlands Antilles in October of 2010, Curaçao and Sint Maarten became successor political entities of the Netherlands Antilles and eligible to receive benefits as such. Curaçao and Sint Maarten requested the receipt of CBERA and CBTPA benefits in, respectively, July and June of 2012.

DATES: Comments are due no later than midnight, November 9, 2012.

ADDRESSES: USTR strongly prefers electronic submissions made at *http://www.regulations.gov*, docket number USTR–2012–0028 See ''Requirements for Submission,'' below. If you are unable to make a submission at *www.regulations.gov*, please contact Don Eiss, Trade Policy Staff Committee, at (202) 395–3475 to make other arrangements.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, contact Don Eiss, Office of the United States Trade Representative, at (202) 395–3475. All other questions should be directed to Fran Huegel, Office of the Americas, Office of the United States Trade Representative, 600 17th Street NW., Room 523, Washington, DC 20508. Her telephone number is (202) 395–6135.

SUPPLEMENTARY INFORMATION: Interested parties are invited to submit comments on whether Curaçao, Sint Maarten, and the Turks and Caicos Islands meet or fail to satisfy the eligibility criteria described in sections 212(b), 212(c), and 213(b)(5)(B) of the CBERA, as amended, and whether the Bahamas, Grenada, Montserrat, St. Kitts and Nevis and St. Vincent meet or fail to satisfy the eligibility criteria described in section 213(b)(5)(B) of the CBERA, as amended. Those criteria may be accessed at *http://www.gpo.gov/fdsys/pkg/USCODE-2011-title19/html/USCODE-2011-title19-chap15.htm* and are summarized below.

Eligibility Criteria for Designation as a Beneficiary Under CBERA and CBTPA

After a country, territory or successor political entity identified in the statute as a potential beneficiary country requests benefits under CBERA and CBTPA, the President must determine whether to designate it as a beneficiary under the two programs. The President shall consider only the specified countries, territories, or successor political entities. In determining whether to designate a country as a CBERA beneficiary country, the President must take into account the criteria contained in section 212(b) of the CBERA, which include whether the country, *inter alia:* (1) Is a Communist country; (2) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, or taken certain steps described in the statute that have such an effect, without proper compensation or arbitration of the dispute; (3) fails to act in good faith in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 percent or more beneficially owned by United States citizens; (4) affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce; (5) owns an entity that engages in the broadcast of copyrighted material belonging to United States copyright owners without their express consent; (6) is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and (7) has not or is not taking steps to afford internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974 (19 U.S.C. 2467(4)) to workers in the country.

The President must also take into account the criteria contained in section 212 (c) of the CBERA, which include, *inter alia:* (1) The economic conditions in such country; (2) the extent to which

such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country; (3) the degree to which such country follows the accepted rules of international trade provided for under the World Trade Organization (WTO) Agreement and the multilateral trade agreements; (4) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade; (5) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region; (6) the degree to which such country is undertaking self-help measures to promote its own economic development; (7) whether or not such country has taken or is taking steps to afford to workers in that country internationally recognized worker rights; (8) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property; (9) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material belonging to United States copyright owners without their express consent; (10) and the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of the CBERA.

Eligibility Criteria for CBTPA Beneficiary Countries

In determining whether to designate a country as a CBTPA beneficiary country, the President must take into account the criteria contained in sections 212(b) and (c) of CBERA described above, and other appropriate criteria, including the following criteria contained in section 213(b)(5)(B) of the CBERA: (1) Whether the beneficiary country has demonstrated a commitment to undertake its obligations under the WTO Agreement; (2) participates in negotiations toward the completion of the Free Trade Area of the Americas or another free trade agreement; (3) the extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)); (4) the extent to which the country provides internationally recognized worker rights; (5) whether the country has implemented its commitments to eliminate the worst forms of child labor; (6) the extent to which the country has met U.S. counter-narcotics certification criteria under the Foreign Assistance Act of 1961; (7) the extent to which the country has taken steps to become a party to and implement the Inter-American Convention Against Corruption; and (8) the extent to which the country applies transparent, nondiscriminatory and competitive procedures in government procurement and contributes to efforts in international fora to develop and implement rules on transparency in government procurement.

Additionally, before a country can receive benefits under the CBTPA, the President must also determine that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) relating to the implementation of procedures and requirements similar to the relevant procedures and requirements under chapter 5 of the North American Free Trade Agreement.

Requirements for Submissions. Persons submitting comments must do so in English and must identify (on the first page of the submission) the ''CBERA and/or CBTPA Eligibility for [insert names of countries upon which you are commenting].'' Written comments must be received by November 9, 2012.

In order to ensure the most timely and expeditious receipt and consideration of comments, USTR has arranged to accept on-line submissions via *www.regulations.gov.* To submit comments via *www.regulations.gov*, enter docket number USTR–2012–0028 on the home page and click ''go''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* Web site provides the option of making submissions by filling in a ''General Comments'' field, or by attaching a document. We expect that most submissions will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''General Comments'' field.

Submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) are preferred. If an application other than those two is used, please identify in your submission the specific application used. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC'' and must be submitted separately from the public version. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. If you file comments containing business confidential information you must also submit a public version of the comments under a separate submission. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. If you submit comments that contain no business confidential information, the file name should begin with the character ''P'', followed by the name of the person or entity submitting the comments. Electronic submissions should not attach separate cover letters; rather, information that might appear in a cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

We strongly urge submitters to use electronic filing. If an on-line submission is impossible, alternative arrangements must be made with Mr. Eiss prior to delivery for the receipt of such submissions. Mr. Eiss may be contacted at (202) 395–3475. General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

John Melle,

Assistant United States Trade Representative for the Western Hemisphere.

[FR Doc. 2012–25063 Filed 10–10–12; 8:45 am]

BILLING CODE 3290–F3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS440]

WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping and Countervailing Duties on Certain Automobiles From the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on September 18, 2012, the United States requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') with the People's Republic of China (''China'') concerning China's anti-dumping and countervailing duties on certain automobiles from the United States. That request may be found at *www.wto.org* in a document designated as WT/DS440/2. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 16, 2012, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov*, docket number USTR–2012–0016. If you are unable to provide submissions at *www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Dan Stirk, Associate General Counsel, Office of the United States Trade Representative; or Joseph Rieras, Assistant General Counsel, Office of the United States Trade Representative. Contact information is: 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b)(1) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the United States has requested a panel pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). Once it is established, the panel will hold its meetings in Geneva, Switzerland, and would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

The United States considers that certain measures imposing antidumping and countervailing duties on certain automobiles from the United States are inconsistent with China's obligations under the WTO Agreement. The measures are set forth in the Ministry of Commerce of the People's Republic of China (''MOFCOM'') Notice No. 20 [2011] and Notice No. 84 [2011], including any and all annexes. These measures appear to be inconsistent with Articles 1, 3.1, 3.2, 3.4, 3.5, 4.1, 5.4, 6.5.1, 6.8, 6.9, 12.2, 12.2.2, and Paragraph 1 of Annex II of the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (''AD Agreement''); Articles 10, 11.4, 12.4.1, 12.7, 12.8, 15.1, 15.2, 15.4, 15.5, 16.1, 22.3, and 22.5 of the WTO *Agreement on Subsidies and Countervailing Measures* (''SCM Agreement''); and Article VI of the *General Agreement on Tariffs and Trade 1994* (''GATT 1994''). On July 5, 2012, the United States requested consultations with China. That request may be found at *www.wto.org* contained in a document designated as WT/DS440/1. The United States and China held consultations on August 23, 2012, but the consultations did not resolve the matter.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2012–0016. If you are unable to provide submissions at *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2012–0016 on the home page and click ''search''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Comment Now!.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use Regulations.gov Site'' on the bottom of the page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comments'' field, or by attaching a document using an ''Upload File'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19

U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *www.regulations.gov*, docket number USTR–2012–0016. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *www.wto.org.* Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

Juan Millan,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2012–25053 Filed 10–10–12; 8:45 am]

BILLING CODE 3290–F3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS449]

WTO Dispute Settlement Proceeding Regarding United States—Countervailing and Anti-Dumping Measures on Certain Products From China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on September 17, 2012, the People's Republic of China (''China'') requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning Public Law 112–99, ''An act to apply the countervailing duty provisions of the Tariff Act of 1930 to nonmarket economy countries, and for other purposes'' (''Pub. L. 112–99''), and the countervailing and anti-dumping duty determinations and actions by the Department of Commerce, the U.S. International Trade Commission and the U.S. Customs and Border Protection on imports of the products from China listed below. That request may be found at *www.wto.org* contained in a document designated as WT/DS449/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 1, 2012, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2012–0031. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Lisa Wang, Assistant General Counsel, or Joseph Rieras, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by China

On September 17, 2012, China requested consultations concerning: (1) Section 1 of Public Law 112–99, ''Application of Countervailing Duty Provisions to Nonmarket Economy Countries''; and (2) Section 2 of Public Law 112–99, ''Adjustment of Antidumping Duty in Certain Proceedings Relating to Imports from Nonmarket Economy Countries.''

China also challenges the concurrent application of anti-dumping and countervailing duties under the nonmarket economy methodology with respect to the following investigations and reviews initiated between November 20, 2006 and March 13, 2012 on imports from China: Coated Free Sheet Paper (C–570–907); Circular Welded Carbon Quality Steel Pipe (C–570–911); Light-Walled Rectangular Pipe and Tube (C–570–915); Laminated Woven Sacks (C–570–917); Certain New Pneumatic Off-The-Road Tires; (C–570–913); Certain New Pneumatic Off-The-Road Tires, Administrative Review (C–570–913); Raw Flexible Magnets (C–570–923); Lightweight Thermal Paper (C–570–921); Sodium Nitrite (C–570–926); Circular Welded Austenitic Stainless Pressure Pipe (C–570–931); Certain Circular Welded Carbon Quality Steel Line Pipe (C–570–936); Citric Acid and Certain Citrate Salts (C–570–938); Citric Acid and Certain Citrate Salts, Administrative Review (C–570–938); Certain Tow Behind Lawn Groomers and Certain Parts Thereof (C–570–940); Certain Kitchen Appliance Shelving and Racks (C–570–942); Certain Kitchen Appliance Shelving and Racks, Administrative Review (C–570–942), Certain Oil Country Tubular Goods (C–570–944), Prestressed Concrete Steel Wire Strand (C–570–946); Certain Steel Grating (C–570–948); Wire Decking (C–570–950); Narrow Woven Ribbons With Woven Selvedge (C–570–953); Certain Magnesia Carbon Bricks (C–570–955); Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (C–570–957); Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses (C–570–959); Certain Potassium Phosphate Salts (C–570–963); Drill Pipe (C–570–966); Aluminum Extrusions (C–570–968); Multilayered Wood Flooring (C–570–971); Certain Steel Wheels (C–570–974); Galvanized Steel Wire (C–570–976); High Pressure Steel Cylinders (C–570–978); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, (C–570–980); Utility Scale Wind Towers (C–570–982); Drawn Stainless Steel Sinks (C–570–984); Coated Free Sheet Paper (A–570–906); Circular Welded Carbon Quality Steel Pipe (A–570–910); Light-Walled Rectangular Pipe and Tube (A–570–916); Laminated Woven Sacks (A–570–914); Certain New Pneumatic Off-The-Road Tires (A–570–912); Certain New Pneumatic Off-The-Road Tires, Administrative Review (A–570–912); Raw Flexible Magnets (A–570–922); Lightweight Thermal Paper (A–570–920); Sodium Nitrite (A–570–925); Circular Welded Austenitic Stainless Pressure Pipe (A–570–930); Certain Circular Welded Carbon Quality Steel Line Pipe (A–570–935); Citric Acid and Certain Citrate Salts (A–570–937); Citric Acid and Certain Citrate Salts, Administrative Review (A–570–937); Certain Tow Behind Lawn Groomers and Certain Parts Thereof (A–570–939); Certain Kitchen Appliance Shelving and Racks (A–570–941); Certain Kitchen Appliance Shelving and Racks,

Administrative Review (A–570–941); Certain Oil Country Tubular Goods (A–570–943); Prestressed Concrete Steel Wire Strand (A–570–945); Certain Steel Grating (A–570–947); Wire Decking (A–570–949); Narrow Woven Ribbons With Woven Selvedge (A–570–952); Certain Magnesia Carbon Bricks (A–570–954); Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (A–570–956); Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses (A–570–958); Certain Potassium Phosphate Salts (A–570–962); Drill Pipe (A–570–965); Aluminum Extrusions (A–570–967); Multilayered Wood Flooring (A–570–970); Certain Steel Wheels (A–570–973); Galvanized Steel Wire (A–570–975); High Pressure Steel Cylinders (A–570–977); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules (A–570–979); Utility Scale Wind Towers (A–570–981); and Drawn Stainless Steel Sinks (A–570–983).

China alleges inconsistencies with Articles VI, X:1, X:2, X:3 of the *General Agreement on Tariffs and Trade 1994* (''GATT 1994''), Articles 10, 15, 19, 21 and 32 of the *Agreement on Subsidies and Countervailing Measures,* and Articles 9 and 11 of the *Agreement on Implementation of Article VI of the GATT 1994.* The challenged investigations and reviews are available at the following web page of the Department of Commerce: *http://ia.ita.doc.gov/frn/index.html.*

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2012–0031. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2012–0031 on the home page and click ''search''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Comment Now!.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use Regulations.gov'' on the bottom of the page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comments'' field or by attaching a document using an ''upload file'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice. Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *www.regulations.gov*, docket number USTR–2012–0031.

The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *www.wto.org.* Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

Juan Millan,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2012–25061 Filed 10–10–12; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2012–0165]

Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: No FEAR Act Notice.

SUMMARY: This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act of 2002). It is the annual obligation for Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Anti-discrimination and Whistleblower Protection Laws.

FOR FURTHER INFORMATION CONTACT: John Benison, Associate Director of Policy and Quality Control Division, S–35, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W78–304, Washington, DC 20590, 202–366–1732 or by email at *John.Benison@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve this document online through the Federal Document Management System at *http://www.regulations.gov.* Electronic retrieval instructions are available under the help section of the Web site. An electronic copy is also available for download from the Government

Printing Office's Electronic Bulletin Board at *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at *http://www.access.gpo.gov/nara*.

No FEAR Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' now recognized as the No FEAR Act (Pub. L. 107–174). One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' (Pub. L. 107–174, Summary). In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination'' (Pub. L. 107–174, Title I, General Provisions, section 101(1)). The Act also requires the United States Department of Transportation (USDOT) to provide this Notice to all USDOT employees, former USDOT employees, and applicants for USDOT employment. This Notice is to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment because of race, color, religion, sex, national origin, age, disability, marital status, genetic information, or political affiliation. One or more of the following statutes prohibit discrimination on these bases: 5 U.S.C. 2302(b)(1), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 206(d), 29 U.S.C. 791, 42 U.S.C. 2000e–16 and 2000ff.

If you believe you were a victim of unlawful discrimination on the bases of race, color, religion, sex, national origin, age, genetic information, and/or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within 45 calendar days of the effective date of the action to try and resolve the matter informally. This must be done before filing a formal complaint of discrimination with USDOT (See, e.g., 29 CFR part 1614).

If you believe you were a victim of unlawful discrimination based on age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. As an alternative to filing a complaint pursuant to 29 CFR part 1614, you can file a civil action in a United States district court under the Age Discrimination in Employment Act (ADEA), against the head of an alleged discriminating agency, after giving the EEOC not less than a 30 day notice of the intent to file such action. You may file such notice in writing with the EEOC via mail at P.O. Box 77960, Washington, DC 20013, personal delivery, or facsimile within 180 days of the occurrence of the alleged unlawful practice.

If you are alleging discrimination based on marital status or political affiliation, you may file a written discrimination complaint with the U.S. Office of Special Counsel (OSC) (See Contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the USDOT administrative or negotiated grievance procedures, if such procedures apply and are available. Form OSC–11 is available online at the OSC Web site *http://www.osc.gov/index.htm,* under the filing tab (*Contact Information*). Additionally, you can download the form under the same filing tab, under OSC Forms. Complete this form and mail it to the Complaints Examining Unit, U.S. Office of Special Counsel at 1730 M Street NW., Suite 218 Washington, DC 20036–4505. You also have the option to call the Complaints Examining Unit at (800) 872–9855 for additional assistance.

If you are alleging compensation discrimination pursuant to the Equal Pay Act (EPA), and wish to pursue your allegations through the administrative process, you must contact an EEO counselor within 45 calendar days of the alleged discriminatory action as such complaints are processed under EEOC's regulations at 29 CFR part 1614. Alternatively, you may file a civil action in a court of competent jurisdiction within two years, or if the violation is willful, three years of the date of the alleged violation, regardless of whether you pursued any administrative complaint processing. The filing of a complaint or appeal pursuant to 29 CFR part 1614 shall not toll the time for filing a civil action.

Whistleblower Protection Laws

A USDOT employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take, or fail to take, or threaten to take, or fail to take a personnel action against an employee or applicant because of a disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless the disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against a USDOT employee or applicant for making a protected disclosure is prohibited (5 U.S.C. 2302(b)(8)). If you believe you are a victim of whistleblower retaliation, you may file a written complaint with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 202–036–4505 using Form OSC–11. Alternatively, you may file online through the OSC Web site at *http://www.osc.gov*.

Disciplinary Actions

Under existing laws, USDOT retains the right, where appropriate, to discipline a USDOT employee who engages in conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection laws up to and including removal from Federal service. If OSC initiates an investigation under 5 U.S.C. 1214 according to 5 U.S.C. 1214(f), USDOT must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws, or permits an agency to take unfounded disciplinary action against a USDOT employee, or to violate the procedural rights of a USDOT employee accused of discrimination.

Additional Information

For more information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate office(s) within your agency (e.g., EEO/civil rights offices, human resources offices, or legal offices). You can find additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws at the EEOC Web site at *http://www.eeoc.gov* and the OSC Web site at *http://www.osc.gov*.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United

States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: October 3, 2012.

Camille Hazeur,

Director, Departmental Office of Civil Rights, United States Department of Transportation.

[FR Doc. 2012–25008 Filed 10–10–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Texas

AGENCY: Federal Highway Administration (FHWA), (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to various proposed highway projects in Tarrant, Dallas and Denton Counties, Texas. Those actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before March 10, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Achille Alonzi, Assistant Division Administrator, Texas Division, Federal Highway Administration, 300 E. 8th Street, Room 826, Austin, Texas 78701; 8:00 a.m. to 5:00 p.m. (central time) Monday through Friday, 512–536–5902; email: *al.alonzi@fhwa.dot.gov.* For Texas Department of Transportation (TxDOT): Mr. Carlos Swonke, Director of Environmental Affairs Division, Texas Department of Transportation (TxDOT), 118 E. Riverside, Austin, Texas 78704; 8:00 a.m. to 5:00 p.m. (central time) Monday through Friday, 512–416–2734; email: *carlos.swonke@txdot.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below. The actions by the Federal agencies on a project, and the laws under which such actions were taken, are described in the documented environmental assessments (EAs) issued in connection with the project, and in other FHWA project records. The EAs and other documents from the FHWA project record files for the listed projects are available by contacting the FHWA or TxDOT at the addresses provided above.

This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken. This notice does not apply to the U.S. Army Corps of Engineering (USACE) permitting process for these projects, because no USACE permits have been issued for any of the projects to date. The laws under which Federal agency decisions were made on the projects listed in this notice include, but are not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 128].

2. *Air:* Clean Air Act (CAA), 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and Section 1536], Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended (106) [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)–470(11)]; Archeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013]

6. *Social and Economic:* Civil Rights Act of 1964 (Civil Rights) [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act (AIRF) [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Rivers and Harbors Act of 1899 (RHA), 33 U.S.C. 401–406; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6); Emergency Wetlands Resources Act (EWRA) [16 U.S.C. 3921, 3931]; Wetlands Mitigation (WM) [23 U.S.C. 103(b)(6)(M) and 133(b)(11); Flood Disaster Protection Act (FDPA) [42 U.S.C. 4001–4128].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13112 Invasive Species and the Executive Memorandum on Beneficial Landscaping; and E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency.

The projects subject to this notice are:

(1) *Project location:* The 10.8 mile section of Interstate Highway (IH) 35W North study limits extend from State Highway (SH) 114 in Denton County to IH 820 in Tarrant County Texas. The proposed improvements extend from south of SH 114 at Eagle Parkway to IH 820.

Project reference number: TxDOT Control Section Job numbers (CSJs): 0014–16–252, 0014–16–255, 0081–12–041 & 0081–13–904.

Project Type: The various ultimate lane configurations of the three sections of the roadway are described as follows:

- From Eagle Parkway to US 81/287, the proposed project will consist of reconstructing and widening the roadway to a 10-lane facility consisting of three general purpose lanes (non-toll) in each direction and a barrier-separated four-lane concurrent managed (toll) lane facility (two lanes in each direction). The concurrent managed (toll) lane facility will be centered between the general purpose lanes (non-toll). Auxiliary lanes will be constructed between entrance and exit ramps along the roadway and two/three lane frontage roads in each direction with bicycle accommodation will be constructed. Direct connectors from IH 35W to SH 170 will also be constructed.
- From US 81/287 to Basswood Boulevard, the proposed project will consist of reconstructing and widening the roadway to a 12-lane facility consisting of four general purpose lanes (non-toll) in each direction and a barrier-separated four-lane concurrent managed (toll) lane facility (two lanes in each direction). The concurrent managed (toll) lane facility will be centered between the general purpose lanes (non-toll). Auxiliary lanes will be constructed between entrance and exit ramps along the roadway and two/three/four-lane frontage roads in each direction with bicycle accommodation will be constructed throughout this section. Direct connectors to/from US 81/287 from IH 35W managed (toll) lanes will be constructed.
- From Basswood Boulevard to IH 820, the proposed project will consist of reconstructing and widening the

roadway to a 14-lane facility consisting of four general purpose lanes (non-toll) in each direction and a barrier-separated six-lane concurrent managed (toll) lane facility (three lanes in each direction). The concurrent managed (toll) lane facility will be centered between the general purpose lanes (non-toll). Auxiliary lanes will be constructed between entrance and exit ramps along the roadway and two/three/four-lane frontage roads in each direction with bicycle accommodation will be constructed throughout this section.

The proposed project does not include improvements to the IH 35W/IH 820 interchange. The interchange (extending from the centerline of IH 820 to 825 feet north of Fossil Creek Boulevard) will be constructed as part of the IH 820 improvement project that was approved by FHWA on December 30, 2008.

Final actions taken under: NEPA, FAHA, CAA, Section 106, ESA, MBTA, ARPA, AHPA, NAGPRA, Civil Rights Act of 1964, RHA, Section 401, AIRF, FPPA, SDWA, EWRA, WM, FDPA, E.O. 11990, E.O. 11988, E.O. 13007, E.O. 13287, E.O. 13175, E.O. 12898, E.O. 13112 and E.O. 13166.

FHWA NEPA documents: A Finding of No Significant Impact (FONSI) was issued by FHWA on March 19, 2012. The EA, FONSI and other documents in the administrative record are available by contacting the FHWA or TxDOT at the addresses provided above or at: *http://txdot.gov/project_information/projects/fort_worth/north_tarrant_express/environmental_studies.htm.*

(2) *Project Location:* A 5.4 mile section along IH 35W South from IH 820 to IH 30, and includes improvements along US 287 from IH 35W to IH 30 and along SH 121 from Riverside Drive to Belknap Street/Weatherford Street in downtown Fort Worth in Tarrant County Texas. The proposed project construction limits extend along IH 35W from just north of Meacham Boulevard to just north of IH 30, along SH 121 from Riverside Drive west to IH 35W, along US 287 from IH 35W to IH 30, and from IH 35W west along Belknap Street and Weatherford Street to their crossing with the Burlington Northern Santa Fe Railroad (BNSF) in downtown Fort Worth. Improvements to the interchanges at IH 820 and IH 30 are not included in the proposed project, but improvements to the SH 121 and US 287 interchanges are included.

Project reference number: TxDOT CSJs: 0014–16–179 & 0014–16–268.

Project type:

- On IH 35W from IH 820 to IH 30, the proposed project will consist of 8 general purpose lanes plus auxiliary lanes (non-toll), four/two-lanes concurrent High Occupancy Vehicles (HOV)/managed lanes (toll) and auxiliary lanes, four/six/eight-lanes continuous and discontinuous frontage road lanes (that includes auxiliary lanes near ramp locations and cross streets).
- Along US 287 from IH 35W to IH 30, the project will consist of 6 general purpose lanes (non-toll), two concurrent HOV/managed lanes (toll) and two lanes discontinuous frontage road lanes (that includes two-way northbound frontage road from Cypress Street to 4th Street).
- On SH 121 from IH 35W to Riverside Drive, the project will consist of 8 general purpose lanes (non-toll), continuous frontage roads for the length of the improvement on SH 121 and direct connectors will be provided to IH 35W north and south with local access to Belknap-Weatherford Streets.

The proposed project does not include improvements to the IH 35W/IH 820 interchange. The interchange (extending from the centerline of IH 820 to 825 feet north of Fossil Creek Boulevard) will be constructed as part of the IH 820 improvement project that was approved by FHWA on December 30, 2008.

Final actions taken under: NEPA, FAHA, CAA, Section 4(f), Section 106, ESA, MBTA, ARPA, AHPA, NAGPRA, Civil Rights Act of 1964, AIRF, FPPA, SDWA, EWRA, WM, FDPA, RHA, Section 401, E.O. 11990, E.O. 11988, E.O. 13007, E.O. 13287, E.O. 13175, E.O. 12898, E.O. 13112 and E.O. 13166.

FHWA NEPA documents: A Finding of No Significant Impact (FONSI) and Section 4(f) *de minimis* determination was issued by FHWA on August 24, 2012. The EA, FONSI and other documents in the administrative record are available by contacting the FHWA or TxDOT at the addresses provided above or at: *http://txdot.gov/project_information/projects/fort_worth/north_tarrant_express/environmental_studies.htm.*

(3) *Project Location:* The IH 35E North section from FM 2181 to US 380 is approximately 11 miles in length located in Denton County Texas.

Project reference number: TxDOT CSJs: 0195–03–050, 0195–03–071, 0195–03–075, 0196–01–056 & 0196–01–074.

Project Type: The proposed improvements include reconstruction of existing 4 lanes to eight mainlanes (four in each direction); two to four concurrent tolled HOV/managed lanes in the center median (one to two in each direction) of IH 35E; and two-, three- and four-lane continuous frontage roads in each direction along the entire project.

Final actions taken under: NEPA, FAHA, CAA, Section 106, ESA, MBTA, ARPA, AHPA, NAGPRA, Civil Rights Act of 1964, AIRF, FPPA, SDWA, EWRA, WM, FDPA, RHA, Section 401, E.O. 11990, E.O. 11988, E.O. 13007, E.O. 13287, E.O. 13175, E.O. 12898, E.O. 13112 and E.O. 13166.

FHWA NEPA documents: A Finding of No Significant Impact (FONSI) was issued by FHWA on January 31, 2012. The EA, FONSI and other documents in the administrative record are available by contacting the FHWA or TxDOT at the addresses provided above or at: *http://www.keepitmovingdallas.com/projects/interstate-highways/ih-35e-from-ih-635-to-us-380/schematics-and-environmental-documents.*

(4) *Project Location:* The IH 35E Middle section from President George Bush Turnpike (PGBT) to FM 2181 is approximately 12 miles in length located in Denton and Dallas County Texas.

Project reference number: TxDOT CSJs: 0196–02–068, 0196–01–096, 0196–02–073, 0196–02–114, and 0196–03–245.

Project Type: The proposed improvements include reconstruction of existing 6 lanes to eight mainlanes (four in each direction); two to four lane collector distributor (each direction) from PGBT to north of SH 121; four concurrent tolled HOV/managed lanes in the center median (two in each direction) of IH 35E; and two, three and four-lane continuous frontage roads in each direction along the entire project.

Final actions taken under: NEPA, FAHA, CAA, Section 4(f), Section 106, ESA, MBTA, ARPA, AHPA, NAGPRA, Civil Rights Act of 1964, AIRF, FPPA, SDWA, EWRA, WM, FDPA, RHA, Section 401, E.O. 11990, E.O. 11988, E.O. 13007, E.O. 13287, E.O. 13175, E.O. 12898, E.O. 13112 and E.O. 13166.

FHWA NEPA documents: A Finding of No Significant Impact (FONSI) and approvals of Programmatic Section 4(f) Net Benefits was issued by FHWA on January 28, 2011, and a FONSI by the U.S. Army Corps of Engineers on February 2, 2011. The EA, FONSIs and other documents in the administrative record are available by contacting the FHWA or TxDOT at the addresses provided above or at: *http://www.keepitmovingdallas.com/projects/interstate-highways/ih-35e-from-ih-635-to-us-380/schematics-and-environmental-documents.*

(5) *Project Location:* The IH 35E South section from IH 635 to President George Bush Turnpike (PGBT) is approximately

5 miles in length located in Dallas County Texas.

Project reference number: TxDOT CSJs: 0196–03–138, 0196–03–180, and 0196–03–240.

Project Type: The proposed improvements include reconstruction of existing 6 lanes to eight mainlanes (four in each direction); two- to four-lane collector distributor (each direction) from Sandy Lake Road/Whitlock Lane to PGBT; four concurrent tolled HOV/managed lanes in the center median (two in each direction) of IH 35E; and two-, three- and four-lane continuous frontage roads in each direction along the entire project.

Final actions taken under: NEPA, FAHA, CAA, ESA, MBTA, Section 106, ARPA, AHPA, NAGPRA, Civil Rights Act of 1964, AIRF, FPPA, SDWA, EWRA, WM, FDPA, RHA, Section 401, E.O. 11990, E.O. 11988, E.O. 13007, E.O. 13287, E.O. 13175, E.O. 12898, E.O. 13112 and E.O. 13166.

FHWA NEPA documents: A Finding of No Significant Impact (FONSI) was issued by FHWA on December 28, 2011. The EA, FONSI and other documents in the administrative record are available by contacting the FHWA or TxDOT at the addresses provided above or at: *http://www.keepitmovingdallas.com/projects/interstate-highways/ih-35e-from-ih-635-to-us-380/schematics-and-environmental-documents*.

(6) *Project Location:* The SH 183 from SH 360 to IH 35E is approximately 8 miles in length located in Tarrant and Dallas Counties Texas.

Project reference number: TxDOT CSJs: 0094–03–065, 0094–07–015, and 0094–07–020.

Project Type: The proposed improvements include reconstruction of existing six lanes to eight mainlanes (four in each direction); four to six concurrent tolled HOV/managed lanes (two to three in each direction); and two- to three-lane continuous frontage roads in each direction along the entire project. The design process produced additional mainlanes, continuous frontage roads in each direction along the corridor, addition of HOV/managed lanes in the center median, and no conversion of existing mainlanes into tolled HOV/managed lanes.

Final actions taken under: NEPA, FAHA, CAA, Section 4(f), Section 106, ESA, MBTA, ARPA, AHPA, NAGPRA, Civil Rights Act of 1964, AIRF, FPPA, SDWA, EWRA, WM, FDPA, RHA, Section 401, E.O. 11990, E.O. 11988, E.O. 13007, E.O. 13287, E.O. 13175, E.O. 12898, E.O. 13112 and E.O. 13166.

FHWA NEPA documents: A Finding of No Significant Impact (FONSI) was issued by FHWA on February 10, 2004. The reevaluation and public involvement conducted thus far indicated no additional environmental concerns have been identified. Therefore, on April 9, 2012, FHWA concurred that the original FONSI issued on February 10, 2004 remains valid for the approved EA. The EA, FONSI and other documents in the administrative record are available by contacting the FHWA or TxDOT at the addresses provided above or at: *http://www.keepitmovingdallas.com/projects/state-highways/sh-183*.

(7) *Project Location:* Dallas Horseshoe Project includes improvements along IH 30 from Sylvan Avenue to west of IH 45 and along IH 35E, and from 8th Street to IH 30. The project is approximately 5 miles in length and is located in Dallas County Texas.

Project reference number: TxDOT CSJs: 0196–03–205, 0442–02–118, 0442–02–132, 1068–04–099, 1068–04–116, and 0009–11–226.

Project Type: The project consists mainly of the replacement of the IH 30 and IH 35E bridge structures that cross the Dallas Floodway and the reconstruction of the IH 35E at IH 30 interchange commonly known as the Mixmaster. The proposed improvements would include the addition of general purpose lanes, collector distributor roads, access ramps, and direct connection ramps. Other improvements include the continuous frontage roads, the extension of the existing reversible HOV lane along IH 35E, and cross street improvements. The proposed project would also accommodate pedestrian and bicycle facilities. The main components of the proposed project are described as follows:

- *IH 30 and IH 35E Bridge Replacement:* The existing IH 30 bridge structures would be replaced with four new bridge structures each (two structures for the mainlanes and two structures for the frontage roads). Each IH 30 mainlane bridge would consist of five travel lanes. Each frontage road bridge would include two lanes. The IH 35E bridge structures would also be replaced with four new bridge structures. The IH 35E northbound bridges would consist of three travel lanes, two reversible HOV lanes, separated from the mainlanes by an outside shoulder and a concrete traffic barrier; five collector distributor lanes, and a sidewalk. The IH 35E southbound bridges would consist of four travel lanes, four collector distributor lanes, and a sidewalk along the outside of the collector distributor road.
- *Interchange reconstruction:* The Mixmaster would be reconstructed to include new direct connectors, collector distributor lanes, mainlanes, reversible HOV lanes, and extension of the IH 30 frontage road which would include one outside lane for shared-use for bikes and vehicles, and a sidewalk. The existing HOV lane within the Mixmaster would be widened from one to two lanes and extended approximately 1,900 feet north to Reunion Boulevard.
- *Cross street improvements proposed at Beckley Avenue, Riverfront Boulevard, and Colorado Boulevard.* Beckley Avenue would include reconstruction of the existing U-turn lane, the addition of sidewalks on both sides of the street, and an outside shared-use lane to accommodate bicycle traffic which would intersect with the Coombs Creek Trail Extension. The proposed improvements along Riverfront Boulevard would include a sidewalks and outside shared-use lanes for bikes and vehicles. The proposed improvements along Colorado Boulevard include the replacement of the half cloverleaf interchange and the realignment of Colorado Boulevard with full reconstruction.

Final actions taken under: NEPA, FAHA, CAA, ESA, MBTA, Section 106, ARPA, AHPA, NAGPRA, Civil Rights Act of 1964, AIRF, FPPA, SDWA, EWRA, WM, FDPA, RHA, Section 401, Supplemental Appropriations Act, 2010, Pub. L. No. 111–212, § 405, 124 Stat. 2302, 2314 (2010), E.O. 11990, E.O. 11988, E.O. 13007, E.O. 13287, E.O. 13175, E.O. 12898, E.O. 13112 and E.O. 13166.

FHWA NEPA documents: A Finding of No Significant Impact (FONSI) was issued by FHWA on September 18, 2012. The EA, FONSI and other documents in the administrative record are available by contacting the FHWA or TxDOT at the addresses provided above or at: *http://www.keepitmovingdallas.com/public-hearings/2012/dallas-horseshoe-project-ih30-ih35e*.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1), as amended by Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, § 1308, 126 Stat. 405 (2012).

Issued on: October 4, 2012.

Achille Alonzi,

Assistant Division Administrator, Austin, Texas.

[FR Doc. 2012–25004 Filed 10–10–12; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Willow Road (FAP 305) between Illinois Route 43 (Waukegan Road) and Interstate 94 (Edens Expressway) in Cook County, Illinois. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 10, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600, Email address: *Norman.Stoner@dot.gov.* The FHWA Illinois Division Office's normal business hours are 7:30 a.m. to 4:15 p.m. You may also contact Mr. John A. Fortmann, P.E., Illinois Department of Transportation, Deputy Director of Highways, Acting Region One Engineer, 201 West Center Court, Schaumburg, Illinois 60196, Phone: (847) 705–4000. The Illinois Department of Transportation Region One's normal business hours are 8 a.m. to 4:15 p.m.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Illinois: reconstruct and widen Willow Road (FAP 305) from Illinois Route 43 (Waukegan Road) to Interstate 94 (Edens Expressway), a distance of approximately 1.8 miles including replacing the bridge over the Middle Fork North Branch of the Chicago River. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project approved on March 28, 2012, the Finding of No Significant Impact (FONSI) issued on September 14, 2012, and in other documents in the FHWA administrative record. The EA, FONSI, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Illinois Department of Transportation at the addresses provided above. The EA and FONSI and all other supporting documentation can be viewed and downloaded from the project Web site at *www.willowroadfuture.org.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351] Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303 and 23 U.S.C. 138].

4. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)].

6. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

7. *Wetlands and Water Resources:* Clean Water Act (Section 401 and 404) [33 U.S.C. 1251–1377]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 1, 2012.

Norman R. Stoner,

Division Administrator, Springfield, Illinois.

[FR Doc. 2012–24700 Filed 10–10–12; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2012–0244]

Pipeline Safety: Notice of Public Meeting on Pipeline Data

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: PHMSA and the National Association of Pipeline Safety Representatives (NAPSR) are sponsoring this public meeting to discuss how pipeline data is currently used by stakeholders and identify potential improvements in pipeline safety performance measures. PHMSA pipeline safety regulations require integrity management program performance measures for gas distribution, gas transmission, and hazardous liquids pipelines. The National Transportation Safety Board (NTSB) and the U.S. Department of Transportation's (DOT) Office of the Inspector General have recommended that PHMSA improve pipeline safety performance measures and generate meaningful metrics. This meeting provides an opportunity for pipeline safety stakeholders to suggest improvements to existing performance measures and new measures representing meaningful pipeline safety metrics. The meeting will include breakout sessions on voluntary reporting, data discrepancies, data collected but not needed, and performance measures.

DATES: The public meeting on pipeline data will be held on Monday, October 29, 2012, from 1 p.m. to 5:30 p.m. and Tuesday, October 30, 2012, from 8 a.m. to 5 p.m. Name badge pickup and onsite registration will be available starting at 12:30 p.m. on October 29 and 7:30 a.m. on October 30.

Registration: Please register at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=81.* Please note that the meeting will be webcast, including the voluntary reporting breakout on October 30. The webcast link will be posted on the registration Web page prior to the event.

ADDRESSES: The public meeting will be held at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue NW., Washington, DC 20001, phone: 888–421–1442. Please contact the Hyatt Regency before October 16, 2012, to reserve a room in the ''US DOT'' room block by phone or at *https://resweb.*

passkey.com/Resweb.do?mode=welcome_gi_new&groupID=16450837. Please contact the Hyatt Regency for information on facilities or services for individuals with disabilities or to request special assistance during these public meetings. The meeting room will be posted at the hotel on the days of the workshop.

FOR FURTHER INFORMATION CONTACT: Blaine Keener at 202–366–0970 or by email at *blaine.keener@dot.gov.*

SUPPLEMENTARY INFORMATION:

PHMSA will be holding this public meeting to provide an open forum for exchanging information about how pipeline data is used by stakeholders and how performance measures could be improved. The NTSB and the DOT Office of the Inspector General have recommended that PHMSA improve pipeline safety performance measures and generate meaningful metrics. Various stakeholders, including Federal and state regulatory agencies, industry, advocacy groups and the media often use data collected by PHMSA and made publicly available to describe the reliability of the pipeline infrastructure, portray safety trends, or identify emerging safety concerns. Further, this data is often used as part of evaluating the safety performance of individual companies, the industry as a whole, and the effectiveness of the regulatory process.

PHMSA regulations require integrity management program performance measures for gas distribution pipelines (49 CFR 192.1007(e)), gas transmission pipelines (49 CFR 192.945) and hazardous liquids pipelines (49 CFR 195.452(k)). The information exchanged at this public meeting will help inform PHMSA as rulemakings or information collections are considered to improve integrity management performance measures and establish new performance measures for aspects of pipeline safety other than integrity management programs.

The keynote speaker will be NTSB member Mr. Mark Rosekind. Presenters will include PHMSA, NAPSR, the Pipeline Safety Trust, and representatives from the pipeline industry. As speakers are identified by name, the agenda on the registration Web page will be updated. PHMSA invites all stakeholders to actively participate in the meeting and specifically engage in thoughtful input and discussion during the topic specific breakout session.

The overall objectives of the meeting are to:

1. Determine how stakeholders, including PHMSA, industry, and the public use the data.
2. Determine how industry and PHMSA currently measure performance, how performance measures could be improved, and what additional data is needed to do so.
3. Determine the best method(s) for collecting, analyzing, and ensuring transparency of additional data needed to improve performance measures.
4. Summarize the data PHMSA currently collects, who we collect it from, and why we collect it.
5. Discuss data quality improvement including past efforts and future opportunities as well as universally understood definitions.

PHMSA is preparing a document summarizing the pipeline data currently collected by PHMSA. This document will be available on the registration Web page by October 22, 2012. All presentations made during the meeting will be available on the registration Web page a few days after the meeting ends.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012–24976 Filed 10–10–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0201]

Pipeline Safety: Communication During Emergency Situations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: PHMSA is issuing this Advisory Bulletin to remind operators of gas, hazardous liquid, and liquefied natural gas pipeline facilities that operators should immediately and directly notify the Public Safety Access Point (PSAP) that serves the communities and jurisdictions in which those pipelines are located when there are indications of a pipeline facility emergency. Furthermore, operators should have the ability to immediately contact PSAP(s) along their pipeline routes if there is an indication of a pipeline facility emergency to determine if the PSAP has information which may help the operator confirm an emergency or to provide assistance and information to public safety personnel who may be responding to the event.

FOR FURTHER INFORMATION CONTACT: John Gale by phone at 202–366–0434 or by email at *john.gale@dot.gov.* Information about PHMSA may be found at *http://phmsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Federal regulations for gas, liquefied natural gas (LNG), and hazardous liquid pipeline facilities require operators to have written procedures for responding to emergencies involving their pipeline facility. The regulations further require that operators include procedures for planning with and notifying local emergency response and other public officials to ensure a coordinated response. Under 49 CFR §§ 192.605, 192.615, 193.2509, and 195.402, pipeline facility operators must include provisions for coordinating with appropriate fire, law enforcement, emergency management, and other public safety officials in their emergency plans. Immediate contact by pipeline facility operators with local emergency responders located in potentially affected areas provides for appropriate, more coordinated and effective response to emergency situations involving pipelines, and can minimize potential injury, death and environmental damage.

Under §§ 192.616 and 195.440, pipeline facility operators must also develop and implement, and sustain a written public education program that follows the American Petroleum Institute's (API) Recommended Practice (RP) 1162. Incorporated by reference into §§ 192.616 and 195.440, API RP 1162 further requires operators to provide notice of, and information regarding their emergency response plans to appropriate local emergency officials. These response plans should include information about how emergency officials can determine potential pipeline related risks, and implement appropriate response plans.

In addition, on December 11, 2011, the National Transportation Safety Board (NTSB) issued safety recommendations following its investigation of the September 9, 2010, natural gas pipeline rupture in the city of San Bruno, CA. Included in these recommendations was NTSB Safety Recommendation P–11–9, which suggested that PHMSA require operators of gas and hazardous liquid pipelines ''to ensure that their control room operators immediately and directly notify the 9–1–1 emergency call center(s) for the communities and jurisdiction in which those pipelines are located when a possible rupture of any pipeline is indicated.'' Pipeline facility

operators should be proactive in notifying officials of possible incidents so that a suitable and timely response can be implemented.

Finally, PHMSA is publishing this Advisory Bulletin to reiterate the importance of immediate dialogue between pipeline facility operators and PSAP staff when there is any indication of a pipeline rupture or other emergency condition which may have an adverse impact on public safety or the environment. The local PSAP may have information pertaining to the event that is not available to the pipeline facility operator. For example, a pipeline facility operator may be aware of a sudden pressure drop on their pipeline, but not be able to pinpoint the location of a release. The local PSAP may have received 9–1–1 calls concerning a strong odor of crude oil or fuel, or of a large fire, but not be aware a pipeline facility is involved. The early exchange and coordination of information can benefit both pipeline facility operators and emergency responders so that a more rapid and effective response to the event is achieved.

II. Advisory Bulletin (ADB–2012–09)

To: Operators of Gas, Hazardous Liquid, and Liquefied Natural Gas Pipeline Facilities

Subject: Communication During Emergency Situations

Advisory: To further enhance the Department's safety efforts, PHMSA is issuing this Advisory Bulletin regarding communication between pipeline facility operators and the PSAP which serves the local emergency responders during pipeline facility emergencies in communities along the pipeline route.

To ensure a prompt, effective, and coordinated response to any type of emergency involving a pipeline facility, pipeline facility operators are required to maintain an informed relationship with emergency responders in their jurisdiction in accordance with §§ 192.615, 193.2509 and 195.402.

PHMSA reminds pipeline facility operators of these requirements and, in particular, the need to notify the PSAP(s), commonly referred to as 9–1–1 emergency call centers, or the local equivalent, of indications of a pipeline facility emergency. Such indications may include an unexpected drop in pressure, unanticipated loss of supervisory control and data acquisition communications, or reports from field personnel. PHMSA recommends that pipeline facility operators immediately contact the PSAP for the communities and jurisdictions in which those indications occur, to notify local responders and implement a coordinated emergency response. These notifications to the PSAP(s) are typically made from pipeline facility control rooms and dispatch centers; pipeline facility operators should ensure the call to the appropriate PSAP is made promptly, and to as many jurisdictions as is necessary. A direct-inbound ten-digit number must be used for the specific PSAP, since a call to 9–1–1 would be routed only to the PSAP for the caller's location.

Further, PHMSA believes that immediate contact and conversation should be established between pipeline facility operators and PSAP staff when there is any indication of a pipeline rupture or other emergency condition which may have a potential adverse impact on public safety or the environment. PHMSA recommends that pipeline facility operators inquire of the PSAP(s) if there are any other reported indicators of possible pipeline emergencies such as odors, unexplained noises, product releases, explosions, fires, etc., as these reports may not have been linked to a possible pipeline incident by the callers contacting the 9–1–1 emergency call center. This early coordination will facilitate the timely and effective implementation of the pipeline facility operator's emergency response plan and coordinated response with local public safety officials.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012–24975 Filed 10–10–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Open Meeting; Request for Comment.

SUMMARY: This Notice sets forth the proposed topics to be discussed for a meeting of the Department of the Treasury's Federal Advisory Committee on Insurance (FACI). The meeting is open to the public and the site is accessible to individuals with disabilities. The FACI will convene the meeting on Wednesday, November 14, 2012, at the Department of the Treasury, in the Cash Room, 1500 Pennsylvania Avenue NW., Washington, DC, 20220, beginning at 10 a.m. Eastern Time. The meeting will be open to the public.

DATES: The meeting will be held on November 14, 2012, commencing at 10 a.m. Eastern Time.

ADDRESSES: The FACI meeting will be held at the Department of the Treasury, in the Cash Room, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The meeting will be open to the public. The meeting will be held in a secured facility, and members of the public who plan to attend the meeting must contact the Federal Insurance Office (Office), at (202) 622–6910, by 5 p.m. Eastern Time on Wednesday, November 7, 2012, to inform the Office of the desire to attend the meeting and to provide the following information which is required for entry into the building:

—Name
—Organization
—Date of Birth
—Social Security Number
—Country of Citizenship

FOR FURTHER INFORMATION CONTACT: James P. Brown, Senior Policy Advisor to the Federal Insurance Office, Department of the Treasury, 1425 New York Avenue NW., Room 2100, Washington, DC 20005, at (202) 622–6910 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Request for Public Comments: FACI is seeking public comments on the EU–U.S. Insurance Dialogue Summary Report (Report) located at: *https://eiopa.europa.eu/consultations/public-hearings/forthcoming/20121016/index.html*. FACI will be discussing the Report at the November 14, 2012 meeting. In addition, the Report will be addressed during a public consultation on October 12, 2012 from 2–5 p.m. in Independence Room F–I, Grand Hyatt Washington, 1000 H Street NW., Washington, DC 20001, as part of the EU–U.S. Dialogue Project. Members of the public wishing to comment on the Report are invited to submit written statements before October 28, 2012, to the FACI by any of the following methods:

Electronic Statements

- Send electronic comments to *faci@treasury.gov*.

Paper Statements

- Send paper statements in triplicate to the Federal Advisory Committee on Insurance, Department of the Treasury, 1425 New York Avenue NW., Room 2100, Washington, DC 20005.

The Department of the Treasury will post all statements on its Web site *http://www.treasury.gov/about/organizational-structure/offices/Pages/Federal-Insurance.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

Tentative Agenda/Topics for Discussion: During this periodic meeting of the FACI, members will discuss international insurance matters. Among the topics to be discussed are the EU–U.S. Insurance Dialogue and matters pending at the International Association of Insurance Supervisors.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2012–25002 Filed 10–10–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; Change in Business Address: Hudson Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 1 to the Treasury Department Circular 570, 2012 Revision, published July 2, 2012, at 77 FR 39322.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that Hudson Insurance Company (NAIC# 25054) has changed its business address to: 100 William Street, 5th Floor, New York, New York, 10038. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2012 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: September 27, 2012.

Laura Carrico,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 2012–24780 Filed 10–10–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8912, Clean Renewable Energy Bond Credit and Gulf Bond Credit; Form 14157, Tax Return Preparer Complaint; Form 990–T, Exempt Organization Business Income Tax Return; Form 5434, Application for Enrollment, and Form 5434–A, Application for Renewal of Enrollment; and Form 8582–CR, Passive Activity Credit Limitations.

DATES: Written comments should be received on or before December 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

(1) *Title:* Clean Renewable Energy Bond Credit and Gulf Bond Credit.

OMB Number: 1545–2025. *Form Number:* 8912.

Abstract: Form 8912, Clean Renewable Energy Bond Credit and Gulf Bond Credit, was developed to carry out the provisions of new Internal Revenue Code sections 54 and 1400N(l). The new form provides a means for the taxpayer to compute the clean renewable energy bond credit and the Gulf bond credit.

Current Actions: There are no changes to the previously approved burden of this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 11 hrs., 7 min.

Estimated Total Annual Burden Hours: 5,555.

(2) *Title:* Tax Return Preparer Complaint.

OMB Number: 1545–2168.

Form Number: 14157.

Abstract: This form was created to comply with TIGTA report 200840015, Complaints Against Return Preparers. This form will be used by taxpayers to report allegations of misconduct by tax return preparers. The form was created specifically for tax return preparer complaints and includes items necessary for the IRS to effectively evaluate the complaint and route to the appropriate function.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and businesses and other for-profits.

Estimated Number of Respondents: 1,500.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Reporting Burden hours: 1,500.

(3) *Title:* Exempt Organization Business Income Tax Return.

OMB Number: 1545–0687.

Form Number: 990–T.

Abstract: Form 990–T is used to report and compute the unrelated business income tax imposed on exempt organizations by Internal Revenue Code section 511 and the proxy tax imposed by Code section 6033(e). The form provides the IRS with the information necessary to determine that the tax has been properly computed.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 37,103.

Estimated Time per Respondent: 141 hrs., 20 min.

Estimated Total Annual Burden Hours: 5,244,139.

(4) *Title:* Form 5434, Application for Enrollment, and Form 5434–A, Application for Renewal of Enrollment.

OMB Number: 1545–0951.

Form Number: 5434 and 5434–A.

Abstract: Form 5434 is used to apply for enrollment to perform actuarial services under the Employee Retirement income

Security Act of 1974 (ERISA). Form 5434–A is used to renew enrollment every three years to perform actuarial services under (ERISA). The information is used by the Joint Board for the Enrollment of Actuaries to determine the eligibility of the applicant to perform actuarial services.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,000.

Estimated Time per Respondent: 38 min.

Estimated Total Annual Burden Hours: 38,000.

(5) *Title:* Passive Activity Credit Limitations.

OMB Number: 1545–1034.

Form Number: 8582–CR.

Abstract: Under Internal Revenue Code section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income, are not allowed, Form 8582–CR is used to figure the passive activity credit allowed and the amount of credit to be reported on the tax return.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 300,000.

Estimated Time per Respondent: 14 hrs., 53 min.

Estimated Total Annual Burden Hours: 2,370,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 4, 2012.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2012–25037 Filed 10–10–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–64–93 (TD 8611): Conduit Arrangements Regulations (§§ 1.881–4 and 1.6038A–3); Form 8871, Political Organization Notice of Section 527 Status; Form 8453–X, Political Organization Declaration for Electronic Filing of Notice of Section 527 Status; Revenue Ruling 2000–33, Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations; Notice 2006–52, Deduction for Energy Efficient Commercial Buildings; and TD 9451, Guidance Necessary to Facilitate Business Election Filing.

DATES: Written comments should be received on or before December 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

(1) *Title:* Conduit Arrangements Regulations.

OMB Number: 1545–1440.

Form Number: INTL–64–93.

Abstract: This regulation provides rules that permit the district director to recharacterize a financing arrangement as a conduit arrangement. The recharacterization will affect the amount of U.S. withholding tax due on financing transactions that are part of the financing arrangement. This regulation affects withholding agents

and foreign investors who engage in multi-party financing arrangements.

Current Actions: There are no changes to the previously approved burden of this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 10 min.

Estimated Total Annual Burden Hours: 10,000.

(2) *Title:* Form 8871, Political Organization Notice of Section 527 Status; Form 8453–X, Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.

OMB Number: 1545–1693.

Form Number: Forms 8871 and 8453–X.

Abstract: Public Law 106–230 as amended by Public Law 107–276, amended Internal Revenue Code section 527(i) to require certain political organizations to provide information to the IRS regarding their name and address, their purpose, and the names and addresses of their officers, highly compensated employees, Board of Directors, and related entities within the meaning of section 168(h)(4)). Forms 8871 and 8453–X are used to report this information to the IRS.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 7 hrs., 2 min.

Estimated Total Annual Reporting Burden hours: 35,195.

(3) *Title:* Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

OMB Number: 1545–1695.

Form Number: Revenue Ruling 2000–33.

Abstract: Revenue Ruling 2000–33 specifies the conditions the plan sponsor should meet to automatically defer a certain percentage of its employees' compensation into their accounts in an eligible deferred compensation plan.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 60 min.

Estimated Total Annual Burden Hours: 500.

(4) *Title:* Deduction for Energy Efficient Commercial Buildings.

OMB Number: 1545–2004.

Form Number: Notice 2006–52.

Abstract: This notice sets forth a process that allows the owner of energy efficient commercial building property to certify that the property satisfies the requirements of § 179D(c)(1) and (d). This notice also provides a procedure whereby the developer of computer software may certify to the Internal Revenue Service that the software is acceptable for use in calculating energy and power consumption for purposes of § 179D of the Code.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 21,767.

Estimated Time per Respondent: 1 hr., 40 min.

Estimated Total Annual Burden Hours: 3,761.

(5) *Title:* Guidance Necessary to Facilitate Business Election Filing.

OMB Number: 1545–2019.

Form Number: REG–161919–05.

Abstract: This regulation provides guidance to taxpayers for determining which corporations are included in a controlled group of corporations.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 350,000.

Estimated Time per Respondent: 45 min.

Estimated Total Annual Burden Hours: 262,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 4, 2012.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2012–25043 Filed 10–10–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8876, Excise Tax on Structured Settlement Factoring Transactions; Form 944–SS, Employer's ANNUAL Federal Tax Return (American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, and Form 944–PR, Planilla para la Declaracion ANNUAL de la Cotribucion Federal del Patrono; Form 1099–MISC, Miscellaneous Income; Form 1099–

PATR, Taxable Distributions Received From Cooperatives; and Letter 109C, Return Requesting Refund Unlocatable or Not Filed; Send Copy.

DATES: Written comments should be received on or before December 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

(1) *Title:* Excise Tax on Structured Settlement Factoring Transactions.

OMB Number: 1545–1826.

Form Number: 8876.

Abstract: Form 8876 is used to report structured settlement transactions and pay the applicable excise tax.

Current Actions: There are no changes to the previously approved burden of this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 5 hrs., 36 min.

Estimated Total Annual Burden Hours: 560.

(2) *Title:* Employer's ANNUAL Federal Tax Return (American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands and Form 944–PR, Planilla para la Declaracion ANNUAL de la Cotribucion Federal del Patrono.

OMB Number: 1545–2010.

Form Number: Form 944–SS and Form 944–PR.

Abstract: Form 944–SS and Form 944–PR are designed so the smallest employers (those whose annual liability for social security and Medicare taxes is $1,000 or less) will have to file and pay these taxes only once a year instead of every quarter.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and Farms.

Estimated Number of Respondents: 20,000.

Estimated Time per Respondent: 9 hrs., 34 min.

Estimated Total Annual Reporting Burden hours: 191,200.

(3) *Title:* Miscellaneous Income.

OMB Number: 1545–0115.

Form Number: 1099–MISC.

Abstract: Form 1099–MISC is used by payers to report payments of $600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments, and an indication of direct sales of $5,000 or more.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 79,480,844.

Estimated Time per Respondent: 18 min.

Estimated Total Annual Burden Hours: 24,639,062.

(4) *Title:* Taxable Distributions Received From Cooperatives.

OMB Number: 1545–0118.

Form Number: 1099–PATR.

Abstract: Form 1099–PATR is used to report patronage dividends paid by cooperatives in accordance with Internal Revenue Code section 6044. The information is used by IRS to verify reporting compliance on the part of the recipient.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,961,131.

Estimated Time per Respondent: 15 min.

Estimated Total Annual Burden Hours: 509,895.

(5) *Title:* Return Requesting Refund Unlocatable or Not Filed; Send Copy.

OMB Number: 1545–0393.

Form Number: 109C.

Abstract: If a taxpayer inquires about not receiving a refund and no return is found, this letter is sent requesting the taxpayer to file another return. The taxpayer must complete an affidavit stating that if they receive a second refund check, it will be return to the IRS.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions.

Estimated Number of Respondents: 18,233.

Estimated Time per Respondent: 5 min.

Estimated Total Annual Burden Hours: 1,513.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 3, 2012.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2012–24946 Filed 10–10–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2009–85, Guidance for Expatriates and Recipients of Foreign Source Gifts and Bequests Under Sections 877A, 2801, and 6039G; Form 1120–FSC, U.S. Income Tax Return of a Foreign Sales Corporation, and Schedule P (Form 1120–FSC), Transfer Price or Commission; Form 8288–B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests; PS–79–93 (TD 8633), Grantor Trust Reporting Requirements (§ 1.674–4); and Form 8844, Empowerment Zone Employment Credit.

DATES: Written comments should be received on or before December 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202)622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

(1) *Title:* Guidance for Expatriates and Recipients of Foreign Source Gifts and Bequests Under Sections 877A, 2801, and 6039G.

OMB Number: 1545–2123.

Form Number: Notice 2009–85.

Abstract: Section 301 of the Heroes Earnings Assistance and Relief Tax Act of 2008 (the ''Act'') enacted new sections 877A and 2801 of the Internal Revenue Code (''Code''), amended sections 6039G and 7701(a), made conforming amendments to sections 877(e) and 7701(b), and repealed section 7701(n). This notice provides guidance regarding certain federal tax consequences under these sections for individuals who renounce U.S. citizenship or cease to be taxed as lawful permanent residents of the United States.

Current Actions: There are no changes to the previously approved burden of this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 4 hrs., 17 min.

Estimated Total Annual Burden Hours: 420.

(2) *Title:* Form 1120–FSC, U.S. Income Tax Return of a Foreign Sales Corporation, and Schedule P (Form 1120–FSC), Transfer Price or Commission.

OMB Number: 1545–0935.

Form Number: 1120–FSC and Schedule P (Form 1120–FSC).

Abstract: Form 1120–FSC is filed by foreign corporations that have elected to be FSCs or small FSCs. The FSC uses Form 1120–FSC to report income and expenses and to figure its tax liability. IRS uses Form 1120–FSC and Schedule P (Form 1120–FSC) to determine whether the FSC has correctly reported its income and expenses and figured its tax liability correctly.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 30,000.

Estimated Time per Respondent: 165 hrs., 37 min.

Estimated Total Annual Reporting Burden hours: 1,088,250.

(3) *Title:* Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Property Interests.

OMB Number: 1545–1060.

Form Number: 8288–B.

Abstract: Section 1445 of the Internal Revenue Code requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Code sections 1445(b) and (c) allow the withholding to be reduced or eliminated under certain circumstances. Form 8288–B is used to apply for a withholding certificate from IRS to reduce or eliminate the withholding required by Code section 1445.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 5,079.

Estimated Time per Respondent: 6 hrs., 8 min.

Estimated Total Annual Burden Hours: 31,135.

(4) *Title:* Grantor Trust Reporting Requirements.

OMB Number: 1545–1442.

Form Number: PS–79–93.

Abstract: The information required by these regulations is used by the Internal Revenue Service to ensure that items of income, deduction, and credit of a trust as owned by a grantor or another person are properly reported.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,840,000.

Estimated Time per Respondent: 30 min.

Estimated Total Annual Burden Hours: 920,000.

(5) *Title:* Empowerment Zone Employment Credit.

OMB Number: 1545–1444.

Form Number: 8844.

Abstract: Employers who hire employees who live and work in one of the eleven designated empowerment zones can receive a tax credit for the first $15,000 of wages paid to each employee.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms and non-profit institutions.

Estimated Number of Respondents: 40,000.

Estimated Time per Respondent: 8 hrs., 5 min.

Estimated Total Annual Burden Hours: 237,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 24, 2012.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2012–24938 Filed 10–10–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, and Form 940–PR, Planilla Para La Declaracion Anual Del Patrono—La Contribucion Federal Para El Desempleo (FUTA); Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt charitable Trust Treated as a Private Foundation, and Form 4720, return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal revenue Code; Form 5227, Split-Interest Trust Information Return; Revenue Procedure 97–33, Electronic Federal Tax Payment System (EFTPS); and TD 9338, Information Returns Required with Respect to Certain Foreign Corporations and Certain Foreign-Owned Domestic Corporations.

DATES: Written comments should be received on or before December 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

(1) *Title:* Employer's Annual Federal Unemployment (FUTA) Tax Return (Form 940) and Planilla Para La Declaracion Anual Del Patrono-La Contribucion Federal Para El Desempleo (FUTA) (Form 940–PR).

OMB Number: 1545–0028. *Form Number:* 940 and 940–PR.

Abstract: Internal Revenue Code section 3301 imposes a tax on employers based on the first $7,000 of taxable wages paid to each employee. The tax is computed and reported on Forms 940 and 940–PR (Puerto Rico employers only). IRS uses the information on Forms 940 and 940–PR to ensure that employers have reported and figured the correct FUTA wages and tax.

Current Actions: There are no changes to the previously approved burden of this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals, or households, and farms.

Estimated Number of Respondents: 1,573,920.

Estimated Time per Respondent: 57 hrs., 26 min.

Estimated Total Annual Burden Hours: 90,403,900.

(2) *Title:* Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt charitable Trust Treated as a Private Foundation, and Form 4720, return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal revenue Code.

OMB Number: 1545–0052.

Form Number: 990–PF and 4720.

Abstract: Internal Revenue Code section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Form 990–PF is used for this purpose. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Form 4720 is used by foundations and/or related persons to report prohibited activities in detail and pay the tax on them.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 55,000.

Estimated Time per Respondent: 200 hrs., 58 min.

Estimated Total Annual Reporting Burden hours: 11,052,594.

(3) *Title:* Split-Interest Trust Information Return.

OMB Number: 1545–0196.

Form Number: 5227.

Abstract: Form 5227 is used to report the financial activities of a split-interest

trust described in Internal Revenue Code section 4947(a)(2), and to determine whether the trust is treated as a private foundation and is subject to the excise taxes under Chapter 42 of the Code.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 88,640.

Estimated Time per Respondent: 84 hrs., 24 min.

Estimated Total Annual Burden Hours: 7,480,960.

(4) *Title:* Federal Tax Payment System (EFTPS).

OMB Number: 1545–1546.

Form Number: Revenue Procedure 97–33.

Abstract: The Electronic Federal Tax Payment System (EFTPS) is an electronic remittance processing system for making federal tax deposits (FTDs) and federal tax payments (FTPs). Revenue Procedure 97–33 provides taxpayers with information and procedures that will help them to electronically make FTDs and tax payments through EFTPS.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 557,243.

Estimated Time per Respondent: 30 min.

Estimated Total Annual Burden Hours: 278,622.

(5) *Title:* Information Returns Required with Respect to Certain Foreign Corporations and Certain Foreign-Owned Domestic Corporations.

OMB Number: 1545–2020.

Form Number: TD 9338.

Abstract: This regulation will provide guidance regarding accounting methods and penalties under section 6038.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 25 min.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 4, 2012.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2012–25045 Filed 10–10–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 197 October 11, 2012

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Cape Sable Thoroughwort, Florida Semaphore Cactus, and Aboriginal Prickly-Apple, and Designation of Critical Habitat for Cape Sable Thoroughwort; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2012–0076; 4500030113]

RIN 1018–AY08

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Cape Sable Thoroughwort, Florida Semaphore Cactus, and Aboriginal Prickly-Apple, and Designation of Critical Habitat for Cape Sable Thoroughwort

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list *Chromolaena frustrata* (Cape Sable thoroughwort), *Consolea corallicola* (Florida semaphore cactus), and *Harrisia aboriginum* (aboriginal prickly-apple) as an endangered species under the Endangered Species Act, and we propose to designate critical habitat for *Chromolaena frustrata.* We have determined that designation of critical habitat is not prudent for *Consolea corallicola* and *H. aboriginum.* These are proposed regulations, and if finalized, their effect will be to add all three species to the List of Endangered or Threatened Plants and to designate critical habitat for one species under the Endangered Species Act.

DATES: We will accept comments received or postmarked on or before December 10, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by November 26, 2012.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the search box, enter Docket No. FWS–R4–ES–2012–0076, which is the docket number for this rulemaking. Then, click the Search button. You may submit a comment by clicking on ''Comment Now!'' If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand–delivery to: Public Comments Processing, Attn: FWS–R4–ES–2012–0076; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

The coordinates, or plot points, or both, from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.fws.gov/verobeach/, http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0076, and at the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we have used for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble of this proposed rule or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Larry Williams, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960; by telephone 772–562–3909; or by facsimile 772–562–4288. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A proposed rule to list *Chromolaena frustrata Consolea corallicola,* and *Harrisia aboriginum* as an endangered species; and (2) a proposed rule to designate critical habitat for *Chromolaena frustrata.*

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), a species may warrant protection through listing if it is an endangered or threatened species throughout all or a significant portion of its range. *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* are highly restricted in their ranges and the threats occur throughout their ranges; therefore, these species qualify for listing. We are proposing to list these plants as endangered species. Their protection under the Act can only be done by issuing a rule.

- *Chromolaena frustrata* has been extirpated (no longer in existence) from half of the islands where it occurred in the Florida Keys, and threats of competition from nonnative plants and habitat loss still exist in the remaining populations.
- *Consolea corallicola* has been extirpated from half of the islands where it occurred in the Florida Keys, and threats of poaching, predation by a nonnative moth, competition from nonnative plant species, and habitat loss still exist in the remaining populations.
- *Harrisia aboriginum* has been extirpated from the northern extent of its range in Manatee County, and threats of poaching, competition from nonnative plant species, and habitat loss still exist in the remaining populations.

The basis for our action. Under the Act, a species may be determined to be an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have determined that threats to *Chromolaena frustrata* include destruction, modification, or curtailment of its habitat or range; inadequate existing regulatory mechanisms; and other natural or man-made factors, including climate change (sea level rise), small populations, and competition from nonnative plant species.

We have determined that threats to *Consolea corallicola* include destruction, modification, or curtailment of its habitat or range; overuse (poaching) and predation; inadequate existing regulatory mechanisms; and other natural or man-made factors, including climate change (sea level rise), small populations, low genetic diversity, and competition from nonnative plant species.

We have determined that the threats to *Harrisia aboriginum* include destruction, modification, or curtailment of its habitat or range; overuse (poaching); inadequate existing regulatory mechanisms; and other natural or man-made factors, including climate change (sea level rise), small populations, and competition from nonnative plant species.

This rule proposes to designate critical habitat for *Chromolaena frustrata.*

• In total, approximately 3,466 hectares (8,565 acres) are being proposed for designation as critical habitat for *C. frustrata.* The proposed critical habitat is located in Miami-Dade and Monroe Counties, Florida.

• The proposed designation includes both occupied and unoccupied critical habitat, although those areas are not differentiated in the proposed rule or on the maps. Where the unit is not occupied by *Chromolaena frustrata,* we have concluded that the area is essential for the conservation of the species because the designation would allow for the expansion of *Chromolaena frustrata*'s range and reintroduction of individuals into areas where the species previously occurred.

This rule does not propose critical habitat for *Consolea corallicola* or *Harrisia aboriginum.* We have determined that designation of critical habitat would not be prudent for either species.

• Designation would increase the likelihood and severity of illegal collection of *C. corallicola* and *H. aboriginum,* and in doing so make enforcement of take prohibitions more difficult.

• These threats outweigh the benefits of designation for the two species.

Peer Review

We are seeking comments from knowledgeable individuals with scientific expertise to review our technical assumptions, analysis of the best available science, and application of that science and to provide any additional scientific information to improve this proposed rule.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional occurrences or populations of these species.

(5) Any information on the biological or ecological requirements of these species and ongoing conservation measures for these species and their habitats.

(6) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to all the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(7) Specific information on:

(a) The amount and distribution of *Chromolaena frustrata* habitat;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(8) Land use designations and current or planned activities in the areas occupied by *Chromolaena frustrata* or proposed to be designated as critical habitat, and possible impacts of these activities on the species and proposed critical habitat.

(9) Information on the projected and reasonably likely impacts of climate change on *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum,* and proposed critical habitat for *Chromolaena frustrata.*

(10) Probable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(11) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(12) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, South Florida Ecological Services Office, Vero Beach, Florida (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

Consolea corallicola was first recognized as a candidate species (under the species' former name *Opuntia spinosissima*) on September 27, 1985 (50 FR 39526). It was removed from the candidate list from 1996 to 1998 because there was not sufficient information on the species' biological vulnerability and threats to support issuance of a proposed rule. The 1999 Candidate Notice of Review (CNOR) published in the **Federal Register** on October 25, 1999 (64 FR 57534) included *C. corallicola* (under the species' previous name *Opuntia corallicola*) as a candidate for listing under the Act. We determined that listing was warranted, but was precluded due to workloads and priorities, and we assigned a listing priority number (LPN) of 5 to the species (64 FR 57534). Candidate species are assigned LPNs based on immediacy and magnitude of threats, as well as taxonomic status. The lower the LPN, the higher priority that species is for us to determine appropriate action using our available resources. In 2001, *C. corallicola* (under the species' previous name *Opuntia corallicola*) remained a candidate species with the LPN of 5 (66 FR 54808, October 30, 2001). In the 2002 CNOR published on June 13, 2002 (67 FR 40657), and under the name *Consolea (opuntia) corallicola,* we changed the LPN of the species from a 5 to a 2 because the threats to the species were found to be more imminent than previously known. *Consolea corallicola* retained the LPN of 2 in the 2004 CNOR published on May 4, 2004 (69 FR 24876). We published a finding for the species in the 2005 CNOR on May 11, 2005 (70 FR 24869) in response to a petition received on May 11, 2004. The species remained on the candidate list as published in the CNORs from 2006 to 2011 with the LPN of 2 (71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011).

Chromolaena frustrata was first recognized as a candidate species in the 1999 CNOR published in the **Federal Register** on October 25, 1999 (64 FR 57534). We determined that listing was warranted, but was precluded due to workloads and priorities, and we assigned a LPN of 5 to the species (64 FR 57534). In 2001, *C. frustrata* remained on the candidate species with the LPN of 5 (66 FR 54808, October 30, 2001). In the 2002 and 2004 CNORs (67 FR 40657, June 13, 2002; 69 FR 24876, May 4, 2004) *C. frustrata* retained the LPN of 5. We published a finding for the species in the 2005 CNOR on May 11, 2005 (70 FR 24869), in response to a petition received on May 11, 2004. We also changed the LPN of C. *frustrata* from a 5 to a 2 because the threats to the species were found to be more imminent than previously known. The species remained on the candidate list as published in the CNORs from 2006 to 2011 with the LNP of 2 (71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 578040, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011).

The Service first recognized *Harrisia aboriginum* as a candidate species in the CNOR published on September 12, 2006, and we assigned an LPN of 5 (71 FR 53756). We determined that listing was warranted, but was precluded due to workloads and priorities. *Harrisia aboriginum* retained its candidate status in 2007 (72 FR 69034, December 6, 2007) and an LPN of 5. In the CNOR published on December 10, 2008 (73 FR 75176), we changed the LPN of *H. aboriginum* from a 5 to a 2 because the threats to the species were found to be more imminent than previously known. The species remained on the candidate list as published in the CNORs from 2009 to 2011 with the LNP of 2 (74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011).

On May 10, 2011, the Service announced a work plan to restore biological priorities and certainty to the Service's listing process. As part of an agreement with one of the agency's most frequent plaintiffs, the Service filed a work plan with the U.S. District Court for the District of Columbia. The work plan will enable the agency to, over a period of 6 years, systematically review and address the needs of more than 250 species listed within the 2010 Candidate Notice of Review, including *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum,* to determine if these species should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. This work plan will enable the Service to again prioritize its workload based on the needs of candidate species, while also providing state wildlife agencies, stakeholders, and other partners clarity and certainty about when listing determinations will be made. On July 12, 2011, the Service reached an agreement with a second frequent plaintiff group and further strengthened the work plan, which will allow the agency to focus its resources on the species most in need of protection under the Act. These agreements were approved on September 9, 2011. The timing of this proposed listing is, in part, therefore, an outcome of the work plan.

Status Assessment for *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum*

Background

It is our intent to discuss below only those topics directly relevant to the listing of *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* as endangered in this section of the proposed rule.

Chromolaena frustrata

General Biology

Chromolaena frustrata (Family: Asteraceae) is a perennial herb. Mature plants are 15 to 25 centimeters (cm) (5.9 to 9.8 inches ((in)) tall with erect stems. The leaves and stems are covered in short, fuzzy hairs. The leaves have three distinct veins, are roughly oval or egg shaped, and have toothed edges. The blue to lavender flowers are borne in heads usually in clusters of two to six. Flowers are produced mostly in the fall, though sometimes year round (Nesom 2006, pp. 544–545).

Taxonomy, Life History, and Distribution

Chromolaena frustrata was first reported by Chapman in 1886, from the Florida Keys, who called it *Eupatorium heteroclinium* (Chapman 1889, p. 626). Early authors assigned the species to the genus *Osmia* (Small 1913, p. 147; 1933, p. 1320). In 1970, R.M. King and H.E. Robinson placed this species in the genus *Chromolaena* (King and Robinson 1970, p. 201). Some authors continued to assign the species to the genus *Eupatorium* (i.e., Long and Lakela 1971, p. 873 and Cronquist 1980, p. 185). The authors of *Vascular Plants of Florida* recognize *Chromolaena frustrata* (Wunderlin and Hansen 2008, pp. 1–2). The Integrated Taxonomic Information System (ITIS) (2012, p. 1) indicates that the taxonomic standing for *C. frustrata* (B.L. Robinson) King and H.E. Robinson is accepted. Synonyms include *Eupatorium frustratum* B.L. Robinson

and *Osmia frustrata* (B.L. Robinson) Small.

Climate

The climate of south Florida where *Chromolaena frustrata* occurs is classified as tropical savanna and is characterized by distinct wet and dry seasons, a monthly mean temperature above 18 °C (64.4 °F) in every month of the year, and annual rainfall averaging 75 to 150 cm (30 to 60 in) (Gabler *et al.* 1994, p. 211). Freezes can occur in the winter months, but are very infrequent at this latitude in Florida.

Habitat

Chromolaena frustrata grows in open canopy habitats, including coastal berms and coastal rock barrens, and in semi-open to closed canopy habitats, including buttonwood forests and rockland hammocks.

Coastal Berm

Coastal berms are landscape features found along low-energy coastlines in south Florida and the Florida Keys. Coastal berm is a short forest or shrub thicket found on long, narrow, storm-deposited ridges of loose sediment formed by a mixture of coarse shell fragments, pieces of coralline algae, and other coastal debris. These ridges parallel the shore and may be found on the seaward edge or landward edge of the mangroves or farther inland depending on the height of the storm surge that formed them. They range in height from 30 to 305 cm (1 to 10 feet (ft)). Structure and composition of the vegetation is variable depending on height and time since the last storm event. The most stable berms may share some tree species with rockland hammocks, but generally have a greater proportion of shrubs and herbs. Tree species may include *Bursera simaruba* (gumbo limbo), *Coccoloba uvifera* (seagrape), *Coccothrinax argentata* (silver palm), *Guapira discolor* (blolly), *Drypetes diversifolia* (milkbark), *Genipa clusiifolia* (seven year apple), and *Metopium toxiferum* (poisonwood). Characteristic tall shrub and short tree species include *Eugenia foetida* (Spanish stopper), *Ximenia americana* (hog plum), *Randia aculeata* (white indigoberry), *Pithecellobium keyense* (Florida Keys blackbead), and *Sideroxylon celastrinum* (saffron plum). Short shrubs and herbs include *Hymenocallis latifolia* (perfumed spiderlily), *Capparis flexuosa* (bayleaf capertree), *Lantana involucrata* (buttonsage), and *Rivina humilis* (rougeplant). More seaward berms or those more recently affected by storm deposition may support a suite of plants similar to beaches, including shoreline *Sesuvium portulacastrum* (sea purslane), *Distichlis spicata* (saltgrass), and *Sporobolus virginicus* (seashore dropseed), or scattered to dense shrub thickets with *Conocarpus erectus* (buttonwood), stunted *Avicennia germinans* (black mangrove), *Rhizophora mangle* (red mangrove), *Laguncularia racemosa* (white mangrove), *Suriana maritima* (bay cedar), *Manilkara jaimiqui* (wild dilly), *Jacquinia keyensis* (joewood), and *Borrichia frutescens* (bushy seaside oxeye) (Florida Natural Areas Inventory (FNAI) 2010a, p. 1).

Coastal berms are deposited by storm waves along low-energy coasts. Their distance inland depends on the height of the storm surge. Tall berms may be the product of repeated storm deposition. Coastal berms that are deposited far enough inland and remain long-undisturbed may in time succeed to hammock. This is a structurally variable community that may appear in various stages of succession following storm disturbance, from scattered herbaceous beach colonizers to a dense stand of tall shrubs (FNAI 2010a, p. 2).

Coastal Rock Barren

Also known as Keys tidal rock barren or Keys cactus barren, coastal rock barren is confined to the Florida Keys on limestone bedrock along shores facing both Florida Bay and the Straits of Florida. Coastal rock barrens are flat rocklands with much exposed and eroded limestone, little soil or leaf litter, and a sparse cover of stunted halophytic herbs and shrubs in tidal rock barrens (FNAI 2010b, p. 1), or a wide variety of herbs and succulents in cactus barrens (FNAI 2010c, p. 1). The amount of exposed rock varies from practically 0 to over 50 percent of the area.

In tidal rock barrens, patches of low, salt-tolerant herbaceous species include *Borrichia frutescens* and *B. arborescens* (seaside oxeye), *Sarcocornia perennis* (perennial glasswort), *Batis maritima* (saltwort), *Monanthochloe littoralis* (shoregrass), *Distichlis spicata, Sporobolus virginicus,* and *Fimbristylis spadicea* (marsh fimbry). *Conocarpus erectus* is the dominant woody plant and varies from stunted, sprawling, multi-stemmed shrubs to tree size. Other typical woody species are *Rhizophora mangle, Avicennia germinans, Laguncularia racemosa,* and *Lycium carolinianum* (christmasberry). At the transition to upland vegetation *C. erectus* may be joined by a variety of shrubs and stunted trees of inland woody species, including *Sideroxylon celastrinum, Gossypium hirsutum* (wild cotton), *Pithecellobium keyense, Suriana maritima, Randia aculeata, Manilkara jaimiqui, Metopium toxiferum, Jacquinia keyensis, Maytenus phyllanthoides* (Florida mayten), and *Acanthocereus tetragonus* (barbed-wire cactus) (FNAI 2010b, p. 1).

In cactus barrens, the vegetation consists of a wide variety of herbaceous and succulent species which characteristically includes cacti, agaves, and several rare herbs. Among the latter are *Evolvulus convolvuloides* (dwarf bindweed), *Cienfuegosia yucatanensis* (Yucatan flymallow), *Jacquemontia pentanthos* (skyblue clustervine), and *Indigofera mucronata* var. *keyensis* (Florida Keys indigo). These frequently occur with grasses and sedges, such as *Leptochloa dubia* (green sprangletop), *Paspalidium chapmanii* (coral panicum), and *Cyperus elegans* (royal flatsedge). Spiny species, particularly the rare *Opuntia triacantha* (three-spined pricklypear), are characteristic but their abundance is variable. Other spiny species include *Agave decipiens* (false sisal), *Acanthocereus tetragonus,* and *Opuntia stricta* (erect pricklypear). Scattered clumps of stunted trees may be present, including *Bursera simaruba, Conocarpus erectus, Eugenia foetida,* and *Pithecellobium unguis-cati* (catclaw blackbead) (FNAI 2010c, p. 1).

Coastal rock barren occurs above the daily tidal range, but is subject to flooding by seawater during extreme tides and storm events. Salt spray from coastal winds, as well as shallow soils, may limit height growth of woody plants. Aside from bare rock substrate, discontinuous patches of thin marl soils may be present. Fires are rare to non existent in this community (FNAI 2010b, p. 2). The natural process giving rise to cactus barrens is not known, but because they occur on sites where the thin layer of organic soil over limestone bedrock is missing, they may have formed by soil erosion following destruction of the plant cover by fire, storm, or artificial clearing (FNAI 2010c, p. 2).

At its seaward edge, coastal rock barren borders mangrove swamp or salt marshes that are regularly inundated. At its upland edge, coastal rock barrens may grade into rockland hammock or pine rockland (FNAI 2010b, p. 2; 2010c, p. 2).

Buttonwood Forest

Forests dominated by buttonwood often exist in upper tidal areas, especially where mangrove swamp transitions to rockland hammock. These buttonwood forests have canopy dominated by *Conocarpus erectus* and often have an understory dominated by *Borrichia frutescens, Lycium*

carolinianum, and *Limonium carolinianum* (sea lavender) (FNAI 2010d, p. 4).

Temperature, salinity, tidal fluctuation, substrate, and wave energy influence the size and extent of buttonwood forests (FNAI 2010e, p. 3). Buttonwood forests often grade into salt marsh, coastal berm, rockland hammock, and coastal rock barren (FNAI 2010d, p. 5).

Rockland Hammock

Rockland hammock is a species-rich tropical hardwood forest on upland sites in areas where limestone is very near the surface and often exposed. The forest floor is largely covered by leaf litter with varying amounts of exposed limestone and has few herbaceous species. Rockland hammocks typically have larger, more mature trees in the interior, while the margins can be almost impenetrable in places with dense growth of smaller shrubs, trees, and vines. Typical canopy and subcanopy species include *Bursera simaruba, Lysiloma latisiliquum* (false tamarind), *Coccoloba diversifolia* (pigeon plum), *Sideroxylon foetidissimum* (false mastic), *Ficus aurea* (strangler fig), *Piscidia piscipula* (Jamaican dogwood), *Ocotea coriacea* (lancewood), *Drypetes diversifolia, Simarouba glauca* (paradisetree), *Sideroxylon salicifolium* (willow bustic), *Krugiodendron ferreum* (black ironwood), *Exothea paniculata* (inkwood), *Metopium toxiferum,* and *Swietenia mahagoni* (West Indies mahogany). Mature hammocks can be open beneath a tall,well-defined canopy and subcanopy. More commonly, in less mature or disturbed hammocks, dense woody vegetation of varying heights from canopy to short shrubs is often present. Species that generally make up the shrub layers within rockland hammock include several species of *Eugenia* (stoppers), *Thrinax morrisii* and *T. radiata* (thatch palms), *Amyris elemifera* (sea torchwood), *Ardisia escallonioides* (marlberry), *Psychotria nervosa* (wild coffee), *Chrysophyllum oliviforme* (satinleaf), *Sabal palmetto* (cabbage palm), *Guaiacum sanctum* (lignum-vitae), *Ximenia americana, Colubrina elliptica* (soldierwood), *Pithecellobium unguis-cati* and *Pithecellobium keyense, Coccoloba uvifera,* and *Colubrina arborescens* (greenheart). Vines can be common and include *Toxicodendron radicans* (eastern poison ivy), *Smilax auriculata* (earleaf greenbrier), *Smilax havanensis* (Everglades greenbrier), *Parthenocissus quinquefolia* (Virginia creeper), *Hippocratea volubilis* (medicine vine), and *Morinda royoc* (redgal). The typically sparse short shrub layer may include *Zamia pumila* (coontie) and *Acanthocereus tetragonus.* Herbaceous species are occasionally present and generally sparse in coverage. Characteristic species include *Lasiacis divaricata* (smallcane), *Oplismenus hirtellus* (basketgrass), and many species of ferns (FNAI 2010e, p.1).

Rockland hammock occurs on a thin layer of highly organic soil covering limestone on high ground that does not regularly flood, but it is often dependent upon a high water table to keep humidity levels high. Rockland hammocks are frequently located near wetlands; in the Everglades they can occur on organic matter that accumulates on top of the underlying limestone; in the Keys they occur inland from tidal flats (FNAI 2010e, p.1).

Rockland hammock is susceptible to fire, frost, canopy disruption, and ground water reduction. Rockland hammock can be the advanced successional stage of pine rockland, especially in cases where rockland hammock is adjacent to pine rockland. In such cases, when fire is excluded from pine rockland for 15 to 25 years, it can succeed to rockland hammock vegetation. Historically, rockland hammocks in south Florida evolved with fire in the landscape, fire most often extinguished near the edges when it encountered the hammock's moist microclimate and litter layer. However, rockland hammocks are susceptible to damage from fire during extreme drought or when the water table is lowered. In these cases, fire can cause tree mortality and consume the organic soil layer (FNAI 2010e, p.2).

Rockland hammocks are also sensitive to the strong winds and storm surge associated with infrequent hurricanes. Canopy damage often occurs, which causes a change in the microclimate of the hammock. Decreased relative humidity and drier soils can leave rockland hammocks more susceptible to fire. Rockland hammock can grade into glades marsh, mangrove swamp, salt marsh, coastal rock barren, pine rockland, maritime hammock, or marl prairie (FNAI 2010e, p. 2).

The sparsely vegetated edges or interior portions laid open by canopy disruption are the areas of rockland hammock that have light levels sufficient to support *Chromolaena frustrata.* However, the dynamic nature of the habitat means that areas not currently open may become open in the future as a result of canopy disruption from hurricanes, while areas currently open may develop more dense canopy over time, eventually rendering that portion of the hammock unsuitable for *C. frustrata.*

The ecological communities and substrate upon which *Chromolaena frustrata* is found differ between the mainland populations and those in the Florida Keys. The mainland populations occur only in Everglades National Park (ENP), where *C. frustrata* occurs in rockland hammocks and buttonwood forest, often occupying the transitional areas (ecotone) between these habitats and salt marsh dominated by *Conocarpus erectus* and salt-tolerant species, on marl (an unconsolidated sedimentary rock or soil consisting of clay and lime) substrate (Sadle 2008 and 2012, pers. comm.). In the Florida Keys, *C. frustrata* occurs on coastal rock barrens, coastal berms, and rockland hammocks on exposed bare limestone rock or with a thin layer of leaf litter (Bradley and Gann 1999, p. 37). *Chromolaena frustrata* is often found in the shade of associated canopy and subcanopy plant species; these canopies buffer *C. frustrata* from full exposure to the sun (Bradley and Gann 1999, p. 37).

Historical Range

Chromolaena frustrata was historically known from Monroe County, both on the Florida mainland and the Keys, and in Miami-Dade County along Florida Bay (Bradley and Gann 1999, p. 36). In mainland Monroe County, *C. frustrata* was known from the Flamingo area to the Madeira Bay area in what is now ENP. In the Florida Keys, *C. frustrata* was known from Key Largo to Boca Grande Key (Bradley and Gann 1999, p. 36; Bradley and Gann 2004, p. 2). The species was observed historically on Big Pine Key, Boca Grande Key, Fiesta Key, Key Largo, Key West, Knight's Key, Lignumvitae Key, Long Key, Upper Matecumbe Key, and Lower Matecumbe Key (Bradley and Gann 1999, p. 36; Bradley and Gann 2004, pp. 4–7).

The common name of *Chromolaena frustrata,* Cape Sable thoroughwort, places it in a locality where it may have never occurred. Usage of this place name may have been referring to the greater Cape Sable-Flamingo area, and not specifically to Cape Sable itself. No additional specimens or verifiable reports have documented it on Cable Sable proper. Other reports of *C. frustrata* are also suspect. It was reported from ''Turner's River Hammock'' in Collier County and the Ten Thousand Islands area of ENP, but no voucher specimen has ever been located for these collections (Bradley and Gann 2004, p. 7).

Current Range

In ENP, the species appears to have a distribution approaching what was reported historically. Eleven populations supporting approximately 1,500 to 2,500 plants occur in buttonwood forests and rockland hammocks from the Coastal Prairie Trail near the southern tip of Cape Sable to Madeira Bay (Sadle 2007 and 2012, pers. comm.).

In the Florida Keys, *Chromolaena frustrata* has been extirpated from half of the islands where it occurred (Bradley and Gann 2004, p. 4). It no longer occurs on Key Largo, Big Pine Key, Fiesta Key, Knight's Key, or Key West (Bradley and Gann 2004, pp. 4–6). The current range of *C. frustrata* includes a small portion of ENP, and six islands in the Florida Keys (Upper Matecumbe Key, Lower Matecumbe Key, Lignumvitae Key, Long Key, Big Munson Island, and Boca Grande Key) (Bradley and Gann 2004, pp. 3–4). Extant populations of *C. frustrata* are identified in Table 1 and discussed below.

Population	Ownership	Size Numbers of plants	Habitat
Everglades National Park—Flamingo District.	Federal—National Park Service ...	1634–2633 (Sadle 2012, pers. comm.).	Buttonwood forest, rockland hammock.
Upper Matecumbe—Choate Tract	State—Florida Department of Environmental Protection.	18 (Bradley and Gann 2004, pp. 3–6).	Coastal rock barren, rockland hammock.
Lower Matecumbe—Klopp Tract ...	State—Florida Department of Environmental Protection.	15 (Duquesnel 2012, pers. comm.).	Coastal rock barren, rockland hammock.
Lignumvitae Key	State—Florida Department of Environmental Protection.	81 (Bradley and Gann 2004, pp. 3–6).	Rockland hammock.
Long Key State Park	State–Florida Department of Environmental Protection.	200 (Bradley and Gann 2004, pp. 3–6).	Coastal rockland barren.
Long Key—North Layton Hammock.	State—Florida Department of Environmental Protection—and Private.	162 (Bradley and Gann 2004, pp. 3–6).	Coastal rock barren, rockland hammock.
Big Munson Island	Private	4,500 (Bradley and Gann 2004, pp. 3–6).	Rockland hammock.
Key West National Wildlife Refuge—Boca Grande Key.	Federal—Fish and Wildlife Service.	25 (Bradley and Gann 2004, pp. 3–6).	Rockland hammock.

Demographics

Little is known about the long-term demographics or population trends of *Chromolaena frustrata.* Populations may experience declines due to the effects of hurricanes and storm surges, but the species appears to be able to rebound at affected sites within a few years. For example, after Hurricane Wilma in 2005, some populations of *C. frustrata* vanished and the habitat at these sites was significantly altered due to hurricane storm surge (Duquesnel 2005, pers. comm.; Bradley 2007, pers. comm.; Maschinski 2007, pers. comm.). However, it appears that the species is returning at these locations (Bradley 2009, pers. comm.). Furthermore, canopy disturbance may also benefit the species, as it has been speculated that the large number of plants observed at Big Munson Island in 2003 was due to thinning of the hammock canopy caused by Hurricane Georges in 1998 (Bradley and Gann 2004, p. 4).

Reproductive Biology and Genetics

The reproductive biology and genetics of *Chromolaena frustrata* have not been studied (Bradley and Gann 1999, p. 37). We have no other information available regarding the ecology of the species beyond the habitat preferences and demographic trends discussed above.

Consolea corallicola

Consolea corallicola (Family: Cactaceae) is a tree-like cactus; mature plants grow 2 meters (m) (6 feet (ft)) tall with an erect main trunk, which is elliptical or oval in cross section and armed with spines. Near the top of the plant there is a dense cluster of branches. The stem branches (pads) are green, elliptical, relatively thin, often curved, and 12 to 30 cm (5 to 12 in) long. The spines are in clusters of five to nine, 7 to 11 cm (2.8 to 4.7 in) long, needle-like, with one of the spines much longer than the others. Spines on the main stems of older plants are enlarged. The flowers are bright red and 1.3 to 1.9 cm (0.50 to 0.75 in) wide, and the fruits are yellow, egg-shaped, and 2.5 to 5.1 cm (1 to 2 in) long (Small 1930, pp. 25–26; Anderson 2001, pp. 170–171).

Taxonomy

John Kunkel Small discovered and described *Consolea corallicola* in 1930 (Small 1930, pp. 25–26). In 1971, Long and Lakela (1971, p. 626) reassigned the plants occurring in the Florida Keys to *Opuntia spinosissima* Miller, a species restricted to the Blue Hills of south coastal Jamaica. Austin *et al.* (1998, pp. 151–158) determined that the plants in Florida are morphologically distinct from *O. spinosissima* and retained them as *O. corallicola.* Genetic studies by Gordon and Kubisiak (1998, p. 209) confirmed that the Florida plants are a genetically distinct species. Recent taxonomic treatments accept the genus *Consolea* and apply the name *C. corallicola* to the Florida species (Areces-Mallea 1996, pp. 224–226; Anderson 2001, pp. 170–171; Parfitt and Gibson 2004a, pp. 92–94). Synonyms include *Opuntia corallicola* (Small) Werdermann (Parfitt and Gibson 2004, p. 94).

Climate

The climate of south Florida where *Consolea corallicola* occurs is classified as tropical savanna, as described above for *Chromolaena frustrata.*

Habitat

Consolea corallicola occurs in rockland hammocks near sea level (Small 1930, pp. 25–26; Benson 1982, p. 531) and in buttonwood forests in the transitional area between rockland hammocks and mangrove swamps (Bradley and Gann 1999, p. 77; Gann *et al.* 2002, p. 480; Higgins 2007, pers. comm.). These community types are described above for *Chromolaena frustrata. Consolea corallicola* occurs on sandy soils and limestone rockland soils with little organic matter (Small 1930, pp. 25–26) and seems to prefer areas where canopy cover and sun exposure are moderate (Grahl and Bradley 2005, p. 4).

Historical Range

Consolea corallicola was known historically from three islands of the Florida Keys in Monroe County (Small 1930, pp. 25–26) and one small island in Biscayne Bay in Miami-Dade County (Bradley and Woodmansee 2002, p. 810). A population on the southeast portion of Big Pine Key in the Florida Keys (Small 1921, p. 50) was extirpated by the 1960s, as a result of road building and ''collecting by cactus enthusiasts'' (Bradley and Gann 1999, p. 77). A population known from Key Largo in the Florida Keys was also extirpated, although the cause of its loss is unknown (Bradley and Woodmansee 2002, p. 810).

Current Range

The current range of *Consolea corallicola* includes two naturally occurring populations, one in Biscayne National Park (BNP; Miami-Dade County) and one on a small island in the Florida Keys (Monroe County) (Bradley and Gann 1999, p. 77; Bradley and Woodmansee 2002, p. 810). These naturally occurring populations account for fewer than 1,000 plants. *Consolea corallicola* was also reintroduced at several sites in the Florida Keys, and plants survive at two of these sites on State-owned lands (Stiling 2009, pers. comm.; Stiling 2010, p. 1; Duquesnel 2011a,b, pers. comm.). Both sites together represent fewer than 50 plants. A survey of other areas containing suitable habitat in BNP was undertaken in 2002 and 2003, to locate additional populations, but none were found (Bradley and Koop 2003, p. 2).

Extant populations of *Consolea corallicola* are provided in Table 2 and are discussed below.

TABLE 2—EXTANT POPULATIONS OF CONSOLEA CORALLICOLA

Population	Ownership	Size	Habitat	Trend
Biscayne National Park	Federal—National Park Service.	600 (McDonough 2010a, pers. comm.).	rockland hammock	Stable.
Island in Florida Keys	Private—The Nature Conservancy.	9 to 11 adults, 100s of juveniles (Gun 2012, pers. comm.).	rockland hammock, rockland hammock–buttonwood forest ecotone.	Declining.
Island in Florida Keys (reintroduced).	State—Florida Department of Environmental Protection.	40 juveniles (Duquesnel 2011a, pers. comm.).	buttonwood forest–saltmarsh ecotone, coastal rock barren.	Declining.
Island in Florida Keys (reintroduced).	State—Florida Fish and Wildlife Conservation Commission.	7 juveniles (Stiling 2010, p.1)	Unknown	Declining.

Reintroductions

Experimental plantings of *Consolea corallicola* were conducted at several sites on State and Federal conservation lands in the Florida Keys from 1996 to 2004. However, these plantings were largely unsuccessful (with most plants succumbing to *Cactoblastis* moth damage or rot), and plants currently remain at only two of these sites, one of which is inundated too frequently during high tides to be favorable for population expansion (Duquesnel 2008, 2009, 2011a,b, pers. comm.; Stiling 2007, p. 2; Stiling 2009, pers. comm.; Stiling 2010, pp. 2, 193–194).

Reproductive Biology and Genetics

Consolea corallicola flowering occurs throughout the year, but peaks in February and March (Bradley and Koop 2003, p. 2). Plants of *C. corallicola* are functionally dioecious (i.e., with male and female flowers on separate plants), but the flowers give the appearance of a species that is hermaphroditic with perfect flowers (i.e., each flower produces stamens and ovules) (Negrón-Ortiz and Strittmatter 2004, p. 22; Negrón-Ortiz 2007a, p. 3; 2007b, p. 1362).

Sexual reproduction has not been observed in *Consolea corallicola.* All documented *C. corallicola* reproduction has been vegetative (clonal), with new plants originating from pads that fall from larger plants and take root (Negrón-Ortiz 1998, p. 208). Survival rates of fallen pads in research populations are low due to rot and *Cactoblastis* moth damage (Stiling 2010, p. 193; see Summary of Factors Affecting the Species below). Production of seeds is rare and the few seeds that have been observed are thought to be the product of asexual seed reproduction (agamospermy) (Negrón-Ortiz 1998, p. 211). Two hypotheses have been suggested to explain the lack of seed production of *C. corallicola.* The first hypothesis is that the species is a sterile polyploid (abnormal cell division that results in more than two sets of chromosomes) (Negrón-Ortíz 1998, p. 212). An alternative hypothesis is the dioecious breeding system of *C. corallicola.* All plants in the known populations produce only male flowers, and no female individuals have ever been located. As a result, all existing occurrences of *C. corallicola* appear to be incapable of sexual reproduction at this time (Negrón-Ortiz and Strittmatter 2004, p. 22).

Cariaga *et al.* (2005, pp. 225–230) found no genetic diversity within the two remaining wild populations of *Consolea corallicola* and concluded that all plants within each population are likely derived clonally from a single parent plant. These data support asexual propagation as the reproductive strategy of *C. corallicola.* However, there is a small amount of variation between the two remaining wild populations, suggesting the possibility that they originated from different parent plants (Lewis 2007, p. 3). Likewise, Cariaga *et al.* (2005, p. 225) found that a single plant collected by George Avery in 1963 from Big Pine Key and maintained at Fairchild Tropical Botanical Gardens was a unique genotype, but Lewis (2007, pp. 6–7) found it to be identical to the plants from the other populations. Thus, *C. corallicola* has extremely limited genetic diversity, consisting of just one to three genetic lines.

Demographics

Annual monitoring has provided a perspective on the population structure and dynamics of *Consolea corallicola.* The wild population at BNP was monitored from 2002 to 2005. At the beginning of the study, the population consisted of 655 plants. At the end of the 3-year study in 2005, 594 plants were alive, and 61 had died (9 percent decline). Only 8 percent of plants produced flowers, and plants grew very slowly (about 1.2 cm (0.5 in) per year) (Grahl and Bradley 2005, pp. 4–5). From 2008 to 2010, the population was estimated to number approximately 600 individuals (McDonough 2010a, pers. comm.). Annual fluctuations in the number of plants is largely due to mortality of branches (pads) that fall from the larger plants but fail to

permanently establish (McDonough 2010a, pers. comm.). Overall, the number of plants comprising this population appears to be stable (Bradley and Koop 2003, p. 2; Grahl and Bradley 2005, p. 2; McDonough 2010a, pers. comm.).

Population decline has been shown in a wild population on an island in the Florida Keys, which now consists of 9 to 11 adult plants (defined as plants greater than 91.4 cm (3 ft) tall) and hundreds of small juveniles originating from fallen pads. Overall, the number of adult plants in this population has declined more than 50 percent over the past 10 years, due to crown rot and damage caused by the *Cactoblastis* moth and hurricanes (Higgins 2007, pers. comm.; Gun 2012, pers. comm.; see Summary of Factors Affecting the Species below).

Harrisia aboriginum

Description

Harrisia aboriginum (Family: Cactaceae) is a sprawling cactus, usually with multiple stems arising from a single base. The stems are erect, slender, and cylindrical. They possess 9 to 11 longitudinal ribs, and may reach 6 m (20 ft) in height. Spines are 1.0 cm (0.4 in) long and originate in clusters of seven to nine spines. Flowers are funnel-shaped, white, up to 15 cm (5.9 in) long, and have a slight scent. The inside of the flower is lined with stiff, brown hairs. Fruits are yellow, round in shape, and 6.1 to 7.6 cm (2.4 to 3.0 in) in diameter (Small in Britton and Rose 1920, p. 154; Anderson 2001, p. 370; Parfitt and Gibson 2004b, p. 153). Each fruit contains hundreds of small black seeds. Plants in full to partial sun typically consist of several stems from a single base. Plants shaded by overstory vegetation usually have stems that tend to be slender and taller. These slender stems will topple over and eventually recorrect their growth upward, or they may reproduce new upright stems along the prostrate stems. Some of the prostrate stems deteriorate over time, obscuring the clonal origin (single source) of upright stems. This results in more diffuse groupings of clonal stems leaning at various angles (Bender 2011, p. 18).

Taxonomy

Harrisia aboriginum was described by John Kunkel Small, after he discovered it in Manatee County in 1919 (Small in Britton and Rose 1920, p. 154). This name is still in use (Parfitt and Gibson 2004b, p. 153; Wunderlin and Hansen 2008, pp. 1–2), although possible alternative names for the species have been proposed over the years. The genus-level placement of *H. aboriginum* and other Florida relatives has been in flux since they were first described, with some authors placing them in the large and variable genus *Cereus* (i.e. Benson 1969, p. 126), and others segregating them into the smaller *Harrisia* genus. Recent authors have included the Florida species in the genus *Harrisia* (Hooten 1991, pp. 64–66; Anderson 2001, p. 370; Ward 2004, pp. 365–371; Parfitt and Gibson 2004b, pp. 150–153; Wunderlin and Hansen 2008, pp. 1–2).

Based upon the best available scientific information, *Harrisia aboriginum* is a distinct taxon, endemic to the west coast of Florida. Synonyms include *Cereus aboriginum* (Small ex Britton and Rose) Little, *C. gracilis* var. *aboriginus* (Small ex Britton and Rose) L. D. Benson, and *Harrisia donae-antoniae* Hooten (Parfitt and Gibson 2004b, p. 153).

Climate

The climate of south Florida where *Harrisia aboriginum* occurs is classified as tropical savanna as described above for *Chromolaena frustrata.*

Habitat

Harrisia aboriginum occurs on coastal berms, coastal strand, coastal grasslands and maritime hammocks, with a sand substrate. It also occurs on shell mounds with a calcareous shell substrate (Bradley *et al.* 2004, pp. 4, 14). The coastal berm community is described above for *Chromolaena frustrata. Harrisia aboriginum* growing in coastal berm habitat sometimes occur close to the mangrove zone, but never within it.

Coastal Strand

Coastal strand is an evergreen shrub community growing on stabilized coastal dunes. It is usually the first woody plant community inland from the coast. On the southwest Gulf coast of Florida, coastal strand is patchily distributed. It usually develops as a band between dunes dominated by *Uniola paniculata* (sea oats) along the immediate coast, and maritime hammock, scrub, or mangrove swamp communities farther inland. On broad barrier islands, it may also occur as patches of shrubs within a coastal grassland matrix (FNAI 2010f, p. 2).

On the southwest Gulf coast of Florida, the species composition of coastal strand consists of tropical plant species, including *Coccoloba uvifera, Forestiera segregata* (Florida swampprivet), *Rapanea punctata* (myrsine), *Lantana involucrata, Randia aculeata, Chiococca alba* (snowberry), *Eugenia foetida, Guapira discolor, Zanthoxylum fagara* (wild lime), *Pithecellobium keyense, Chrysobalanus icaco* (coco plum), *Dalbergia ecastaphyllum* (coinvine), *Sophora tomentosa* var. *truncata* (yellow necklacepod), *Caesalpinia bonduc* (gray nicker), *Sideroxylon celastrinum,* and *Jacquinia keyensis,* (FNAI 2010f, p. 2).

Soils are deep, well-drained sands and may be somewhat alkaline, consisting of quartz sand mixed with varying proportions of shell fragments (FNAI 2010f, p. 2).

Storm waves periodically destroy dunes and the coastal strand behind them, with the resulting bare area being recolonized first by pioneer beach species and then by coastal grassland. The resulting coastal grassland is in turn invaded by patches of woody species, which eventually coalesce into a continuous woody community of coastal strand. Natural disturbances, such as strong winds and storm surge associated with hurricanes, or hard freezes, serve to open up coastal strand canopies. There is little information on natural fire frequency in coastal strand (FNAI 2010f, p. 2).

Coastal strand is distinguished from maritime hammock by the absence of distinct tree canopy and understory layers. It is distinguished from coastal berm and shell mound by its occurrence on sand deposits along a high-energy sandy coast, rather than on shell deposits along a low-energy, mangrove-dominated coast. It is distinguished from coastal grassland by the dominance of woody, rather than herbaceous, species.

Coastal Grassland

Coastal grassland is a predominantly herbaceous community occupying the drier portions of the transition zone between beach dunes on the immediate coast and communities dominated by woody species, such as coastal strand or maritime hammock, farther inland. It occurs primarily on the broader barrier islands and capes along the sandy coasts of Florida. The specialized dune building grasses of the beach dune community, *Uniola paniculata, Panicum amarum* (bitter panicgrass), and *Spartina patens* (saltmeadow cordgrass), are usually present, along with a variety of other herbaceous species typically found on more stable soils, such as *Andropogon* and *Schizachyrium* (bluestem grasses), *Heterotheca subaxillaris* (camphorweed), and *Smilax auriculata.* On the southwest Gulf coast, a distinctive coastal grassland community is found on the broad barrier islands such as Cayo Costa, North Captiva, and

formerly Captiva and Sanibel. It consists of a short, dense sward (a portion of ground covered with grass) of *Bouteloua hirsuta* (hairy grama). Other species present include *Ernodea littoralis* (beach creeper), *Opuntia stricta,* and *Lantana depressa* var. *sanibelensis* (Gulf Coast Florida lantana) (FNAI 2010g, entire).

Coastal grassland develops either as a barrier island builds seaward, developing new dune ridges along the shore that protect the inland ridges from sand burial and salt spray, or as a beach recovers after storm overwash and a new foredune ridge builds up along the shore, protecting the overwashed area behind it from sand burial and salt spray. As time passes, absent further storms, the coastal grassland community itself will gradually be replaced by woody species to form scrub, coastal strand, or maritime hammock communities (FNAI 2010g, entire).

Fire is naturally rare and localized in this community, with water barriers and sparse fuels combining to limit its spread (FNAI 2010g, entire).

Coastal grassland is distinguished from the beach dune community by its position inland from the immediate coastline and the presence of a variety of grasses, forbs, and pioneer dune-building grasses. It differs from coastal berm in its position on a sandy coast, rather than on a storm-deposited shell ridge on a mangrove-dominated shoreline. Coastal grassland is distinguished from coastal strand and maritime hammock in being dominated by herbaceous, rather than woody, species (FNAI 2010g, entire).

Maritime Hammock

Maritime hammock is a predominantly evergreen hardwood forest growing on stabilized coastal dunes lying at varying distances from the shore. On the southwest Gulf coast of Florida, most of the barrier islands and peninsulas are long and narrow with correspondingly small, narrow areas of hammock. Maritime hammock is best developed on the few broad islands, including Caladesi, Cayo Costa, North Captiva, and the inner barrier islands at Stump Pass and Keewaydin Island (FNAI 2010h, entire).

Canopy species include *Cococarpus erectus, Piscidia piscipula, Bursera simaruba, Sideroxylon foetidissimum, Exothea paniculata, Eugenia axillaris* (white stopper), *Ficus aurea, Coccoloba uvifera, Eugenia foetida,* and *Pithecellobium keyense;* shrubs include *Rapanea punctata, Myrcianthes fragrans* (Simpson's stopper), *Ardisia escallonioides, Psychotria nervosa, Chiococca alba,* and *Randia aculeata.* Cacti and other spiny species, such as *Agave sisalana* (sisal) *and Acanthocereus tetragonus,* may also be present. The herb layer is sparse to absent (FNAI 2010h, entire).

Maritime hammock occurs on deep, well-drained, acid quartz sands, or well-drained, moderately alkaline, quartz sands mixed with shell fragments (FNAI 2010h, entire).

Due to their coastal location with water barriers on at least one, if not two sides, fire was probably naturally rare and very spotty in maritime hammock, especially on the narrower barrier islands. Maritime hammocks are principally influenced by wind-borne salt spray, storm waves, and sand burial. If storm waves destroy the protective dunes seaward of the hammock, sand can blow inland, burying the trees. In addition to physical destruction by storm waves, hammock trees are susceptible to being killed by standing salt water deposited in low areas by storm surge (FNAI 2010h, entire).

Tropical maritime hammock can be distinguished from rockland hammock by their occurrence on sand substrate, rather than limestone. They may be similar in species composition to coastal berm, being distinguished primarily by location along a high wave energy sandy coast, rather than a low-energy, mangrove-dominated coast, and the presence of a distinct canopy layer. They are very similar to shell mounds in species composition, being distinguished by their occurrence on a natural sand deposit rather than on pure shell (FNAI 2010h, entire).

Shell Mound

Shell mounds are small hills, usually in coastal locations, composed entirely of shells (clams, oysters, whelks) discarded by generations of Native Americans. Shell mounds are found along the coast throughout Florida and range westward and northward along the coastlines of the southeastern United States. Originally, there were many such shell mounds along coastal lagoons and at the mouths of rivers, but most were destroyed for road building in the early part of the last century. A rich, calcareous soil develops on the deposited shells, which supports a diverse hardwood forest on undisturbed mounds. Several shell mounds are now surrounded by mangroves, evidence that they were built when sea level was lower than today (FNAI 2010i, entire).

The plant species composition of shell mound forests tends to be more strictly tropical than that of maritime hammocks on sandy substrates in the same region. South Florida shell mounds are often characterized by tropical tree species such as *Bursera simaruba, Eugenia axillaris, Amyris elemifera, Zanthoxylum fagara, Sideroxylon foetidissimum, Exothea paniculata, Ficus aurea,* and *Ocotea coriacea.* Characteristic shrub species include *Chiococca alba, Forestiera segregata,* and *Sideroxylon celastrinum.* Shell mounds may have vegetation similar to tropical or temperate types of maritime hammock, but differ in that they grow on pure shells rather than sand or sand mixed with shell fragments (FNAI 2010i, entire).

In the habitats described above, *Harrissia aboriginum* seems to prefer areas where canopy cover is open to partially closed (Fellows *et al.* 2001, p. 3; Woodmansee *et al.* 2007, p. 115). Mortality of plants growing in deep shade under fully closed canopy has been observed (Bradley *et al.* 2004, p. 11; Bender 2011, p. 5). Plants growing in open to partially closed canopy sites tend to be more robust and produce more flowers and fruits (Bender 2011, p. 17; Conrad 2012, pers. comm.).

Historical Range

Harrisia aboriginum was known historically from coastal areas of southwest Florida along the Gulf coast in Manatee, Charlotte, Sarasota, and Lee Counties. The species was documented on six keys along approximately 125 km (78 mi) of Gulf coastline. Populations reported for Delnor-Wiggins Pass State Park, San Marco Island, Fort Pierce, and ENP are considered unsubstantiated (Bradley *et al.* 2004, pp. 5–6).

Current Range

A 2004 status survey confirmed 10 extant populations along a 100-km (62-mile) stretch of coast (Bradley *et al.* 2004, p. 8), one of which has since been extirpated (Nielsen 2009, pers. comm.). The species is extirpated in the northern extent of its historic range in Manatee County (Bradley *et al.* 2004, pp. 3, 8–9). Currently 12 sites support extant populations. Plants occur on seven public and private conservation areas, four County parcels not managed for conservation, and at least three unprotected private parcels. In total, the species was represented by an estimated 300 to 500 individuals in 2007 (Woodmansee *et al.* 2007, p. 87). Besides a few anecdotal accounts, population trends were unknown prior to 2004. Extant populations of *Harrisia aboriginum* are provided in Table 3.

TABLE 3—EXTANT POPULATIONS OF *Harrisia aboriginum*

Population No.	Ownership	Size (Number of plants)	Trend	Habitat
1	Private conservation	5 (Woodmansee *et al.* 2007, p. 87)	declining	maritime hammock.
2	Private conservation	5 (Woodmansee *et al.* 2007, p. 87)	declining	shell mound.
3	Sarasota County	50–75 (Woodmansee *et al.* 2007, p. 87)	declining	coastal strand, coastal berm.
4	Sarasota County	3 (Bender 2011, pp. 9–12)	unknown	spoil mound.
5	Private	at least 13 (Woodmansee *et al.* 2007, p. 87).	declining	coastal strand, coastal berm.
6	State—Florida Department of Environmental Protection.	27 (Woodmansee *et al.* 2007, p. 87)	declining	coastal berm, shell mound.
7	Private and Charlotte County	approx. 10 (Bradley *et al.* 2004, pp. 10–37).	unknown	coastal berm.
8	Private Conservation	1 (Bradley *et al.* 2004, pp. 10–37)	unknown	coastal berm.
9	Lee County	1 (Woodmansee *et al.* 2007, p. 87)	stable	spoil mound.
10	Lee County	4 (Woodmansee *et al.* 2007, p. 87)	declining	coastal berm.
11	Lee County	300–400 (Woodmansee *et al.* 2007, p. 87)	stable	coastal berm.
12	Federal—Fish and Wildlife Service	100–200 (Bradley *et al.* 2004, pp. 10–37)	stable	coastal berm.

Reproductive Biology and Population Genetics

There has been little research into the reproductive biology of *Harrisia aboriginum.* Flowers are produced May through September. Ripe fruits have been observed from June through October. In some populations, fruits are frequently removed from plants by unknown animals (Fellows *et al.* 2001, p. 2). Observations suggest that establishment of new plants is likely an infrequent event. Seedlings are rarely observed. Plant fragmentation has been observed, suggesting that this could be a dispersal mechanism. New clonal plants are observed to arise from small stem fragments ranging from 5.1 to 7.6 cm (2 to 3 in) in length (Bender 2011, p. 17). Establishment from plant fragments is probably more frequent than from seed (Fellows *et al.* 2001, p. 2). There have been no genetic studies of *H. aboriginum.*

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors as applied to these three plants is discussed below.

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

Human Population Growth and Development

Destruction and modification of habitat are a threat to *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum.* Terrestrial ecosystems of south Florida have been heavily impacted by humans, through widespread clearing for agricultural, residential, commercial, and infrastructure development. Extensive areas of rockland hammock, pine rockland, and other ecosystems have been lost (Solecki 2001, p. 350; Hodges and Bradley 2006, p. 6). Because of their proximity to the beach and relatively higher elevations, coastal hammocks, strands, and berms have been heavily impacted by residential and tourism development. As a result, only isolated fragments of these habitats remain (Bradley *et al.* 2004, pp. 3–4). Loss and modification of coastal habitat due to development is expected to continue and increase in the coming decades in Florida (Zwick and Carr 2006, p. 13). Species populations are more secure on public lands than on private lands, but still face the threats of habitat loss and modification through development of public facilities such as new buildings, parking lots, and other associated facilities and through recreational opportunities to support visitor services. Impacts to each of the species are discussed below.

Chromolaena frustrata

Habitat destruction and modification resulting from development are considered a major threat to *Chromolaena frustrata* throughout the species' range (Gann *et al.* 2002, p. 387). The populations on Fiesta Key, Knights Key, Key Largo, and Key West were lost due to development. Fiesta Key is completely developed as a Kampgrounds of America (KOA) campground and is devoid of native plant communities. Knights Key is almost completely developed and has no remaining suitable habitat (Bradley and Gann 2004, p. 5). Key Largo has undergone extensive disturbance and development. Although suitable coastal berm and rockland hammock habitat are still located in State and Federal conservation sites on Key Largo (Bradley and Gann 2004, p. 8), despite extensive surveys of the island *C. frustrata* has not been located (Bradley and Gann 2004, p. 5).

Two *Chromolaena frustrata* populations, including the largest population, are located on privately owned sites, which are vulnerable to further development (Bradley and Gann 2004, p. 7; Table 1). The statewide population of *C. frustrata* was estimated at fewer than 5,000 plants in 2004, but 4,500 plants (90 percent) are located at a single, privately owned, unprotected site (Bradley and Gann 2004, p. 7). The site, Big Munson Island, is owned by the Boy Scouts of America (BSA) and is utilized as a Boy Scout Camp. Scout campsites have been established along the coastal berm (Hodges and Bradley 2006, p. 10), and recreation development (campsites) and possibly recreational activities (trampling) potentially remain a threat to *C. frustrata* at this site. At this time, we do not believe that this site faces threats from residential or commercial development. However, if development pressure and BSA recreational usage increase, this largest population may face threats from habitat loss and modification.

The population on Long Key at Layton Hammock is vulnerable to commercial or residential development (Bradley and Gann 2004, pp. 3–20). In addition, development remains a threat to any suitable rock barren or rockland hammock habitat on private lands within the species' historic range. Overall, the human population in Monroe County is expected to increase from 79,589 to more than 92,287 people by 2060 (Zwick and Carr 2006, p. 21). All vacant land in the Florida Keys is projected to be developed by then, including lands not currently accessible by automobile (Zwick and Carr 2006, p. 14).

Chromolaena frustrata populations in conservation areas have been impacted and may continue to be impacted by development with increased public use. Mechanical disturbances such as trail construction in coastal berms may have exacerbated nonnative plant invasions (see Factor E discussion below) (Bradley and Gann 2004, p. 4). *C. frustrata* has been impacted by park development on State lands, and habitat modifications such as mowing and trail maintenance remain a threat (Gann *et al.* 2002, p. 391; Bradley and Gann 2004, p. 6; Hodges and Bradley 2006, p. 30).

Consolea corallicola

Destruction and modification of habitat from development throughout the species' range continue to be a threat to *Consolea corallicola.* Unoccupied suitable habitat throughout the species' former range is under intense development pressure. Development and road building were the causes of this species' original extirpation on Big Pine Key (Bradley and Gann 1999, p. 77; Bradley and Woodmansee 2002, p. 810). Residential and commercial development and roadway construction continue to occur throughout Miami-Dade County and the Florida Keys. Both remaining wild populations are secure from habitat destruction because they are located within private and Federal conservation areas. However, at one State-owned site where a reintroduction was attempted, all of the plants were accidentally destroyed by the expansion of a trail.

Harrisia aboriginum

Destruction and modification of habitat from development throughout the species' range continue to be a threat to *Harrisia aboriginum.* The coastal habitats of this species have been heavily impacted by development over the past 50 years (Morris and Miller 1981, pp. 1–11; Bradley *et al.* 2004, p. 3). Shell mounds created by Native Americans were among the first areas colonized by early Western Europeans because of their higher elevation and were later extensively utilized for construction material, in some cases resulting in the complete destruction of the habitat. Coastal hammocks, strands, and berms, because of their proximity to the beach and higher elevations, were also used for coastal residential construction. Only isolated fragments of suitable habitat for *H. aboriginum* remain (Bradley *et al.* 2004, p. 3).

The species was extirpated from the northern extent of its range in Manatee County by the 1970s, due to urbanization (Morris and Miller 1981, p. 2; Austin 1984, p. 69). Despite the recent downturn in residential construction, coastal development is ongoing in the habitat of *H. aboriginum.* Populations on private land or non-conservation public land are most vulnerable to habitat loss. Threats include residential development, road widening, and landscape maintenance (Morris and Miller 1981, pp. 2–11; Bradley *et al.* 2004, pp. 36–37). Suitable habitat within the species' range was recently destroyed by encroachment from a private development onto State land (FNAI 2011a, pp. 207–208). The threats of habitat loss, modification, and degradation are expected to increase with increased human population, development pressure, and infrastructure needs. Sarasota, Charlotte, and Lee Counties, where this plant currently occurs, are expected to build out before 2060 (Zwick and Carr 2006, p. 13), placing further pressure on remaining natural areas.

Populations located on public lands are better protected than those on private land, but still may face the threat of habitat loss through development of park facilities such as new buildings, parking lots, and trails (Morris and Miller 1981, p. 4). Construction of new bathrooms in 2011 at a site owned by Sarasota County eliminated a portion of the coastal berm habitat, and parking lot renovations are planned for 2012 at a second County site where *Harrisia aboriginum* occurs (Bender 2011, p. 11). Not all land managers are aware of the presence of *H. aboriginum* at sites under their jurisdiction; for example, managers at one site in Charlotte County were unaware of *H. aboriginum* on county lands (Bender 2011, p. 13). Nevertheless, the population has persisted, probably due to its anonymity and difficulty of access. The lack of management, however, has allowed a heavy infestation of nonnative plants, which have modified the habitat and are shading out *H. aboriginum* (Bender 2011, p. 13). Portions of at least two populations located on public land also extend onto adjacent unprotected, private lands (Bradley *et al.* 2004, pp. 16, 36).

Populations on privately owned conservation sites may have inadequate protection from habitat loss or modification as well. One such site that was declared a ''Preserve'' in 1992 as part of a residential community has no formal protection; it was partially bulldozed and landscaped with native species within the past 10 years (Bradley *et al.* 2004, p. 10). The number of plants observed at this ''Preserve'' site decreased from 226 plants in 1981 (Morris and Miller 1981, p. 5), to 5 plants in 2006 (Woodmansee *et al.* 2007, p. 87). Another site is owned by a nonprofit organization and managed for historical preservation. The site is severely disturbed from a long history of human activity and is currently open to public visitation (Woodmansee *et al.* 2007, p. 103). This population has declined over the past 30 years from 21 stems comprising 7 plants in 1981 (Morris and Miller 1981, p. 4), to only 3 plants in 2003 (Bradley *et al.* 2004, p. 13). Development of the site for public visitation likely played a role in the decline (Morris and Miller 1981, p. 4).

Other Conservation Efforts

The National Wildlife Refuge System Improvement Act of 1997 and the Fish and Wildlife Service Manual (601 FW 3, 602 FW 3) require maintaining biological integrity and diversity, comprehensive conservation planning for each refuge, and set standards to ensure that all uses of refuges are compatible with their purposes and the Refuge System's wildlife conservation mission. The comprehensive conservation plans (CCP) address conservation of fish, wildlife, and plant resources and their related habitats, while providing opportunities for compatible wildlife-dependent recreation uses. An overriding consideration reflected in these plans is that fish and wildlife conservation has first priority in refuge management, and that public use be allowed and encouraged as long as it is compatible with, or does not detract from, the Refuge System mission and refuge purpose(s).

The CCP for the Lower Florida Keys National Wildlife Refuges (National Key Deer Refuge, Key West National Wildlife Refuge, and Great White Heron National Wildlife Refuge) provides a description of the environment and priority resource issues that were considered in developing the objectives and strategies that guide management over the next 15 years. The CCP promotes the enhancement of wildlife populations by

maintaining and enhancing a diversity and abundance of habitats for native plants and animals, especially imperiled species that are only found in the Florida Keys. The CCP also provides for obtaining baseline data and monitoring indicator species to detect changes in ecosystem diversity and integrity related to climate change. In the Lower Key Refuges CCP management objective no. 16 provides specifically for maintaining and expanding populations of candidate plant species including *Chromolaena frustrata* and

Consolea corallicola

Special Use Permits (SUPs) are also issued by the Refuges as authorized by the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–ee) as amended, and the Refuge Recreation Act (16 U.S.C. 460k–460k–4). The SUPs cover commercial activities (such as guiding hunters, anglers or other outdoor users, commercial filming, agriculture, cabins, and trapping); research and monitoring by students, universities, or other non-Service organizations; and general use (woodcutting, miscellaneous events (fishing tournaments, one-time events, other special events), cabins/subsistence cabins, education activity). The Service has no information concerning the effects of the issuance of SUPs for any of the three species.

Summary of Factor A

In summary, the decline of *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* habitat is the result of threats that have operated in the past, are impacting these species now, and will continue to impact these species in the future. It is reasonable to conclude that the changes in the habitats historically and currently occupied by the species are the cause of observed population-level declines. The decline of these species is primarily the result of the long-lasting effects of habitat loss, degradation, and modification from human population growth and associated development. Thus, we believe these changes in the species' historic or current range will not be ameliorated in the future; therefore, we find it reasonably likely that the effects on the species will continue at current levels or potentially increase.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization (collection by hobbyists, also known as poaching) is a major threat to *Consolea corallicola* (Gann *et al.* 2002, p. 440) and *Harrisia aboriginum* (Austin *et al.* 1980, p. 2; Morris and Miller 1981, pp. 1–11; Gann *et al.* 2002, p. 481; Bradley *et al.* 2004, p. 6; Bender 2011, p. 5). Cactus poaching is an international phenomenon. Cacti are frequently impacted at sites that are known and easily accessed by poachers (Anderson 2001, pp. 73–78). The rarity of *C. corallicola* and *H. aboriginum,* coupled with their showy flowers, make these cacti particularly desirable to collectors. Seeds of *H. aboriginum* and *H. fragrans* (the fragrant prickly-apple, a federally listed endangered cactus (listed as *Cereus eriophorus* var. *fragrans*) from Florida's east coast) are currently offered for sale by online plant distributors, demonstrating that a demand exists for these cacti from collectors. The severity of the threat of poaching is exacerbated by the fact that some populations of these cacti are limited to just a few individual plants. These smaller populations could easily be extirpated by a single poaching episode.

Consolea corallicola

Collecting by cactus hobbyists is suspected to have played a part in the extirpation of *Consolea corallicola* from Big Pine Key and Key Largo in the late 1970s, and poaching remains a major threat to this species (Gann *et al.* 2002, p. 481). Other species of *Consolea* are currently offered for sale by online plant distributors. Probable evidence of poaching activity was observed at a site in Monroe County on multiple occasions, and caused the death of one *C. corallicola* plant (Slapcinsky *et al.* 2006, p. 3). Although the remaining populations are somewhat protected due to their location on conservation lands, these plants remain vulnerable to illegal collection because the sites are remote and not patrolled regularly by enforcement personnel.

Collection for scientific and recovery purposes has so far relied on the harvesting of cuttings from plants growing in botanical garden and private collections. We expect that collection for the purposes of recovery will continue and ultimately be beneficial in augmenting and reintroducing *C. corallicola* at suitable sites. We have no evidence that collection for scientific or recovery purposes is a threat to the species at this time.

Harrisia aboriginum

Poaching of *Harrisia aboriginum* is a major threat (Morris and Miller 1981, pp. 1–11; Gann *et al.* 2002, p. 440; Bradley *et al.* 2004, p. 6). Damage and evidence of *H. aboriginum* poaching was reported by Morris and Miller (1981, pp. 1–11) at several sites. Evidence of poaching was recently observed at a site in Sarasota County that has high public visitation. At that site, there was evidence that cuttings had been removed from multiple *H. aboriginum* plants at numerous different times (Bender 2011, pp. 5–6).

Chromolaena frustrata

We have no evidence suggesting that overutilization for commercial, recreational, scientific, or educational purposes are a threat to *Chromolaena frustrata.* Except for its rarity, the species does not possess any attributes that would make it desirable to collectors, such as showy foliage or flowers, and there are no known medicinal, culinary, or religious uses for this species.

Summary of Factor B

In summary, based on our analysis of the best available scientific and commercial information we find that collecting for commercial or scientific reasons or recreational activities is not a threat to *Chromolaena frustrata* in any portion of its range at this time and is not likely to become so in the future.

We find that overutilization by poachers is a major threat to *Consolea corallicola* and *Harrisia aboriginum.* There is a current market for these cacti and evidence of ongoing collecting activity such that it is reasonable to conclude that collecting has caused declines and extirpation of populations. All populations of *C. corallicola* and *H. aboriginum* are vulnerable to this ongoing threat; however, populations at sites that are easily accessible to the public likely face the greatest threat from collectors. The small number of remaining plants at most sites exacerbates this threat; smaller populations could be completely lost to a single collection episode. The areas that support these cacti are somewhat remote, making enforcement extremely difficult. These threats have operated in the past, are impacting these species now, and are expected to continue into the future. Based on our analysis of the best available information, we find that overutilization is a threat to these species throughout their entire range. We believe that overutilization will not be ameliorated in the future; therefore, we find it reasonably likely that the effects on the species will continue at current levels or potentially increase.

C. Disease or Predation

Chromolaena frustrata

On Big Munson Island, much of the *Chromolaena frustrata* population was

observed to suffer from severe herbivory in 2004. No insects were observed on any plants, and the endangered Key deer (*Odocoileus virginianus clavium*) was the suspected culprit (Bradley and Gann 2004, p. 4). The significance of herbivory on *C. frustrata* population dynamics is unknown. No diseases have been reported for *C. frustrata.*

Consolea corallicola

A fungal pathogen, *Fusarium oxysporum,* can infect *Consolea corallicola,* causing crown rot, a disease in which plants rot near their base (Slapcinsky *et al.* 2006, p. 2; Stiling 2010, p. 191). Cacti in the Florida Keys populations that are affected by this disease have also tested positive for a fungus, *Phomopsis* sp. (Slapcinsky *et al.* 2006, p. 3). This disease was largely responsible for the high mortality rates in some reintroduced populations in the Florida Keys (Stiling 2010, p. 193). At present, crown rot does not appear to be affecting the population at BNP.

Predation by the moth *Cactoblastis cactorum* (Lepidoptera: Pyralidae) is considered a significant threat to *Consolea corallicola* (Stiling *et al.* 2000, pp. 2, 6; Gann *et al.* 2002, p. 481; Wright and Maschinski 2004, p. 4; Grahl and Bradley 2005, pp. 2, 7; Slapcinsky *et al.* 2006, pp. 2–4). Native to South America, *Cactoblastis cactorum* was introduced to Australia in 1925, as a biological control agent for nonnative species of *Opuntia.* Adult moths deposit eggs on the branches of host species. When these eggs hatch, larvae then burrow into the cacti and feed on the inner tissue of the plant's stems. The larvae then pupate, and the cycle repeats. *Cactoblastis cactorum* was extremely effective as a biological control agent, and credited with reclaiming 6,474,970 ha (16,000,000 ac) of land infested with *Opuntia* species in Australia alone. The moth also has been an effective control agent for *Opuntia* species in Hawaii, India, and South Africa. It was introduced to a few Caribbean islands in the 1960s and 1970s, and rapidly spread throughout the Caribbean. The effectiveness of *C. cactorum* at controlling *Opuntia* populations is described as ''rapid and spectacular'' (Habeck and Bennett 1990. p. 1). The moth had spread to Florida by 1989, prompting the Florida Department of Agriculture and Consumer Services (FDACS) to issue an alert that *C. cactorum,* along with another unidentified species of moth, had the potential to adversely impact *Opuntia* populations due to the high rate of *Opuntia* infestation and mortality, as demonstrated in other localities in the Caribbean and elsewhere (Habeck and Bennett 1990. p. 1). Among local cactus species in the Florida Keys, *C. corallicola* is a preferred host (Stiling 2010, p. 190). Between 1990 and 2009, the moth infested and damaged multiple *C. corallicola* plants in the Florida Keys' wild populations, killing one plant and damaging others (Gun 2012 pers.comm. Fortunately, these infestations were detected very early and controlled before *C. cactorum* could kill multiple plants and fully spread throughout the population. Planted *C. corallicola* populations in the Florida Keys fared much worse; at one planting site, 90 individuals (50 percent of those planted) were killed by *C. cactorum* over a 4-year period (Stiling 2010, p. 193). To date, *C. cactorum* has not been observed in BNP (McDonough 2010a, pers. comm.). Even if the moth has not yet reached the Park, it likely will, based on its rapid spread in the Caribbean and Florida. This threat has the potential to cause steep declines in populations of *Consolea corallicola* if they become infested. No satisfactory method of large-scale control is known at this time (Habeck *et al.* 2009, p. 2). Potential impacts to *C. corallicola* at the population level as a result of predation by *C. cactorum* are severe. As stated above, experts are certain of the potential for the moth to cause massive mortality in populations of *C. corallicola* if they become infested and the infestation is not caught early and aggressively controlled.

Predation by the Cuban garden snail (*Zachrysia provisoria*) has been observed at one *Consolea corallicola* reintroduction site (Duquesnel 2008, pers. comm.). The population-level impact of the Cuban garden snail is not known.

Harrisia aboriginum

An as yet unidentified pathogen can attack *Harrisia aboriginum* and cause stems to rot and die within about a week (Austin 1984, p. 2; Bradley 2005, pers. comm.). However, no signs of this disease were observed at several sites visited in 2011 (Bender 2011, p. 19).

Herbivory of flowers by iguanas (Bradley *et al.* 2004, p. 30) and stems by gopher tortoises (Woodmansee *et al.* 2007, p. 108) has been noted. Scale insects have been observed in some *H. aboriginum* populations, occasionally causing severe damage to plants (Bradley 2005, pers. comm.).

Overall, evidence indicates disease and predation are relatively minor stressors to *H. aboriginum* at present, but could become threats in the future if they become more prevalent in the cacti populations.

Summary of Factor C

In summary, *Chromolaena frustrata* does not appear to be affected by disease or predation; disease and predation have been reported occasionally for *Harrisia aboriginum.* We have no evidence that the severity of either stressor has affected either species at a population level. Though it is possible the amount of disease or predation may increase in the future, there is no evidence that this stressor is growing in extent. Thus, based on our analysis of the best available scientific and commercial data available, we find that disease or predation is not a significant stressor to the overall status of *C. frustrata* or *H. aboriginum* at current levels, though these stressors could potentially become a threat in the future if these pests become more prevalent.

Disease and predation are severe threats to *Consolea corallicola.* Threats from disease include a pathogen that can cause crown rot and predation by the nonnative moth, *Cactoblastis cactorum.* Both are severe and pervasive threats, and it is reasonable to conclude that disease and predation have caused population declines. We have no reason to believe that diseases or predation will be ameliorated in the future; therefore, we find it reasonably likely that the effects on *C. corallicola* will continue at current levels or potentially increase in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *.'' In relation to Factor D, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, plans, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

State

Chromolaena frustrata, Consolea corallicola, and *Harrisia aboriginum* are listed on the Regulated Plant Index as endangered under Chapter 5B–40, Florida Administrative Code. The Regulated Plant Index also includes all federally listed endangered and threatened plant species. Florida Statutes 581.185 sections (3)(a) and (b) prohibit any person from willfully destroying or harvesting any species listed as endangered or threatened on the Index, or growing such a plant on the private land of another, or on any public land, without first obtaining the written permission of the landowner and a permit from the Florida Department of Plant Industry (DPI). The statute also requires that collection permits issued for species listed under the Act must be consistent with Federal standards (i.e., only the Service can issue permits to collect plants on Federal lands). The statute further provides that any person willfully destroying or harvesting; transporting, carrying, or conveying on any public road or highway; or selling or offering for sale any plant listed in the Index must have a permit from the State at all times when engaged in any such activities. However, despite these regulations, recent poaching is evident, and threats to the three species (particularly the two cacti) remain. Lack of implementation or compliance with existing regulations may be a result of funding, work priorities, or staffing.

In addition, subsections (8)(a) and (b) of the statute waive State regulation for certain classes of activities for all species on the Regulated Plant Index, including the clearing or removal of regulated plants for agricultural, forestry, mining, construction (residential, commercial, or infrastructure), and fire-control activities by a private landowner or his or her agent. However, section (10) of the statute provides for consultation similar to section 7 of the Federal Act for listed species by requiring the Department of Transportation to notify the FDACS and the Endangered Plant Advisory Council of planned highway construction at the time bids are first advertised, to facilitate evaluation of the project for listed plants populations, and to ''provide for the appropriate disposal of such plants'' (i.e., transplanting,). The Service has no information concerning the State of Florida's implementation of the enforcement of these statutes. However, it is clear that illegal collection and vandalism of cacti are both occurring, despite these and other provisions that specifically prohibit these activities. Insufficient implementation or enforcement of these statutes constitutes a threat to both *Consolea corallicola* and *Harrisia aboriginum* as they continue to decline in numbers.

Shell mounds on State land, some of which support populations of *Harrisia aboriginum,* are protected as historical resources under Florida Statute 267.13, sections (1)(a) and (b). Despite these protections, there is a long history of utilization and excavation of shell mounds by artifact hunters in Florida, causing erosion and opening areas for invasion by invasive plants (FNAI 2010i, p.3).

The Florida Division of Forestry (FDOF) administers Florida's outdoor burning and forest fire laws. Florida Statute 590.08 prohibits any person to willfully or carelessly burn or cause to be burned, or to set fire to or cause fire to be set to, any forest, grass, woods, wildland, or marshes not owned or controlled by such person. Despite this protection, unauthorized bonfires have been documented at sites supporting *Harrisia aboriginum* (Woodmansee *et al.* 2007, p. 108; Bender 2011, pp. 5–6).

Federal

National Park Service (NPS) regulations at 36 CFR 2.1 prohibit visitors from harming or removing plants, listed or otherwise, from ENP or BNP.

The Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470aa–470mm) protects archaeological sites, including shell mounds, on Federal lands. Shell mounds are known from the area of ENP where *Chromolaena frustrata* occurs; however the Service has no specific information regarding illegally excavated or vandalized shell mounds at ENP.

The Service has no information concerning ENP's or BNP's implementation or the enforcement of these Federal regulations protecting the plants and their habitats from harm. Insufficient implementation or enforcement could become a threat to the two species in the future if the species continue to decline in numbers.

Summary of Factor D

In summary, there are currently State regulatory mechanisms and NPS regulatory mechanisms that provide for the conservation of *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum.* Despite the existing regulatory mechanisms, these species continue to decline due to the effects of a wide array of threats, and it is reasonable to conclude that the limitations of current regulatory mechanisms have allowed population declines of *Chromolaena frustrata* and *Consolea corallicola* due to habitat loss and modification and declines of *Consolea corallicola* and *Harrisia aboriginum* due to poaching, vandalism, and illegal bonfires.

Based on our analysis of the best available information, we find that existing regulatory mechanisms, due to their inherent limitations and constraints, are inadequate to address threats to these species throughout their ranges. We have no information to indicate that poaching, unauthorized fires, or habitat loss will be ameliorated in the future by enforcement of existing regulatory mechanisms. Therefore, we find it reasonably likely that the effects on *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* will continue at current levels or potentially increase in the future.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Wildfire

Wildfire, whether naturally ignited or caused by unauthorized burning, such as bonfires, is a threat to *Consolea corallicola* and *Harrisia aboriginum.* In general these plants do not survive fires, making this a severe threat to remaining populations and occupied sites. At a site in Sarasota County, a large illegal bonfire pit is located within the habitat that supports one of the larger populations of *H. aboriginum.* The bonfires occur just a few yards from the plants (Bender 2011, pp. 5–6). At least one plant was killed by an escaped fire that affected part of this site in 2006 (Woodmansee *et al.* 2007, p. 108) and should another fire escape into occupied habitat in the future, it is reasonable to conclude this could result in the loss of individuals or extirpation of populations.

Nonnative Plant Species

Nonnative, invasive plant species are a threat to all three species (Morris and Miller 1981, pp. 1–11; Bradley *et al.* 2004, pp. 6, 25; Woodmansee *et al.* 2007, p. 91; Bradley and Gann 2004, p. 8; Bradley 2007, pers. comm.; Sadle 2010, pers. comm.; McDonough 2010b, pers. comm.). They compete with native plants for space, light, water, and nutrients, and they have caused population declines in all three species.

Schinus terebinthifolius (Brazilian pepper), a nonnative, invasive tree, occurs in all of the habitats of the three species. *Schinus terebinthifolius* forms dense thickets of tangled, woody stems that completely shade out and displace

native vegetation (Loflin 1991, p. 19; Langeland and Craddock-Burks 1998, p. 54). *Schinus terebinthifolius* can dramatically change the structure of rockland hammocks, coastal berms, and shell mounds, making habitat conditions unsuitable for *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum,* which prefer moderate to full sun exposure. For example, at more than one site, numerous *H. aboriginum* plants occurring in the shade of *S. terebinthifolius* were observed to have died (Bradley *et al.* 2004, p. 10; Bender 2011, pp. 5, 13). By the mid-1990s, *S. terebinthifolius* had spread dramatically and had become a dominant woody species at sites known to support *H. aboriginum* (Morris and Miller 1981, pp. 5, 10; Loflin 1991, p. 19; Herwitz *et al.* 1996, pp. 705–715; Bradley *et al.* 2004, p. 7). *Schinus terebinthifolius* is a threat to populations of *Chromolaena frustrata* along the Coastal Prairie Trail in ENP (Sadle 2010, pers. comm.) and is invading the habitat of *Consolea corallicola* (McDonough 2010b, pers. comm.).

Colubrina asiatica (lather leaf), a nonnative shrub, has invaded large areas of coastal berm and coastal berm edges (Bradley and Gann 2004, p. 4). *Colubrina asiatica* also forms dense thickets and mats, and is of particular concern in coastal hammocks (Langeland and Craddock-Burks 1998, p. 122). *Colubrina asiatica* is invading large areas of hammocks within ENP along the edge of Florida Bay (Bradley and Gann 1999, p. 37). Populations of *Chromolaena frustrata* along the Coastal Prairie Trail and habitat within ENP face threats from *Colubrina asiatica* (Sadle pers. comm. 2010). *Colubrina asiatica* is also present in BNP in areas supporting *Consolea corallicola* (McDonough 2010b, pers. comm.).

Casuarina equisetifolia (Australian pine) invades coastal berm and is a threat to suitable habitat at most sites that could support all three species (FNAI 2010a, p. 2). *Casuarina equisetifolia* forms dense stands that exclude all other species through dense shade and a thick layer of needles that contain substances that leach out and suppress the growth of other plants. Coastal strand habitat that once supported *Harrisia aboriginum* has experienced dramatic increases in *C. equisetifolia* over the past 30 years (Loflin 1991, p. 19; Herwitz *et al.* 1996, pp. 705–715).

Other invasive plant species that are a threat to *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* include *Scaevola taccada* (beach naupaka), *Neyraudia reynaudiana* (Burma reed), *Cupaniopsis anacardioides* (carrotwood) *Thespesia populnea* (Portia tree), *Manilkara zapota* (sapodilla), *Hibiscus tiliaceus* (hau), and *Hylocereus undatus* (night blooming cactus) (FNAI 2010f, p. 4; Bradley *et al.* 2004, p. 13; McDonough 2010b, pers. comm.;).

Vandalism

Vandalism is a threat to *Consolea corallicola* and *Harrisia aboriginum,* and has caused population declines in both species. For *Consolea corallicola,* vandalism has been documented twice. In 1990, branches were cut off plants at one site, but instead of being taken (as would be the case for poaching), the cut stems were left at the base of plants. In 2003, vegetative recruits and pads were damaged by unauthorized removal of protective cages from plants (Slapcinsky *et al.* 2006, p. 3). At a Sarasota County site, the Service has documented numerous *H. aboriginum* plants that have been uprooted, trampled, and hacked with sharp implements. This population is impacted by people who use the coastal berm and hammock interface to engage in a variety of recreational (including unauthorized) activities as evidenced by a very large bonfire site and vast quantities of garbage, bottles, and discarded clothing (Bender 2011, p. 5).

Due to their historic significance and possible presence of artifacts, shell mounds are susceptible to vandalism by artifact hunters. Despite regulations that protect these sites on State lands (Florida Statute 267. 13), there is a long history of artifact hunters conducting unauthorized excavation of shell mounds in Florida, including some mounds where *Harrisia aboriginum* has been found, causing erosion and opening areas for invasion by nonnative plants (FNAI 2010i, p.3).

Recreation

Recreational activities may inadvertently impact some populations of *Chromolaena frustrata.* These activities may affect some individual plants in some populations but have not likely caused significant population declines in the species. Foot traffic and campsites at Big Munson Island may be a threat to *Chromolaena frustrata.* Recreation is a threat to some populations of *Harrisia aboriginum.* Coastal berms and dunes are impacted by recreational activities that cause trampling of plants, exacerbate erosion, and facilitate invasion by nonnative plants. As noted above, in 2011, numerous plants at a Sarasota County site were observed to be intentionally uprooted, hacked, and trampled, and there was a large amount of trash deposited nearby. At the same site, there is an ongoing problem with recreational bonfires in the coastal berm habitat just a few yards from *H. aboriginum* plants (Bradley *et al.* 2004, p. 16; Woodmansee *et al.* 2007, p.108; Bender 2011, pp. 5–6). One escaped bonfire has the potential to destroy this entire population.

Hurricanes, Storm Surge, and Extreme High Tide Events

Hurricanes, storm surge, and extreme high tide events are natural events that can pose a threat to all three species. Hurricanes and tropical storms can modify habitat (e.g., through storm surge) and have the potential to destroy entire populations. Climate change may lead to increased frequency and duration of severe storms (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015). All three species experienced these disturbances historically, but had the benefit of more abundant and contiguous habitat to buffer them from extirpations. With most of the historical habitat having been destroyed or modified, the few remaining populations of these species could face local extirpations due to stochastic events.

The Florida Keys were impacted by three hurricanes in 2005: Katrina on August 26th, Rita on September 20th, and Wilma on October 24th. Hurricane Wilma had the largest impact, with storm surges flooding much of the landmass of the Keys. The vegetation in many areas was top-killed due to salt water inundation (Hodges and Bradley 2006, p. 9).

Chromolaena frustrata

The ecology of coastal rock barrens is poorly understood. Periodic storm events may be responsible for maintaining the community (Bradley and Gann 1999, p. 37). There is some evidence that, over the long term, hurricanes can be beneficial to the species by opening up tree canopies allowing more light to penetrate, thereby creating the necessary conditions for growth (Woodmansee *et al.* 2007, p. 115). The large population of *Chromolaena frustrata* observed at Big Munson Island in 2004 suggests that this species may respond positively to occasional hurricanes or tropical storms that thin hammock canopies, providing more light (Bradley and Gann 2004, p. 8). Populations of *C. frustrata* in ENP initially appeared to have been eliminated by storm surge during Hurricane Wilma in 2005 (Bradley 2007, pers. comm.; Duquesnel 2005, pers.

comm.), and habitat was significantly altered (Maschinski 2007, pers. comm.). All communities where *C. frustrata* was found showed impacts from the 2005 hurricane season, primarily thinning of the canopy and numerous blow downs (Sadle 2007, pers. comm.). However, it appears that the species has returned to some locations (Bradley 2009, pers. comm.). The population of *C. frustrata* in ENP may have benefited from hurricanes; surveys at some sites in ENP in 2007 detected more plants than ever previously reported (Sadle 2007, pers. comm.). However, if nonnative, invasive plants are present at sites when a storm hits, they may respond similarly, becoming dominant and not allowing for a pulse in the population of native species. This may radically alter the long-term population dynamics of *C. frustrata,* keeping population sizes small or declining, until they eventually disappear (Bradley and Gann 2004, p. 8).

Consolea corallicola

Suitable habitat such as coastal rock barrens on Key Largo have been inundated with saltwater during spring and fall high tides over the past 5 to 10 years; these extreme events killed planted *Consolea corallicola* at one location (Duquesnel 2011a, pers. comm.). In the future, sea level rise could cause increases in flooding frequency or duration, prolonged or complete inundation of plants, and loss of suitable habitat (see *Climate Change and Sea Level Rise,* below for more information).

Harrisia aboriginum

In 2004, Hurricane Charley, a Category 4 hurricane, passed within 8 km (5 miles) of seven populations of *Harrisia aboriginum* and within 29 km (18 miles) of all populations (Bradley and Woodmansee 2004, p. 1). Several populations suffered damage and loss of plants (Nielsen 2007, pers. comm.; Woodmansee *et al.* 2007, p. 85) due to fallen limbs and shock caused by the sudden increase in sun exposure when the canopy was opened. However, some plants damaged by Hurricane Charley in 2004 have since recovered and seem to be thriving (Nielsen 2009, pers. comm.).

Freezing Temperatures

Occasional freezing temperatures that occur in south Florida are a threat to *Chromolaena frustrata* (Bradley 2009, pers. comm.; Sadle 2011, pers. comm.) and *Harrisia aboriginum* (Woodmansee *et al.* 2007, p. 91). Under normal circumstances, occasional freezing temperatures would not result in a significant impact to these species; however, the small size of some populations makes impacts from freezing more significant.

Effects of Small Population Size and Isolation

Endemic species whose populations exhibit a high degree of isolation are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Species that are restricted to geographically limited areas are inherently more vulnerable to extinction than widespread species because of the increased risk of genetic bottlenecks, random demographic fluctuations, climate change, and localized catastrophes such as hurricanes and disease outbreaks (Mangel and Tier 1994, p. 607; Pimm *et al.* 1988, p. 757). These problems are further magnified when populations are few and restricted to a very small geographic area, and when the number of individuals is very small. Populations with these characteristics face an increased likelihood of stochastic extinction due to changes in demography, the environment, genetics, or other factors (Gilpin and Soule 1986, pp. 24–34).

Small, isolated populations often exhibit reduced levels of genetic variability, which diminishes the species' capacity to adapt and respond to environmental changes, thereby decreasing the probability of long-term persistence (e.g., Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Very small plant populations may experience reduced reproductive vigor due to ineffective pollination or inbreeding depression. Isolated individuals have difficulty achieving natural pollen exchange, which limits the production of viable seed. The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other threats, such as those discussed above (Factors A, B, and C).

Chromolaena frustrata

The current range of *Chromolaena frustrata* includes eight populations spread across 209 km (130 mi) between ENP and Boca Grande Key; four of eight *C. frustrata* populations consist of fewer than 100 individuals (see Table 1). These populations may not be viable in the long term due to their small number of individuals. Threats exacerbated by small population size include hurricanes, storm surges, freezing temperatures, and recreation impacts.

Consolea corallicola

The two natural populations of *Consolea corallicola* are spread across 193 km (120 mi) between Biscayne Bay and Big Pine Key. One of the two remaining natural populations of *C. corallicola* consists of fewer than 20 adult plants (see Table 2). Threats exacerbated by small population size include hurricanes, storm surges, and poaching. Populations can also be impacted by demographic stochasticity, where populations are skewed toward either male or female individuals by chance. This may be the case with *C. corallicola,* in which the two remaining populations do not contain any female plants. While the species may continue to reproduce indefinitely by clonal means, populations may not be viable over the long term due to a lack of genetic mixing and thus the potential to adapt to environmental changes.

Harrisia aboriginum

The current range of *Harrisia aboriginum* spans such a small geographic area (100-km (62-mi)) stretch of coastline north to south) that all populations could be affected by a single event (e.g., hurricane). Six of the 12 remaining populations have 10 or fewer individual plants (see Table 3). Threats exacerbated by small population size include hurricanes, storm surges, freezing temperatures, recreation impacts, wildfires, and poaching.

Chromolaena frustrata, Consolea corallicola, and *Harrisia aboriginum* have restricted geographic distributions, and few populations, some or all of which are relatively small in number and extent. Therefore, it is essential to maintain the habitats upon which they depend, which require protection from disturbance caused by development, recreational activities and facilities maintenance, nonnative species, or a combination of these. Due to ongoing and pervasive threats, the number and size of existing populations of these species are probably not sufficient to sustain them into the future.

Climate Change and Sea Level Rise

Climatic changes, including sea level rise, are major threats to south Florida and *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum.* Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such

measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Projected changes in climate and related effects can vary substantially across and within different regions of the world (e.g., IPCC 2007a, pp. 8–12). Thus, although global climate projections are informative and in some cases are the only or the best scientific information available, to the extent possible we use ''downscaled'' climate projections, which provide higher resolution information that is more relevant to the spatial scales used to assess effects to a given species (see Glick *et al.* 2011, pp. 58–61 for a discussion of downscaling).

With regard to our analysis for *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum,* downscaled projections suggest that sea-level rise is the largest climate-driven challenge to low-lying coastal areas and refuges in the subtropical ecoregion of southern Florida (U.S. Climate Change Science Program (CCSP) 2008, pp. 5–31, 5–32). The long-term record at Key West shows that sea level rose on average 0.224 cm (0.088 in) annually between 1913 and 2006 (National Oceanographic and Atmospheric Administration (NOAA) 2008, p. 1). This equates to approximately 22.3 cm (8.76 in) over the last 100 years (NOAA 2008, p. 1). IPCC (2008, p. 28) emphasized it is very likely that the average rate of sea level rise during the 21st century will exceed that rate, although it was projected to have substantial geographical variability.

Other processes expected to be affected by climate change include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity). Temperatures are projected to rise from 2 °C to 5 °C (35.6 °F to 41.5 °F) for North America by the end of this century (IPCC 2007, pp. 7–9, 13).

The Nature Conservancy (TNC) modeled several scenarios for the Florida Keys, and predicted that sea level rise will first result in the conversion of habitat, and eventually the complete inundation of habitat. In the best-case scenario, by the year 2100, a rise of 18 cm (7 in) would result in the inundation of 745 ha (1,840 acres) (34 percent) of Big Pine Key and the loss of 11 percent of the island's upland habitat (TNC 2010, p. 1). In the worst-case scenario, a rise of 140 cm (4.6 ft) would result in the inundation of about 2,409 ha (5,950 acres) (96 percent) and the loss of all upland habitat on the Key (TNC 2010, p. 1).

Hydrology has a strong influence on plant distribution in these and other coastal areas (IPCC 2008, p. 57). Such communities typically grade from salt to brackish to freshwater species. From the 1930s to 1950s, increased salinity of coastal waters contributed to the decline of cabbage palm forests in southwest Florida (Williams *et al.* 1999, pp. 2056–2059), expansion of mangroves into adjacent marshes in the Everglades (Ross *et al.* 2000, pp. 9, 12–13), and loss of pine rockland in the Keys (Ross *et al.* 1994, pp. 144, 151–155). The possible effects of sea level rise were noted in the 1980s, at a site supporting *Harrisia aboriginum* (Morris and Miller 1981, p. 10), and recent deaths of cabbage palms at this location suggest that this is a continuing threat (Bradley *et al.* 2004, p. 7). Furthermore, Ross *et al.* (2000, pp. 109–111) suggested that interactions between sea level rise and pulse disturbances (e.g., storm surges) can cause vegetation to change sooner than projected based on sea level alone. Patterns of development will also likely be significant factors influencing whether natural communities can move and persist (IPCC 2008, p. 57; CCSP 2008, p. 7–6).

Most populations of *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* are located just slightly above mean sea level, and the effects of sea level rise are expected to be a continual problem for coastal species and habitats (Gann *et al.* 2002, p. 391, 481; Bradley *et al.* 2004, p. 7; Sadle 2007, pers. comm.; Higgins 2007, pers. comm.; Duquesnel 2008, pers. comm.). Research on *C. corallicola* (Stiling 2010, p. 2) and other Florida cacti suggests that increased soil salinity levels can cause mortality of these plants (Goodman *et al.* 2012, pp. 9–11). Natural populations of *Harrisia aboriginum* and *Consolea corallicola* do not occur on saturated soils (fresh or saline) and would likely be extirpated at sites affected by sea level rise.

Similarly, the extant populations of *Consolea corallicola* occur near sea level in a transitional zone between mangrove and hardwood hammock habitats. Populations at two sites have been declining for years, and this may be partially attributed to rising sea level, as most of the cacti are on the edge of the hammock and buttonwood transition zone or directly in the transition zone (Higgins 2007, pers. comm.; Duquesnel 2008, 2009, pers. comm.).

Summary of Factor E

In summary, *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* are vulnerable to a wide array of threats from human activities; invasive, nonnative plant species; small population sizes; weather events, and climate change, which have operated in the past, are impacting these species now, and have caused population declines in all three species. Based on our analysis of the best available information, these threats are likely to continue in the future at current levels or potentially increasing.

Cumulative Effects of Threats

The limited distributions and small population sizes of *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* make them extremely susceptible to further habitat loss and competition from nonnative species. Poaching, vandalism, and wildfires are additional threats to *C. corallicola* and *H. aboriginum.* Mechanisms leading to the decline of these species as discussed above, range from local (e.g., poaching, vandalism, wildfire), to regional (e.g., development, nonnative species), to global (e.g., climate change, sea level rise). The synergistic (interaction of two or more components) effects of threats (such as hurricane effects on a species with a limited distribution consisting of just a few small populations) make it difficult to predict population viability. While these stressors may act in isolation, it is more probable that many stressors are acting simultaneously (or in combination) on populations of *Chromolaena frustrata, Consolea corallicola,* and *H. aboriginum.*

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum.* Section 3(6) of the Act defines an endangered species as ''any species that is in danger of

extinction throughout all or a significant portion of its range,'' and section 3(20) of the Act defines a threatened species as ''any species that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.''

As described in detail above, these three species are currently at risk throughout all of their respective ranges due to the immediacy, severity, and scope of threats from habitat destruction and modification (Factor A), inadequacy of existing regulatory mechanisms (Factor D), and other natural or manmade factors affecting their continued existence (Factor E). *Consolea corallicola* and *Harrisia aboriginum* are currently at risk throughout all of their respective ranges due to the immediacy, severity, and scope of threats from overutilization (Factor B), and *C. corallicola* is immediately threatened by disease or predation (Factor C). Although there are ongoing actions to alleviate some threats, there appear to be no populations without current significant threats. Current State and Federal regulatory mechanisms (Factor D) are inadequate to protect *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* from taking and habitat loss. Despite the existing regulatory mechanisms, *Chromolaena frustrata, Consolea corallicola,* and *H. aboriginum* continue to decline. In particular, poaching remains a concern for *Consolea corallicola,* and *H. aboriginum.* Habitat loss or modification from development (Factor A) and sea level rise, competition from nonnative plants, small population sizes, and restricted range (Factor E) are threats to all three species. Hurricanes, storm surge, and future sea level rise are threats to all three species through direct mortality of individuals and modification of habitat. The majority of the remaining *C. frustrata, C. corallicola,* and *H. aboriginum* populations are generally small and geographically isolated. The narrow distribution of their populations in hurricane-prone south Florida makes them more susceptible to extirpation from a single catastrophic event. Furthermore, this level of isolation makes natural recolonization of extirpated populations virtually impossible without human intervention.

Chromolaena frustrata

Chromolaena frustrata has been extirpated (no longer in existence) from half of the islands in the Florida Keys where it historically occurred, and threats of competition from nonnative, invasive plants (Factor E) and habitat loss (Factor A) are currently active in the remaining populations. Populations of *Chromolaena frustrata* are isolated from one another, and the species has a limited ability to recolonize suitable habitat between populations. Because of the current condition of the populations and life-history traits of the species, it is vulnerable to natural or human-caused changes in its currently occupied habitats. Significant threats are occurring now and are likely to continue in the foreseeable future, at a high intensity, and across the species' entire range; therefore, we have determined the species is currently on the brink of extinction. Because these threats are placing the species in danger of extinction now and not only at some point in the foreseeable future, we find this species meets the definition of an endangered species versus a threatened species. Therefore, we are proposing to list it as an endangered species. We are not proposing threatened species status for *C. frustrata* due to the high level of continuing threats described above. These threats described above are currently active, and will continue to affect the populations of *C. frustrata* into the foreseeable future, and these threats will individually and collectively contribute to the species' local extirpation and potential extinction.

Consolea corallicola

Consolea corallicola has been extirpated from half of the islands in the Florida Keys where it historically occurred. Threats of poaching and vandalism (Factor B), predation by a nonnative moth, disease (Factor C), competition from nonnative, invasive plant species and wildfire (Factor E), and habitat loss (Factor A) still exist in the remaining populations. Additionally, low genetic diversity and lack of sexual reproduction are threats to *C. corallicola.* Because there are only a few small populations of this cactus, and the remoteness of occupied habitat that makes enforcement difficult, collection has and continues to be a significant threat to the species. Existing regulatory mechanisms (Factor D) at the State level are inadequate to protect the species from poaching or vandalism. Because populations are isolated and the species has a limited ability to recolonize suitable habitats, it continues to be vulnerable to natural or human-caused changes in its habitats. As a result, impacts from continuing threats, singly or in combination, are likely to result in the extinction of this species. Significant threats are occurring now and are likely to continue in the foreseeable future, at a high intensity, and across the species' entire range; therefore, we have determined the species is currently on the brink of extinction. Because these threats are placing the species in danger of extinction now and not only at some point in the foreseeable future, we find this species meets the definition of an endangered species, versus a threatened species. Therefore, we are proposing to list it as an endangered species. We are not proposing threatened status for *C. corallicola* due to the severity of the threats described above. These threats described above are currently active, and will continue to affect the populations of *C. corallicola* into the foreseeable future, and these threats will individually and collectively contribute to the species' local extirpation and potential extinction.

Harrisia aboriginum

Harrisia aboriginum has been extirpated from the northern extent of its range in Manatee County, and threats of poaching (Factor B), competition from nonnative, invasive plant species, wildfire (Factor E), disease, predation (Factor C), vandalism (Factor B), and habitat loss (Factor A) still exist in the remaining populations. Because there are only a few small populations of this cactus, and the remoteness of occupied habitat that makes enforcement difficult, collection has and continues to be a significant threat to this species. Existing regulatory mechanisms (Factor D) at the State level are inadequate to protect this species from poaching or vandalism. Because populations are isolated and the species has a limited ability to recolonize historically occupied habitats, it is vulnerable to natural or human-caused changes in its habitats. As a result, impacts from increasing threats, singly or in combination, are likely to result in the extinction of the species. Significant threats are occurring now and are likely to continue in the foreseeable future, at a high intensity, and across the species' entire range; therefore, we have determined the species is currently on the brink of extinction. Because these threats are placing the species in danger of extinction now and not only at some point in the foreseeable future, we find this species meets the definition of an endangered species, versus a threatened species. Therefore, we are proposing to list it as an endangered species. We are not proposing threatened status for *H. aboriginum* due to the severity of the threats described above. These threats described above are currently active, and will continue to affect the populations of *H. aboriginum* into the foreseeable future, and these threats will

individually and collectively contribute to the species' local extirpation and potential extinction.

Significant Portion of Its Range

We evaluated the current range of the *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* to determine if there is any apparent geographic concentration of potential threats for either species. All three species are highly restricted in their ranges, and the threats occur throughout their ranges. We considered the potential threats due to habitat loss or modification from development and sea level rise, competition from nonnative plants, hurricanes, storm surge, small populations, and restricted range. We found no concentration of threats because of the species' limited and curtailed ranges, and uniformity of the threats throughout their entire ranges. Having determined that *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* are endangered throughout their entire ranges, it is not necessary to evaluate whether there are any significant portions of their ranges.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in public awareness and conservation by Federal, State, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against take and harm are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and after preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be down listed or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. Achieving recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and non-governmental organizations. In addition, under section 6 of the Act, the State of Florida would be eligible for Federal funds to implement management actions that promote the protection and recovery of *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum.* Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* are only being proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Federal agencies are required to confer with us informally on any action that is likely to jeopardize the continued existence of a proposed species. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within these species' habitats that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to, the funding of, carrying out or issuance of permits for resource management activities, development of facilities, road and trail construction, recreational programs, and any other any landscape-altering activities on Federal lands administered by the Department of Defense, NPS, Fish and Wildlife Service, and U.S. Forest Service; or the issuance of Federal permits under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) by the U.S. Army Corps of Engineers; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a

commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as an endangered species, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

Preservation of native flora of Florida (Florida Statutes 581.185) sections (3)(a) and (b) provide limited protection to species listed in the State of Florida Regulated Plant Index including *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum,* as described under Factor D. *The Inadequacy of Existing Regulatory Mechanisms.*

Federal listing increases protection by for these species by making violations of Section 3 of the Florida Statute punishable as a Federal offense under section 9 of the Act. This provides increased protection from unauthorized collecting and vandalism for the plants on State and private lands, where they might not otherwise be protected by the Act, and increases the severity of the penalty for unauthorized collection, vandalism, or trade in these species.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 50 CFR 17.72 for threatened plants. With regard to endangered plants, a permit must be issued for the following purposes: For scientific purposes or to enhance the propagation or survival of the species.

The Service acknowledges that it cannot fully address some of the natural threats facing *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* (e.g., hurricanes, tropical storms) or even some of the other significant, long-term threats (e.g., climatic changes, sea level rise). However, through listing, we provide protection to the known population(s) and any new population of the species that may be discovered (see discussion below). With listing, we can also influence Federal actions that may potentially impact the species (see discussion below); this is especially valuable if it is found at additional locations. With this action, we are also better able to deter illicit collection and trade.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Import any such species into, or export any such species from, the United States;

(2) Remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law;

(3) Deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(4) Sell or offer for sale in interstate or foreign commerce any such species;

(5) Introduce any nonnative wildlife or plant species to the State of Florida that compete with or prey upon *Chromolaena frustrata, Consolea corallicola,* or *Harrisia aboriginum;*

(6) Release any unauthorized biological control agents that attack any life stage of *Chromolaena frustrata, Consolea corallicola,* or *Harrisia aboriginum;*

(7) Modify the habitat of *Chromolaena frustrata, Consolea corallicola,* or *Harrisia aboriginum* on Federal lands that is unauthorized or not covered under the Act for impacts to these species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Field Supervisor of the Service's South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, Endangered Species Permits, 1875 Century Boulevard, Atlanta, GA 30345 (Phone 404–679–7140; Fax 404–679–7081).

If *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* are listed under the Act, the State of Florida's Endangered Species Act (Florida Statutes 581.185) is automatically invoked, which would also prohibit take of these species and encourage conservation by State government agencies. 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 (Florida Statutes 581.185). Funds for these activities could be made available under section 6 of the Act (Cooperation with the States). Thus, the Federal protection afforded to these species by listing them as endangered species would be reinforced and supplemented by protection under State law.

Critical Habitat Designation for *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum*

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aborigiunum* in this section of the proposed rule.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the

extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time we determine that a species is endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. This determination involves a weighing of the expected increase in threats associated with a critical habitat designation against the benefits gained by such designation. We have determined that for *Consolea corallicola* and *Harrisia aboriginum,* identification of critical habitat can be expected to increase the degree of threat to the species from over utilization by collectors and poachers and that the benefits of designating critical habitat are minimal.

Increased Threat to the Consolea corallicola and Harrisia aboriginum by Designating Critical Habitat

Rare cacti are highly desirable to collectors and often targeted for collection in the wild (Anderson 2001, pp. 73–78). The Service has documented unauthorized collection of both *Consolea corallicola* and *Harrisia aboriginum* on public lands in Florida. Collection appears to be ongoing, prevalent, and damaging (see Factor B analysis above for specific cases). In addition, we are aware that a market exists for trade in rare, imperiled, and federally-listed cacti, including those in south Florida (see Factor B analysis above). For example, there is currently a demand for *Harrisia fragrans,* a rare cactus from south Florida that is listed (under the scientific name *Cereus eriophorus* var. *fragrans*) as an endangered species under the Act, and that closely resembles *H. aboriginum.* Websites currently offer for sale seeds of *C. corallicola* and *H. aboriginum.* It is clear that a demand currently exists for specimens of both cacti.

Due to the low number of populations, small population sizes, restricted range, and remoteness of occupied habitat (which makes enforcement difficult), we believe that collection is a significant and continuing threat to *Consolea corallicola* and *Harrisia aboriginum.* Even limited collection from the remaining populations (or other populations, if discovered) could have significant and long-lasting deleterious effects on reproductive and genetic viability and thus could contribute to the extinction of these cacti. Identification of critical habitat units would increase the severity of this threat by describing the exact locations where the species may be found and more widely publicizing this information, exposing small, isolated populations and habitat to greater risks of collection and vandalism.

Designation of critical habitat requires the publication of maps and a narrative description of specific critical habitat units in the **Federal Register**. The degree of detail in those maps and boundary descriptions would be greater than what is currently available to the public. Thus, designation of critical habitat could more widely announce the exact location of the two cacti to collectors and poachers, and further encourage and facilitate unauthorized collection and trade. Due to their extreme rarity (a low number of individuals, combined with small areas inhabited by the remaining populations), these cacti are highly vulnerable to collection. We believe that these threats would be exacerbated by the publication of maps and descriptions outlining the specific locations of these cacti in the **Federal Register**, on Service Web sites, and in local newspapers.

Identification and publication of critical habitat for *Consolea corallicola* and *Harrisia aboriginum* would also likely increase enforcement problems. Although take prohibitions exist, effective enforcement is difficult. As discussed under Factors B, D, and E and elsewhere above, the threats of collection and inadvertent impacts from human activities exists and areas where the species currently exist are already difficult to patrol due to the remoteness of those areas. Many of the areas supporting the cacti are remote and accessible mainly by boat, making them difficult for law enforcement personnel to patrol and monitor, and more desirable for illegal activities. Limited patrolling is available for resource protection on the lands supporting *Consolea corallicola* and *Harrisia aboriginum.* We believe that designation of critical habitat would facilitate further use and misuse of sensitive habitats and resources, creating additional difficulty for law enforcement personnel in an already challenging environment. Overall, we believe that designation of critical habitat would increase the likelihood and severity of the threats of illegal collection of *C. corallicola* and *H. aboriginum,* as well as exacerbate enforcement issues.

Benefits to Consolea corallicola and Harrisia aboriginum From Critical Habitat Designation

The principal benefit of including an area in critical habitat is the requirement for agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Critical habitat provides protections only where there is a Federal nexus, that is, those actions that come under the purview of section 7 of the Act. Critical habitat designation has no application to actions that do not have a Federal nexus. Section 7(a)(2) of the Act mandates that Federal agencies, in consultation with the Service, evaluate the effects of its their proposed actions on any designated critical habitat. Similar to the Act's requirement that a Federal agency action not jeopardize the continued existence of listed species, Federal agencies have the

responsibility not to implement actions that would destroy or adversely modify designated critical habitat.

Federal actions affecting the species even in the absence of designated critical habitat areas would still benefit from consultation pursuant under to section 7(a)(2) of the Act and may still result in jeopardy findings. However, the analysis of effects of a proposed project on critical habitat is separate and distinct from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation of the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This would, in some instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Consolea corallicola

All areas known to support populations of *Consolea corallicola* are on Federal, State, or private conservation lands; these areas are currently being managed at some level for the species. Management efforts include nonnative species control and efforts to detect and control *Cactobalastis cactorum.* These efforts are consistent with, and tailored for, *C. corallicola* conservation, and such efforts are expected to continue in the future. Because *C. corallicola* is restricted to two small natural populations, with by far the largest occurring on NPS land, any future activity involving a Federal action that would destroy or adversely modify occupied critical habitat would also be expected to jeopardize the species' continued existence (see Jeopardy Standard within proposed rule). On the other hand, designation of unoccupied critical habitat for *C. corallicola* would provide a measureable regulatory benefit in those instances when a Federal action occurred in only unoccupied critical habitat. Because *C. corallicola* has been extirpated from half of the islands where it occurred in the Florida Keys, designation of critical habitat for this species could cover a large area. Thus, for the species if consultation on the Federal action was found to likely destroy or adversely modify unoccupied critical habitat but not jeopardize the continued existence of the species, a measurable regulatory benefit would be realized. In the absence of a critical habitat designation, Federal lands that support *C. corallicola* would continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections by the section 7(a)(2) jeopardy standard consultation requirements and may still result in jeopardy findings. Therefore, designation of specific areas as critical habitat that are currently occupied is unlikely to provide a measurable benefit to the species while designation of unoccupied areas as critical habitat could provide a measurable benefit to the species.

Harrisia aboriginum

All *Harrisia aboriginum* populations are at least in part on protected Federal, State, County, and private conservation lands. A few plants are located on private non-conservation parcels adjacent to larger populations on protected conservation sites. Most, but not all, of the protected sites are currently being managed at some level for the species. Management efforts are limited to nonnative species control at this time. These efforts are expected to continue in the future. The Federal listing of the species regardless of critical habitat designation, could result in increased enforcement efforts and population augmentation, although to what extent is unknown. One of the 12 sites where *H. aboriginum* occurs is on Federal lands and represents approximately one third of all existing individuals and would be subject to section 7(a)(2) consultation requirements of the Act. However, *Harrisia aboriginum* has been extirpated from the northern extent of its range in Manatee County. There are a few small County-owned and private land parcels that are occupied and not currently being managed for the species; and these lands would not be subject the requirements of section 7 consultation without a Federal nexus. Designation of these small parcels as occupied critical habitat would provide limited additional to *H. aboriginum* because a Federal nexus would still be needed to trigger consultation and it is unlikely the loss of the habitat would have an adverse effect on the conservation of the species. If unoccupied critical habitat were designated for *H. aboriginum,* additional habitat could be protected from adverse habitat modification or destruction on State, county, or private land if a Federal nexus were present and the action rose to the level of adversely modifying the critical habitat. Additional unoccupied habitat may be necessary for the recovery of *C. corallicola* and *H. aboriginum,* as areas targeted for reintroduction would likely be on existing State, Federal, or county conservation lands. However, the identification of these lands would increase the risk of poaching in the future at these reintroduced sites.

In summary, for both *Consolea corallicola* and *Harrisia aboriginum,* consultation with respect to critical habitat would provide additional protection to a species if the agency action would result in the destruction or adverse modification of the critical habitat but would not jeopardize the continued existence of the species. In the absence of a critical habitat designation, areas that support *C. corallicola* and *H. aboriginum* would continue to be subject to conservation actions implemented under section 7(a)(1) of the Act. Also, Federal actions affecting *C. corallicola* and *H. aboriginum* in the absence of designated critical habitat areas would still benefit from consultation pursuant under to section 7(a)(2) of the Act and may still result in jeopardy findings. Therefore, although designation of specific areas as critical habitat that is currently occupied, recently occupied, or unoccupied would provide some additional protections under the Act, that protection is likely to be minimal.

Another potential benefit to *Consolea corallicola* and *Harrisia aboriginum* from designating critical habitat is that it could serve to educate private landowners, and Federal State, and local government agencies, Refuge, or Park visitors, and the general public regarding the potential conservation value of the area for the species. Through the processes of listing the cacti under the State of Florida's endangered species statute and the recognition of the *C. corallicola* and *H. aboriginum* as a Federal candidate species in 2005 and 2006, respectively, much of this educational component is already in effect. Agencies, organizations, and stakeholders are actively engaged in efforts to raise awareness for these cacti and their conservation needs, including the need to deter poaching of wild specimens, designation of critical habitat would help in increasing the awareness. In addition, designation of critical habitat could inform State agencies and local governments about areas that could be conserved under State laws, local ordinances, or land management initiatives by State, local, and Federal agencies. However, nearly all land managers responsible for sites supporting *Consolea corallicola* and *Harrisia aboriginum* are now aware the presence of these species. Designation of critical habitat that is occupied would

likely provide benefits concerning awareness by private entities where management for the species could be enhanced or initiated.

Increased Threat to Consolea corallicola and Harrisia aboriginum Outweighs the Benefits of Critical Habitat Designation

Upon reviewing the available information, we have determined that the designation of critical habitat would increase the threat to *Consolea corallicola* and *Harrisia aboriginum* from unauthorized collection and trade, and may further facilitate inadvertent or purposeful disturbance and vandalism to the cacti's habitat. We believe that designation of occupied critical habitat is likely to confer only an educational benefit to these cacti beyond that provided by listing. Alternatively, the designation of unoccupied critical habitat for either species could provide an educational and at least some regulatory benefit for each species. However, we believe that the risk of increasing significant threats to the species by publishing more specific location information in a critical habitat designation greatly outweighs the benefits of designating critical habitat.

In conclusion, we find that the designation of critical habitat is not prudent, in accordance with 50 CFR 424.12(a)(1), because *Consolea corallicola* and *Harrisia aboriginum* are threatened by collection and habitat destruction, and designation can reasonably be expected to increase the degree of these threats to these species and their habitats. Critical habitat designation could provide some benefit to these species, but these benefits are significantly outweighed by the increased risk of collection pressure and enforcement problems that could result from depicting, through publicly available maps and descriptions, exactly where these extremely rare cacti and their habitat can be found.

Determination of Prudency for Chromolaena frustrata

In contrast to *Consolea corallicola* and *Harrisia aboriginum, Chromolaena frustrata* is not sought after by collectors and there is no evidence that the designation of critical habitat would result in an increased threat from taking (particularly poaching) or other human activity for this species. On the other hand, as for these other species, we find that the designation of critical habitat for *C. frustrata,* as for the other two species, is likely to provide at least some benefit to the species by serving to focus conservation efforts on the restoration and maintenance of ecosystem functions that are essential for attaining its recovery and long-term viability. Similarly, the designation of critical habitat could serve to inform management and conservation decisions by identifying any additional physical and biological features of the ecosystem that may be essential for the conservation of the species. We therefore find that designation of critical habitat for *C. frustrata* is prudent.

Critical Habitat Determinability

Having determined that designation of critical habitat is prudent for *Chromolaena frustrata,* under section 4(a)(3) of the Act, we must find whether critical habitat is determinable for the species. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking; or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

We reviewed the available information pertaining to the biological needs of *Chromolaena frustrata* and habitat characteristics where the species is located. This and other information represent the best scientific data available and have led us to conclude that the designation of critical habitat is determinable for *C. frustrata.*

Designation of Critical Habitat

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the specific elements of physical or biological features that provide for a species' life-history processes, are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, would continue to be subject to: (1) Conservation actions implemented

under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools would continue to contribute to recovery of this species if we list *Chromolaena frustrata.* Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features (PBFs) that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific PBFs for *Chromolaena frustrata* from observations of this species' habitat, ecology, and life history as described below. The PBFs for *C. frustrata* were defined on the basis of the habitat features of the areas actually occupied by the plants, which included climate, substrate types, hydrologic regimes, plant community structure, associated plant species, and locale information.

Space for Individual and Population Growth

Plant Community and Competitive Ability. Chromolaena frustrata occurs in communities classified as coastal berms, coastal rock barrens, buttonwood forests, and rockland hammocks restricted to tropical South Florida and the Florida Keys. These communities and their associated native plant species are provided in the Status Assessment for *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum* section above.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Climate (temperature and precipitation). The climate of south Florida where *Chromolaena frustrata* occurs is characterized by distinct wet and dry seasons, a monthly mean temperature above 18 ° (64.4 °F) in every month of the year, and annual rainfall averaging 75 to 150 cm (30 to 60 in) (Gabler *et al.* 1994, p. 211). Freezes can occur in the winter months, but are very infrequent at this latitude in Florida.

Soils. Substrates supporting *Chromolaena frustrata* for anchoring or nutrient absorption vary depending on the habitat and location and include marl (an unconsolidated sedimentary rock or soil consisting of clay and lime) (Sadle, 2008 and 2012, pers. comm.); soils consisting of covering limestone; exposed bare limestone rock or with a thin layer of leaf litter or highly organic soil (Bradley and Gann 1999, p. 37; FNAI 2010d, p.1); or loose sediment formed by a mixture of coarse sand, shell fragments, pieces of coralline algae, and other coastal debris (FNAI 2010a, p.1).

Hydrology. The species requires coastal berms and coastal rock barrens that occur above the daily tidal range, but are subject to flooding by seawater during extreme tides and storm surge. Rockland hammock occurs on high ground that does not regularly flood, but it is often dependent upon a high water table to keep humidity levels high, and they can be inundated during storm surges (FNAI 2010d, p.1).

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The reproductive biology and needs of *Chromolaena frustrata* have not been studied (Bradley and Gann 1999, p. 37). We have no other information available beyond the habitat preferences and demographic trends and life-history cycles. Thus, except habitat requirements discussed above we have no other information regarding the ecology of the species related to reproduction needs.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

Chromolaena frustrata continues to occur in habitats that are protected from human-generated disturbances and are representative of the species' historical, geographical, and ecological distribution although its range has been reduced. The species still is found in all of its representative plant communities: Rock barrens, coastal berms, buttonwood forest, and rockland hammocks. In addition, representative communities are located on Federal, State, local, and private conservation lands that implement conservation measures benefitting the species.

Disturbance Regime. All of the habitats that support *Chromolaena frustrata* depend on some degree of natural disturbance regime from hurricanes or tidal inundation to reduce the canopy in order to provide light levels sufficient to support the species. The historical frequency and magnitude of hurricanes and tidal inundation has allowed for the persistence of *C. frustrata* by occasionally creating areas of open canopy that support the species.

In the absence of disturbance, some of these habitats may have closed canopies, resulting in areas lacking enough available sunlight to support *Chromolaena frustrata.* However, too frequent or severe disturbance that transitions the habitat toward more saline conditions could result in the decline of the species in the area.

The natural process giving rise to coastal rock barren is not known, but as it occurs on sites where the thin layer of organic soil over limestone bedrock is missing, coastal rock barren may have formed by soil erosion following destruction of the plant cover by fire or storm surge (FNAI 2010c, p. 2).

Fires are rare to nonexistent in coastal rock barren coastal berm, and buttonwood forest communities (FNAI 2010a, b, c, entire). Historically, rockland hammocks in south Florida evolved with fire in the landscape; fire most often extinguished near the edges when it encountered the hammock's moist microclimate and litter layer. However, rockland hammocks are susceptible to damage from fire during extreme drought or when the water table is lowered (FNAI 2010d, p. 2).

Cover or Shelter

Chromolaena frustrata occurs in open canopy and semi-open to closed canopy

habitats and thrives in areas of moderate sun exposure (Bradley and Gann 1999, p. 37). The amount and frequency of such microsites varies by habitat type and time, and since the last disturbance. In rockland hammocks, suitable microsites will often be found near the hammock edge where the canopy is most open. However, the species has been observed to spread into the hammocks when canopy cover is reduced by hurricane damage to canopy trees. More open communities (e.g., coastal berm, buttonwood and salt marsh ecotone) provide more abundant and temporally consistent suitable habitat than communities capable of establishing a dense canopy (e.g., hardwood hammock).

Accordingly, we have determined that *Chromolaena frustrata* requires the following PBFs:

(1) Upland habitats consisting of coastal berm, coastal rock barren, rockland hammocks, and buttonwood forest;

(2) Habitats inundated by storm surge or tidal events at a frequency needed to limit plant species competition while not creating too saline conditions;

(3) Substrate derived from calcareous sand, limestone, or marl to provide anchoring and nutritional requirements;

(4) Vegetation composition and structure that allows for adequate sunlight, and space for individual growth and population expansion;

(5) Habitat connectivity of sufficient size and suitability, or habitat that can be restored to these conditions that supports species growth, distribution and population expansion; and

(6) Disturbance regimes, including hurricanes, and infrequent inundation events that saturate the substrate, to maintain suitable sites for *Chromolaena frustrata* within these habitats.

Primary Constituent Elements for *Chromolaena frustrata*

Under the Act and its implementing regulations, we are required to identify the PBFs essential to the conservation of *Chromolaena frustrata* in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

We derive the PCEs for *Chromolaena frustrata* primarily based on those PBFs that support the successful functioning of the habitat upon which the species depends. *C. frustrata* is dependent upon functioning habitats to provide its fundamental life requirements, such as substrate, hydrology, disturbance regime, and the species composition and structure of vegetation. The PCEs collectively provide the suite of PBFs essential to meeting the requirements of *C. frustrata.*

Based on our current knowledge of the PBFs and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs for *C. frustrata* are:

(1) Areas of upland habitats consisting of coastal berm, coastal rock barren, rockland hammocks, and buttonwood forest.

(A) Coastal berm habitat contains:

(1) Open to semi-open canopy, subcanopy, and understory;

(2) Substrate of coarse, calcareous, storm-deposited sediment; and

(3) A plant community of predominately native vegetation and either no competitive nonnative, invasive plant species or such species in quantities low enough to have minimal effect on the survival of *Chromolaena frustrata.* Coastal berm habitat has a canopy vegetated by *Bursera, Coccoloba, Coccothrinax, Guapira, Drypetes, Genipa,* and *Metopium;* a subcanopy vegetated by *Eugenia, Ximenia, Randia, Pithecellobium, Laguncularia, Conocarpus, Avicennia, Rhizophora, Suriana, Manilkara, Jacquinia,* and *Sideroxylon;* and an understory vegetated by *Borrichia, Hymenocallis, Capparis, Lantana, Rivina, Sesuvium, Distichlis,* and *Sporobolus.*

(B) Coastal rock barren (Keys cactus barren, Keys tidal rock barren) habitat contains:

(1) Open to semi-open canopy and understory;

(2) Limestone rock substrate; and

(3) A plant community of predominately native vegetation and either no competitive nonnative, invasive plant species or such species in quantities low enough to have minimal effect on the survival of *Chromolaena frustrata.* Coastal rock barren habitat has a subcanopy vegetated by *Conocarpus, Lycium, Gossypium, Sideroxylon, Pithecellobium, Suriana, Randia, Metopium, Acanthocereus, Maytenus, Opuntia, Agave, Bursera,* and *Eugenia;* and an understory vegetated by *Evolvulus, Cienfuegosia, Indigofera, Borrichia, Sarcocornia, Batis, Leptochloa, Paspalidium, Monanthochloe, Distichlis, Sporobolus,* and *Fimbristylis.*

(C) Rockland hammock habitat contains:

(1) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory;

(2) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the underlying limestone; and

(3) A plant community of predominately native vegetation and either no competitive nonnative, invasive plant species or such species in quantities low enough to have minimal effect on the survival of *Chromolaena frustrata.* Rockland hammock has a canopy vegetated by *Bursera, Lysiloma, Simarouba, Krugiodendron, Ocotea, Piscidia, Swietenia, Sideroxylon, Exothea, Ficus, Coccoloba, Metopium, Conocarpus, Guapira,* and *Pisonia;* a subcanopy vegetated by *Eugenia, Thrinax, Amyris, Ardisia, Psychotria, Chrysophyllum, Sabal, Guaiacum, Ximenia,* and *Colubrina;* and an understory vegetated by *Zamia, Acanthocereus,* and *Oplismenus.*

(D) Buttonwood forest habitat contains:

(1) Open to semi-open canopy and understory;

(2) Substrate with calcareous marl muds, calcareous sands, or limestone rock; and

(3) A plant community of predominately native vegetation and either no competitive nonnative, invasive plant species or such species in quantities low enough to have minimal effect on the survival of *Chromolaena frustrata.* Buttonwood forest has a canopy vegetated by *Conocarpus,* and an understory vegetated by *Borrichia, Lycium,* and *Limonium.*

(2) A disturbance regime, due to the effects of strong winds or salt-water inundation from storm surge or infrequent tidal inundation, that creates canopy disruption in coastal berm, coastal rock barren, rockland hammocks, and buttonwood forest habitats listed above.

(3) Habitats that are connected and of sufficient area to sustain viable populations in in coastal berm, coastal rock barren, rockland hammocks, and buttonwood forest habitats listed above.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

Management considerations or protection are necessary throughout the critical habitat areas proposed here to avoid further degradation or destruction of the habitat that provides those features essential to the species'

conservation. The primary threats to the PBFs that *Chromolaena frustrata* depends on include: (1) Habitat destruction and modification by development; (2) competition with nonnative, invasive plant species; (3) wildfire; (4) hurricanes and storm surge; and (5) sea level rise. Some of these threats can be addressed by special management considerations or protection while others (e.g., sea level rise, hurricanes) are beyond the control of land owners and managers. However, while land owners or land managers may not be able to control all the threats, they may be able to address the results of the threats.

Management activities that could ameliorate these threats include the monitoring and minimization of recreational activities impacts, nonnative species control, and protection from development. Precautions are needed to avoid the inadvertent trampling of *Chromolaena frustrata* in the course of management activities and public use. Development of recreation facilities or programs should avoid impacting these habitats directly or indirectly. Ditching should be avoided because it alters the hydrology and species composition of these habitats. Sites that have shown increasing encroachment of woody species over time may require efforts to maintain the open nature of the habitat, which favors these species. Nonnative species control programs are needed to reduce competition and prevent habitat degradation. The reduction of these threats will require the implementation of special management actions within each of the critical habitat areas identified in this proposed rule. All proposed critical habitat requires active management to address the ongoing threats listed above (and those presented in Factors A through E).

In summary, we find that each of the areas we are proposing as critical habitat that are occupied by *Chromolaena frustrate* contain features essential to the conservation of the species that may require special management considerations or protection to ensure conservation of the species. These special management considerations and protection are required to preserve and maintain the essential features provided to these species by the ecosystems upon which they depend. A more detailed discussion of these threats is presented above in ''Summary of Factors Affecting the Species.''

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of this species. We are proposing to designate critical habitat in areas within the geographical area occupied by *Chromolaena frustrata* at the time of listing. All of these units are designated based on sufficient elements of physical and biological features being present to support known *Chromolaena frustrata* life-history processes.

In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. For the reasons described below, we also are proposing to designate specific areas outside the geographical area currently occupied by the species (that would mean occupied at the time of listing), but which were historically occupied, because we have determined that such areas are essential for the conservation of the species.

Small populations and plant species with limited distributions, like those of *Chromolaena frustrata,* are vulnerable to relatively minor environmental disturbances (Frankham 2005, pp. 135–136), and are subject to the loss of genetic diversity from genetic drift, the random loss of genes, and inbreeding (Ellstrand and Elam 1993, pp. 217–237; Leimu *et al.* 2006, pp. 942–952). Plant populations with lowered genetic diversity are more prone to local extinction (Barrett and Kohn 1991, pp. 4, 28). Smaller plant populations generally have lower genetic diversity, and lower genetic diversity may in turn lead to even smaller populations by decreasing the species' ability to adapt, thereby increasing the probability of population extinction (Newman and Pilson 1997, p. 360; Palstra and Ruzzante 2008, pp. 3428–3447). Because of the dangers associated with small populations or limited distributions, the recovery of many rare plant species includes the creation of new sites or reintroductions to ameliorate these effects.

When designating critical habitat, we consider future recovery efforts and conservation of the species. Realizing that the current occupied habitat is not enough for the conservation and recovery of *Chromolaena frustrata,* we used habitat and historical occurrence data to identify unoccupied habitat essential for the conservation of the species. The justification for why unoccupied habitat is essential to the conservation of these species and the methodology we used to identify the best unoccupied areas for consideration of inclusion are described below.

Habitat fragmentation can have negative effects on biological populations, especially rare plants, and can affect survival and recovery (Aguilar *et al.* 2006, pp. 968–980; Aguilar *et al.* 2008, pp. 5177–5188; Potts *et al.* 2010, pp. 345–352). Fragments are often not of sufficient size to support the natural diversity prevalent in an area, and thus exhibit a decline in biodiversity (Fahrig 2003, pp. 487–515). Fragmentation effects are especially prevalent in systems where multiple generations have elapsed since the fragmentation occurred (Aguilar *et al.* 2008, p. 5177). Habitat fragmentation has been shown to disrupt plant-pollinator interactions and predator-prey interactions (Steffan-Dewenter and Tscharntke 1999, pp. 432–440; Aguilar *et al.* 2006, pp. 968–980; Eckert *et al.* 2010, pp. 35–43), alter seed germination percentages (Menges 1991, pp. 158–164), affect recruitment (Santos and Telleria 1997, pp. 181–187; Quesada *et al.* 2003, pp. 400–406), and result in lowered fruit set (Burd 1994, pp. 83–139; Cunningham 2000, pp. 1149–1152; Eckert *et al.* 2010, p. 38).

In general, habitat fragmentation causes habitat loss, habitat degradation, habitat isolation, changes in species composition, changes in species interactions, increased edge effects, and reduced habitat connectivity (Fahrig 2003, pp. 487–515; Fisher and Lindenmayer 2007, pp. 265–280). Habitat fragments are often functionally smaller than they appear because edge effects (such as increased nonnative, invasive species or wind speeds) impact the available habitat within the fragment (Lienert and Fischer 2003, p. 597).

Shaffer and Stein (2000) identify a methodology for conserving imperiled species known as the 'three Rs': Representation, resiliency, and redundancy. Representation, or preserving some of everything, means conserving not just a species but its associated plant communities. Resiliency and redundancy ensure there is enough of a species so it can survive into the future. Resiliency means ensuring that the habitat is adequate for a species and its representative components. Redundancy ensures an adequate number of sites and individuals. This methodology has been widely accepted as a reasonable conservation strategy (Tear *et al.* 2005, p. 841).

We have addressed representation through our PCEs (as discussed above) and by providing habitat for *Chromolaena frustrata.* There are only approximately 6,000 to 8,000 known individuals and only 8 populations, four

of which have fewer than 100 individuals (low redundancy). Seven of eight populations occur on small islands where the amount of suitable and remaining habitat is limited (low resiliency). For adequate redundancy and resiliency, we believe it is necessary for conservation and recovery that additional populations of *C. frustrata* be established. Therefore, we have proposed two unoccupied areas for designation as critical habitat units on islands of the Florida Keys where *C. frustrata* was historically recorded, but has since been extirpated.

To determine the location and boundaries of critical habitat, the Service used the following sources of information:

(1) FNAI population records and ArcGIS geographic information system (GIS) software to spatially depict the location and extent of documented populations of *Chromolaena frustrata* (FNAI 2011b, pp. 1–17);

(2) Reports prepared by botanists with the Institute for Regional Conservation (IRC), NPS, and Florida Department of Environmental Protection (FDEP). Some of these were funded by the Service, others were requested or volunteered by biologists with the NPS or FDEP;

(3) Historical records found in reports and associated voucher specimens housed at herbaria, all of which are also referenced in the above mentioned reports from the IRC and FNAI;

(4) Digitally produced habitat maps provided by NPS and Monroe County; and

(5) Aerial images of Miami-Dade and Monroe Counties. The presence of PCEs was determined through the use of GIS spatial data depicting the current habitat status. This habitat data for the Keys were developed by Monroe County from 2006 aerial images, and ground conditions for many areas were checked in 2009. Habitat data for ENP were provided by the NPS. The areas that contain PCEs follow predictable landscape patterns and have a recognizable signature in the aerial photographs.

We have identified areas to include in this proposed designation by applying the following considerations.

The amount and distribution of critical habitat being proposed for designated would allow populations of *Chromoleana frustrata* to:

(1) Maintain their existing distribution;

(2) Expand their distribution into previously occupied areas (needed to offset habitat loss and fragmentation);

(3) Use habitat depending on habitat availability (response to changing nature of coastal habitat including occurring sea level rise) and support genetic diversity;

(4) Increase the size of each population to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished; and

(5) Maintain their ability to withstand local or unit level environmental fluctuations or catastrophes.

We utilized the following process to select appropriate critical habitat units for *Chromolaena frustrata:*

Areas Occupied at Time of Listing

(1) For the purpose of designating critical habitat for *Chromolaena frustrata,* we defined the geographical area currently occupied by the species as required by section 3(5)(A)(i) of the Act. Proposed occupied critical habitat units were delineated around extant populations. These units include the mapped extent of the population and adjacent areas that contain the elements of the PBFs that allow for population growth and expansion and to account for dynamic habitat processes (i.e., gain and loss of areas with sufficient light availability due to disturbance of canopy by natural events such as inundation and hurricanes), and habitat transition or loss due to sea level rise. In the ENP, the distribution of *Chromolaena frustrata* is across a larger area than at any other single location. In the Keys, the same criteria were used, but the size of the proposed units is limited by the size of individual islands.

(2) Areas to maintain connectivity of habitat. Some areas that may contain only some of the elements of the PBFs were included if they were contiguous with areas containing one or more of those elements and if they contribute to the hydrologic processes and disturbance regime essential to the ecological function of the system. These areas maintain connectivity within populations and allow for population expansion.

(3) Areas for restoration. We have selected some areas within occupied units that, once restored, would be able to support expansion and a larger number of the species. These areas generally are habitats within or adjacent to coastal berms, coastal barrens, rockland hammocks, or buttonwood forest that retain some of the elements of the PBFs although some PBFs have been lost through natural or anthropogenic causes. These areas would provide habitat to off-set the anticipated loss and degradation of habitat occurring or expected from the effects of climate change (such as sea level rise) or due to development.

(4) Areas to allow the dynamic nature of coastal berm, buttonwood forest, rockland hammock, and coastal rock barren habitats to respond to hurricane and salt-water inundation. Areas with an open canopy which are suitable for *C. frustrata* are patchy within rockland hammock and coastal rock barren. At any one time, not all the elements of the PBFs are found in these habitats and affect the suitability for *C. frustrata.* The size and location of these areas are dynamic over time, being largely driven by disturbance by hurricanes in hammocks and storm surge in coastal rock barrens. After hurricanes, canopy gaps created by the storm begin to close over time, limiting light availability and suitability of the gap to *C. frustrata.* Thus, these areas could be transitory in providing all the elements of the PBFs as canopy regrows and closes. To address the dynamic nature of these habitats, we included all contiguous habitat associated with a current population record that retains at least one element of the PBFs.

(5) Areas to ensure the persistence of *Chromolaena frustrata* in the face of imminent effects on habitats as a result of sea level rise.

Areas Not Occupied at Time of Listing

(1) Areas where *Chromolaena frustrata* occurred historically but has since been extirpated. *Chromolaena frustrata* has been extirpated from several locations where it was previously recorded. Of those areas found in reports, we are proposing critical habitat only for those that are well-documented and still retain some or all the elements of the PBFs (i.e., Big Pine Key, Key Largo (Bradley and Gann 2004, pp. 4–6)). Areas such as Fiesta Key and Knight's Key, which once supported populations of *C. frustrata* but no longer contain any PCEs and cannot be restored, are not included. As it is not always possible to identify that exact location where a specimen was collected, we used available descriptions to speculate upon likely locales, but ultimately were guided by the location of remaining habitats on islands where little of these habitats remain.

(2) Areas of sufficient size to support ecosystem processes for occupied populations of *Chromolaena frustrata.* Large contiguous parcels of habitat are more likely to be resilient to ecological processes of disturbance and succession, and support viable populations of *Chromolaena frustrata.*

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by

buildings, pavement, and other structures because such lands lack physical or biological features for *Chromolaena frustrata.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0076, on our Internet sites (*http://www.fws.gov/verobeach/*), and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation

We are proposing nine units as critical habitat for *Chromolaena frustrata.* The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for *C. frustrata.* The nine areas we propose as critical habitat are: (1) Everglades National Park; (2) Key Largo; (3) Upper Matecumbe Key; (4) Lignumvitae Key; (5) Lower Matecumbe Key; (6) Long Key; (7) Big Pine Key; (8) Big Munson Island; and (9) Boca Grande Key. Landownership within the proposed critical habitat consists of Federal (62 percent), State (30 percent), and private and other (8 percent). Table 4 summarizes these units.

TABLE 4—*Chromolaena frustrata* PROPOSED CRITICAL HABITAT UNITS

Unit number	Unit name	Ownership	Percent	Hectares	Acres	PCEs present	Occupied
1	Everglades National Park.	Federal	100	1,525	3,768	coastal berm, rockland hammock, buttonwood forest.	yes.
		Total	*100*	*1,525*	*3,768*		
2	Key Largo	Federal	23	325	803	coastal berm, rockland hammock, buttonwood forest.	no.
		State	63	878	2,170		
		Private	13	185	457		
		Total	*100*	*1,388*	*3,430*		
3	Upper Matecumbe Key.	State	34	9	22	coastal berm, coastal rock barren, rockland hammock.	yes.
		Private	66	18	44		
		Total	*100*	*27*	*66*		
4	Lignumvitae Key	State	100	73	180	rockland hammock, buttonwood forest.	yes.
		Total	*100*	*73*	*180*		
5	Lower Matecumbe Key.	State	49	9	22	coastal berm, coastal rock barren, rockland hammock, buttonwood forest.	yes.
		Private	51	9	22		
		Total	*100*	*18*	*44*		

TABLE 4—*Chromolaena frustrata* PROPOSED CRITICAL HABITAT UNITS—Continued

Unit number	Unit name	Ownership	Percent	Hectares	Acres	PCEs present	Occupied
6	Long Key	State	73	61	151	coastal berm, coastal rock barren, rockland hammock, buttonwood forest.	yes.
		Private	27	23	57		
		Total	*100*	*84*	*208*		
7	Big Pine Key	Federal	88	277	684	coastal berm, coastal rock barren, rockland hammock, buttonwood forest.	no.
		Private	12	38	94		
	Total	*100*	*315*	*778*			
8	Big Munson Island	Private	100	11	27	coastal berm, rockland hammock, buttonwood forest.	yes.
		Total	*100*	*11*	*27*		
9	Boca Grande Key	Federal	100	25	62	coastal berm, rockland hammock, buttonwood forest.	yes.
		Total	*100*	*25*	*62*		
Total All Units		Federal	62	2,152	5,318		
		State	30	1,030	2,545		
		Private and Other	8	284	702		
		All		3,466	8,565		

Note: Area sizes may not sum due to rounding.

Seven of the nine critical habitat units proposed for *Chromolaena frustrata* are also currently designated under the Act for the wintering piping plover (*Charadrius melodus*) and the American crocodile (*Crocodylus acutus*) The specific units, and the species for which they are designated are shown in Table 4.

TABLE 5—CRITICAL HABITAT AREAS PROPOSED FOR *Chromolaena frustrata* THAT ARE CURRENTLY DESIGNATED OR PROPOSED AS CRITICAL HABITAT FOR OTHER FEDERALLY LISTED SPECIES

Proposed unit (unit #)	Species for which critical habitat is designated	Federal Register reference
Unit 1—Everglades National Park	American Crocodile	50 CFR 17.95(c).
Unit 2—Key Largo	American Crocodile	50 CFR 17.95(c).
Unit 3—Upper Matecumbe Key	American Crocodile	50 CFR 17.95(c).
Unit 4—Lignumvitae Key	American Crocodile	50 CFR 17.95(c).
Unit 5—Lower Matecumbe Key	American Crocodile	50 CFR 17.95(c).
Unit 6—Long Key	American Crocodile	50 CFR 17.95(c).
Unit 9—Boca Grande Key	Wintering piping plover; Unit FL–29	50 CFR 17.95(b).

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for *Chromolaena frustrata,* below.

Unit 1: Everglades National Park, Monroe County and Miami-Dade County

Unit 1 consists of 1,525 ha (3,768 ac) in Monroe County and Miami-Dade County. This unit is comprised entirely of lands in Federal ownership, 100 percent of which are located within the ENP along the southern coast of Florida from Cape Sable to Trout Cove, located between the mean high water line to approximately 4.02 km (2.5 miles) inland. This unit is currently occupied

and contains the features essential to the conservation of the species. The unit contains coastal berm, rockland hammock, and buttonwood forest PCEs. This unit contains all the PBFs, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, required by the species. The PBFs in this unit may require special management considerations or protection to address threats of nonnative plant species and sea level rise.

Unit 2: Key Largo, Monroe County

Unit 2 consists of 1,388 ha (3,430 ac) in Monroe County. This unit is comprised of Federal lands within Crocodile Lake National Wildlife Refuge (NWR) (325 ha (803 ac)); State lands within Dagny Johnson Botanical State Park, John Pennekamp Coral Reef State Park, and the Florida Keys Wildlife and Environmental Area (878 ha (2,170 ac)); and parcels in private ownership (185 ha (457 ac)).

This unit extends from near the northern tip of Key Largo, along the length of Key Largo, beginning at the south shore of Ocean Reef Harbor near South Marina Drive and the intersection of County Road (CR) 905 and Clubhouse Road on the west side of CR 905, and between CR 905 and Old State Road 905, then extending to the shoreline south of South Harbor Drive. The unit then continues on both sides of CR 905 through the Crocodile Lake NWR, Dagny Johnson Key Largo Hammock Botanical State Park, and John Pennekamp Coral Reef State Park. The unit then terminates near the junction of U.S. 1 and CR 905 and Garden Cove Drive. The unit resumes on the east side of U.S. 1 from South Andros Road to Key Largo Elementary; then from intersection of Taylor Drive and Pamela Street to Avenue A; then from Sound Drive to the intersection of Old Road and Valencia Road; then resumes on the east side of U.S. 1 from Hibiscus Lane and Ocean Drive. The unit continues south near the Port Largo Airport from Poisonwood Road to Bo Peep Boulevard. The unit resumes on the west side of U.S. 1 from the intersection of South Drive and Meridian Avenue to Casa Court Drive. The unit then continues on the west side of U.S. 1 from the point on the coast directly west of Peace Avenue south to Caribbean Avenue. The unit also includes a portion of the barrier island in Largo Sound located directly east of Avenue A, extending south to a point directly east of Mahogany Drive. This unit is not currently occupied but contains habitat essential to the conservation of the species because it serves to protect habitat needed to recover the species, reestablish wild populations within the historical range of the species, and maintain populations throughout the historic distribution of the species in the Florida Keys, and provides area for recovery in the case of stochastic events that otherwise would eliminate the species from the one or more locations it is presently found.

Unit 3: Upper Matecumbe Key, Monroe County

Unit 3 consists of 27 ha (66 ac) in Monroe County. This unit is comprised of State lands within Lignumvitae Key State Botanical Park, Indian Key Historical State Park (9 ha (22 ac)); City of Islamorada lands within the Key Tree Cactus Preserve and Green Turtle Hammock Park and parcels in private ownership (18 ha (44 ac)). This unit extends from Matecumbe Avenue south to Seashore Avenue along either side of U.S. 1. The unit then continues along the west side of U.S. 1, including the Green Turtle Hammock Park and a nature preserve owned by the City of Islamorada; straddles U.S. 1 in the vicinity of Indian Key Historical Park; and continues for 0.8 km (0.5 mi) to near the southern tip of Key Largo on the west side of U.S. 1.

This unit is currently occupied and contains the features essential to the conservation of the species. It contains the PCEs of coastal berm, coastal rock barren, and rockland hammock. This unit contains all PBFs, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, required by the species. The PBFs in this unit may require special management considerations or protection to address threats of nonnative species and sea level rise.

Unit 4: Lignumvitae Key, Monroe County

Unit 4 consists of 73 ha (180 ac) in Monroe County. This unit is comprised entirely of lands in State ownership, 100 percent of which are located within the Lignumvitae Key Botanical State Park (LKBSP).

This unit is currently occupied and contains the features essential to the conservation of the species. This unit includes all PCEs of rockland hammock and buttonwood forest habitat that occur within LKBSP on Lignumvitae Key. This unit contains all PBFs, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, required by the species. The PBFs in this unit may require special management considerations or protection to address threats of nonnative species and sea level rise.

Unit 5: Lower Matecumbe Key, Monroe County

Unit 5 consists of 18 ha (44 ac) in Monroe County. The unit is comprised of State lands within Lignumvitae Key State Botanical Park, parcels owned by the Florida Department of Transportation (9 ha (22 ac)); and parcels in private ownership (9 ha (22 ac)). This unit extends from the east side of U.S. 1 from 0.2 km (0.14 mi) from the north edge of Lower Matecumbe Key, situated across U.S. 1 from Davis Lane and Tiki Lane. The unit continues on either side of U.S. 1 approximately 0.4 mi (0.6 km) from the north edge of Lower Matecumbe Key for approximately 0.9 km (0.6 mi).

This unit is currently occupied and contains the features essential to the conservation of the species. It contains all PBFs, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, required by the species. The PBFs in this unit may require special management considerations or protection to address threats of nonnative species and sea level rise.

Unit 6: Long Key, Monroe County

Unit 6 consists of 84 ha (208 ac) in Monroe County. This unit is comprised of State lands within Long Key State Park (61 ha (151 ac)) and parcels in private ownership (23 ha (57 ac)). The unit extends from the southwestern tip of Long Key along the island's west and south shores.

The unit is currently occupied and contains the features essential to the conservation of the species. It contains the PCEs of coastal berm, coastal rock barren, rockland hammock, and buttonwood forest. This unit contains all PBFs, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes required by the species. The PBFs in this unit may require special management considerations or protection to address threats of development, nonnative species, and sea level rise.

Unit 7: Big Pine Key, Monroe County

Unit 7 consists of 315 ha (778 ac) in Monroe County. Unit 7 consists of 315 ha (778 ac) in Monroe County. This unit is comprised of Federal land within the National Key Deer Refuge (NKDR) (277 ha (684 ac)) and parcels in private ownership (38 ha (94 ac)). This unit extends from near the northern tip of Big Pine Key along the eastern shore to the vicinity of Hellenga Drive and

Watson Road; from Gulf Boulevard south to West Shore Drive; from the southwest tip of Big Pine Key, bordered by Big Pine Avenue and Elma Avenues on the east, Coral and Yacht Club Road, and U.S. 1 on the north, and Industrial Avenue on the east; extending along the undeveloped portion of Long Beach Drive; and from the southeastern tip of Big Pine Key to Avenue A.

This unit is not currently occupied but is essential to the conservation of the species because it serves to protect habitat needed to recover the species, reestablish wild populations within the historical range of the species, and maintain populations throughout the historic distribution of the species in the Florida Keys, and it provides area for recovery in the case of stochastic events that otherwise hold the potential to eliminate the species from the one or more locations where it is presently found.

Unit 8: Big Munson Island, Monroe County

Unit 8 consists of 11 ha (27 ac) in Monroe County. This unit is comprised entirely of lands in private ownership, owned by the Boy Scouts of America.

This unit is occupied and contains the features essential to the conservation of the species. It includes all the PCEs of coastal berm, rockland hammock, and buttonwood forest habitat that occur on Big Munson Island. This unit contains all PBFs, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, required by the species. The PBFs in this unit may require special management considerations or protection to address threats of development, recreation, small population size, nonnative species, and sea level rise.

Unit 9: Boca Grande Key, Monroe County

Unit 9 consists of 25 ha (62 ac) in Monroe County. This unit is comprised entirely of lands in Federal ownership, 100 percent of which is located within the Key West National Wildlife Refuge (NWR).

This unit is occupied and contains features essential to the conservation of the species. This unit includes all the PCEs of coastal berm, rockland hammock, and buttonwood forest habitat on the island, comprising the entirety of Boca Grande Key. This unit contains all PBFs, including suitable climate, hydrology, substrate, associated native plant species, and disturbance regimes, required by the species. The PBFs in this unit may require special management considerations or protection to address threats of nonnative species and sea level rise.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the United States Court of Appeals for the Fifth and Ninth Circuits have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether,

with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for *Chromolaena frustrata.* As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for *Chromolaena frustrata.* These activities include, but are not limited to:

(1) Actions that would significantly alter the hydrology or substrate, such as ditching or filling. Such activities may include, but are not limited to, road construction or maintenance, and residential, commercial, or recreational development.

(2) Actions that would significantly alter vegetation structure or composition, such as clearing vegetation for construction of residences, facilities, trails, and roads.

(3) Actions that would introduce nonnative species that would significantly alter vegetation structure or composition. Such activities may include, but are not limited to, residential and commercial development, and road construction.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation for *Chromolaena frustrata.*

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of designating any particular area as critical habitat. In order to consider economic impacts, we are preparing an economic analysis of the proposed critical habitat designation and related factors.

We will announce the availability of our draft economic analysis as soon as it is completed. During the development of a final designation, we will consider the draft economic analysis, public comments, and other new information related to economic impacts, and as a result areas that were proposed for critical habitat may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. In preparing this proposal, we have determined that none of the lands within the proposed designation of critical habitat for *Chromolaena frustrata* are owned or managed by the Department of Defense, or designated for its use, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion of lands from, critical habitat.

In addition, we look at any tribal issues, and consider the government–to–government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposed rule, we have determined that there are currently no HCPs or other management plans that affect *Chromolaena frustrata* or its proposed critical habitat. Furthermore, we are not aware of any potential social impacts that might occur because of the designation. Accordingly, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our proposed listing and critical habitat designation are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific proposed rule.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service certifies that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation would not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number

of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat would only directly regulate Federal agencies, which are not by definition small business entities. Accordingly, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions.

All proposed units are remote from energy supply, distribution, or use activities. We do not expect that if made final, this designation of critical habitat would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

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

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

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then–existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because the areas proposed for critical habitat designation are not owned by one Federal, State, or City government. None of these government entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for *Chromolaena frustrata* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for *Chromolaena frustrata* would not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Florida. If finalized, the designation of critical habitat in areas occupied by *Chromolaena frustrata* may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long–range planning (rather than having them wait for case–by–case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may

affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of *Chromolaena frustrata* within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as endangered or threatened under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is also our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribal lands that are currently occupied by *Chromolaena frustrata* that contain the features essential for conservation of the species, and no tribal lands unoccupied by *C. frustrata* that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for *C. frustrata* on tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the South Florida Ecological Services Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. Amend § 17.12 (h) by adding entries for *Chromolaena frustrata, Consolea corallicola,* and *Harrisia aboriginum,* in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Chromolaena frustrata.	Thoroughwort, Cape Sable.	U.S.A. (FL)	Asteraceae	E		17.96(a)	NA
*	*	*	*	*	*		*
Consolea corallicola	Cape Sable thoroughwort.	U.S.A. (FL)	NA	E		17.96(h)	NA
	Cactus, Florida semaphore.	U.S.A. (FL)	Cactaceae	E		NA	NA
*	*	*	*	*	*		*
Harrisia aboriginum	Prickly-apple, aboriginal.	U.S.A. (FL)	Cactaceae	E		NA	NA

3. Amend § 17.96(a) by adding an entry for ''*Chromolaena frustrata* (Cape Sable Thoroughwort)'' in alphabetical order under the family Asteraceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Asteraceae: *Chromolaena frustrata* (Cape Sable thoroughwort)

(1) Critical habitat units for *Chromolaena frustrata* are depicted for Miami-Dade and Monroe Counties, Florida, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Chromolaena frustrata* are:

(i) Areas of upland habitats consisting of coastal berm, coastal rock barren, rockland hammocks, and buttonwood forest.

(A) Coastal berm habitat contains:

(1) Open to semi-open canopy, subcanopy, and understory;

(2) Substrate of coarse, calcareous, storm-deposited sediment; and

(3) A plant community of predominately native vegetation and either no competitive nonnative, invasive plant species or such species in quantities low enough to have minimal effect on survival of *Chromolaena frustrata.* Coastal berm habitat has a canopy vegetated by *Bursera, Coccoloba, Coccothrinax, Guapira, Drypetes, Genipa,* and *Metopium;* a subcanopy vegetated by *Eugenia, Ximenia, Randia, Pithecellobium, Laguncularia, Conocarpus, Avicennia, Rhizophora, Suriana, Manilkara, Jacquinia,* and *Sideroxylon;* and an understory vegetated by *Borrichia, Hymenocallis, Capparis, Lantana, Rivina, Sesuvium, Distichlis,* and *Sporobolus.*

(B) Coastal rock barren (Keys cactus barren, Keys tidal rock barren) habitat contains:

(*1*) Open to semi-open canopy and understory;

(*2*) Limestone rock substrate; and

(*3*) A plant community of predominately native vegetation and either no competitive nonnative, invasive plant species or such species in quantities low enough to have minimal effect on survival of *Chromolaena frustrata.* Coastal rock barren habitat has a subcanopy vegetated by *Conocarpus, Lycium, Gossypium, Sideroxylon, Pithecellobium, Suriana, Randia, Metopium, Acanthocereus, Maytenus, Opuntia, Agave, Bursera,* and *Eugenia;* and an understory vegetated by *Evolvulus, Cienfuegosia, Indigofera, Borrichia, Sarcocornia, Batis, Leptochloa, Paspalidium, Monanthochloe, Distichlis, Sporobolus,* and *Fimbristylis.*

(C) Rockland hammock habitat contains:

(*1*) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory;

(2) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the underlying limestone; and

(3) A plant community of predominately native vegetation and either no competitive nonnative, invasive plant species or such species in quantities low enough to have minimal effect on survival of *Chromolaena frustrata.* Rockland hammock has a canopy vegetated by *Bursera, Lysiloma, Simarouba, Krugiodendron, Ocotea, Piscidia, Swietenia, Sideroxylon, Exothea, Ficus, Coccoloba, Metopium, Conocarpus, Guapira,* and *Pisonia;* a subcanopy vegetated by *Eugenia, Thrinax, Amyris, Ardisia, Psychotria, Chrysophyllum, Sabal, Guaiacum, Ximenia,* and *Colubrina;* and an understory vegetated by *Zamia, Acanthocereus,* and *Oplismenus.*

(D) Buttonwood forest habitat contains:

(1) Open to semi-open canopy and understory;

(2) Substrate with calcareous marl muds, calcareous sands, or limestone rock; and

(3) A plant community of predominately native vegetation and either no competitive nonnative, invasive plant species or such species in quantities low enough to have minimal effect on survival of *Chromolaena frustrata.* Buttonwood forest has a canopy vegetated by *Conocarpus,* and an understory vegetated by *Borrichia, Lycium,* and *Limonium.*

(ii) A disturbance regime, due to the effects of strong winds or salt-water inundation from storm surge or infrequent tidal inundation, that creates canopy disruption in all habitats listed above in (1).

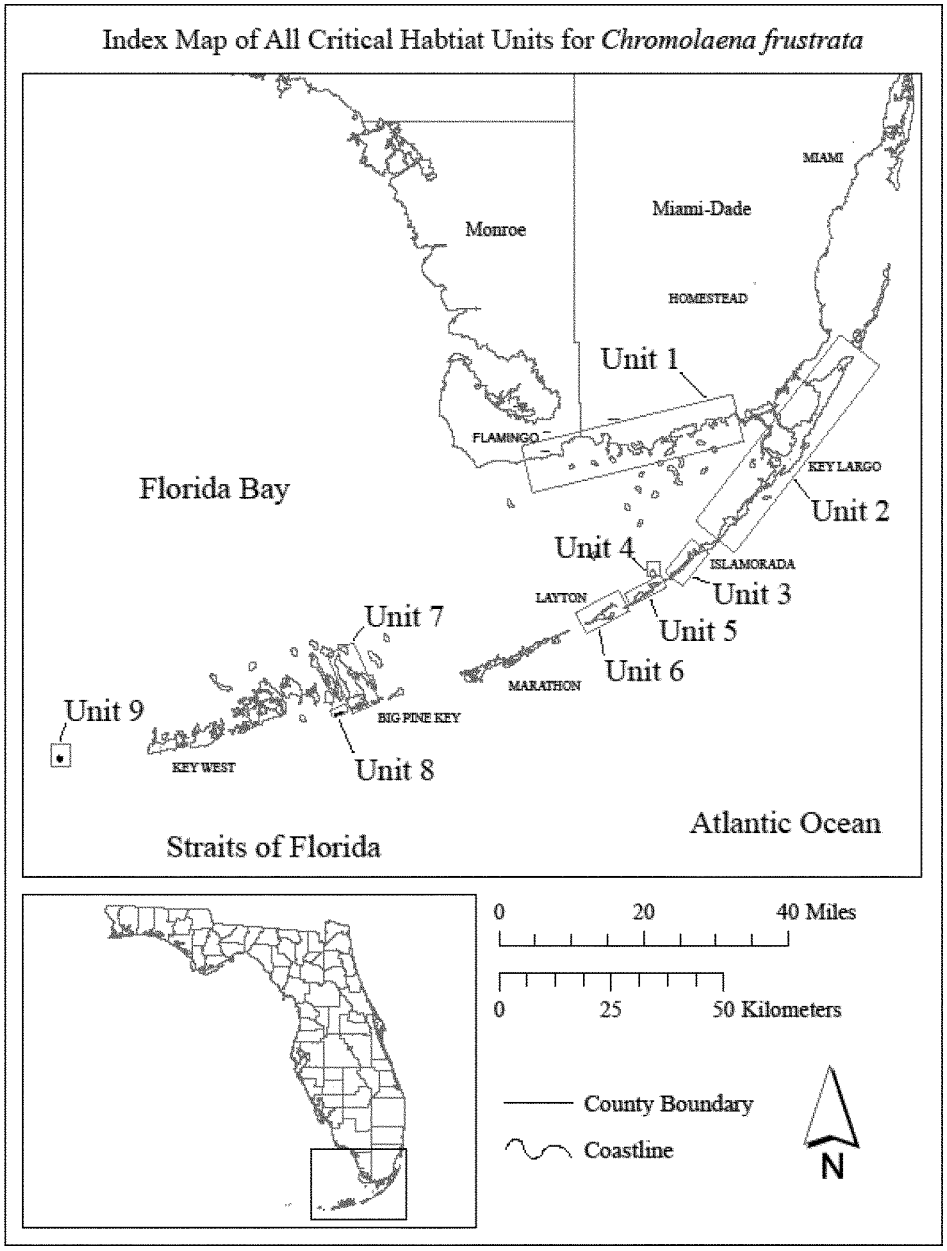
(iii) Habitats that are connected and of sufficient area to sustain viable populations in all habitats listed above in (1).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located exists within the legal boundaries on the effective date of this rule.

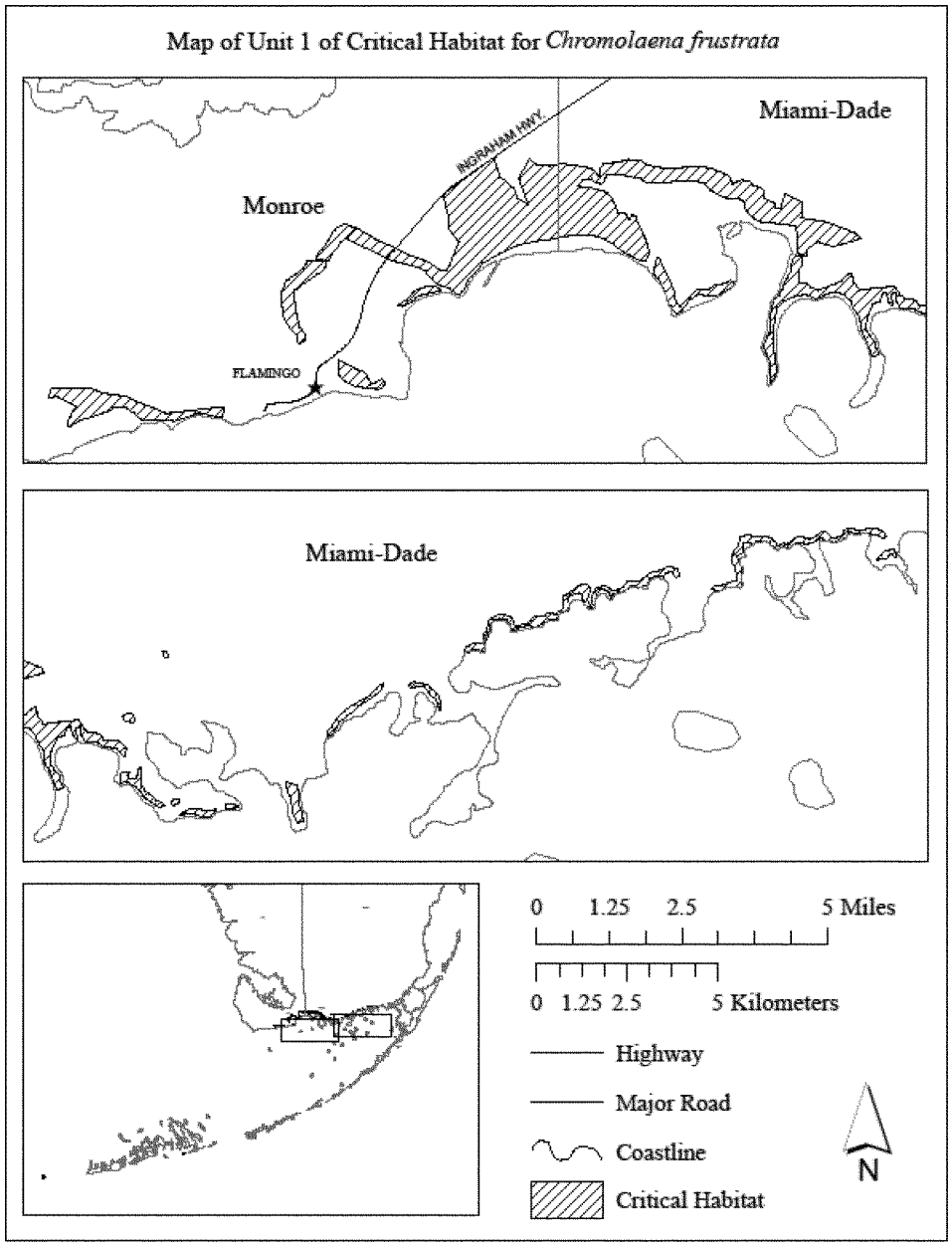
(4) Critical habitat map units. Unit maps were developed using ESRI ArcGIS mapping software along with various spatial data layers. ArcGIS was also used to calculate. The projection used in mapping and calculating distances and locations within the units was North American Albers Equal Area Conic, NAD 83. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on

which each map is based are available to the public at the Service's internet site, (*http://www.fws.gov/verobeach/*), the Federal eRulemaking Portal (*http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0076) and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

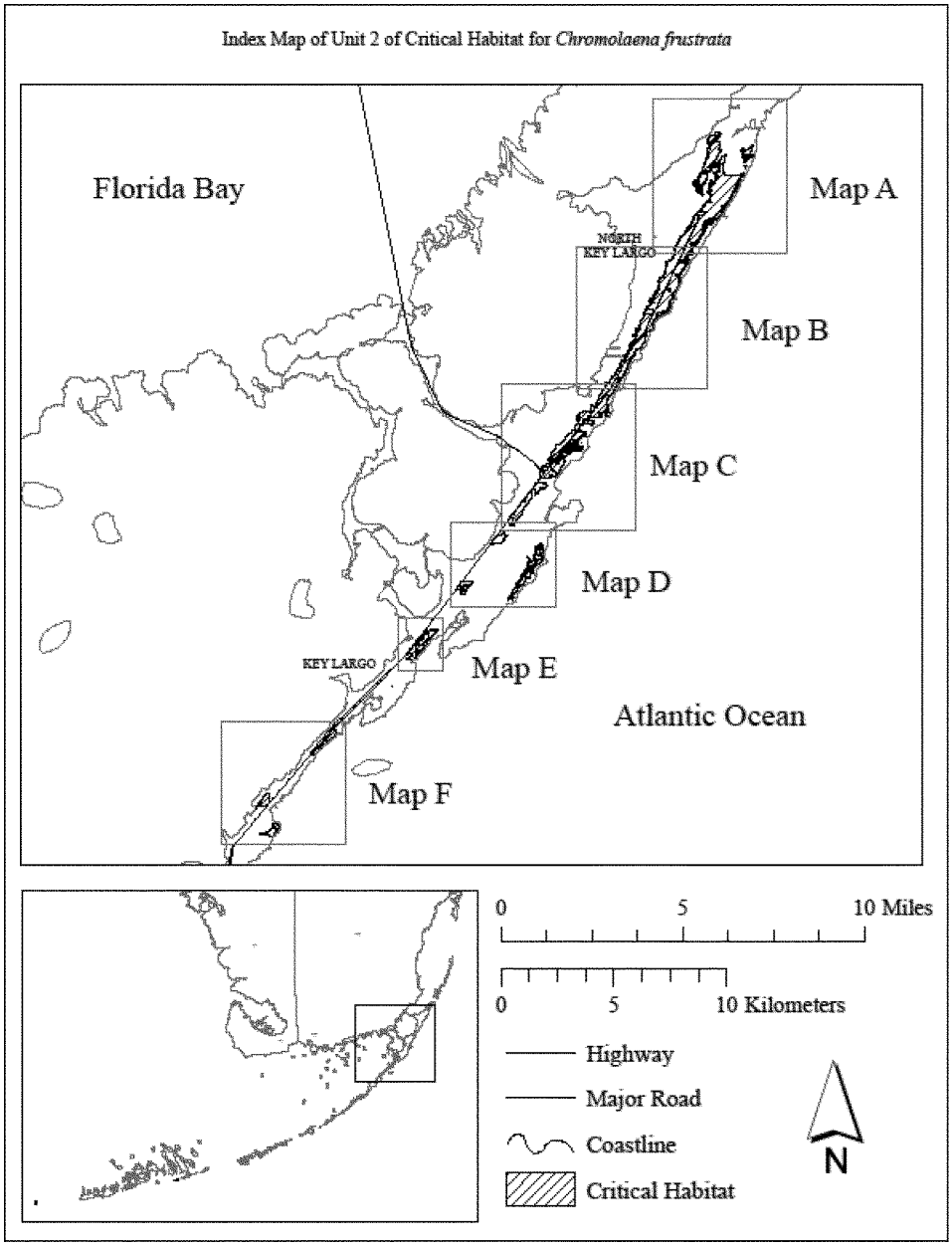


(6) Unit 1: Everglades National Park, Monroe and Miami-Dade Counties, Florida. Map of Unit 1 follows:

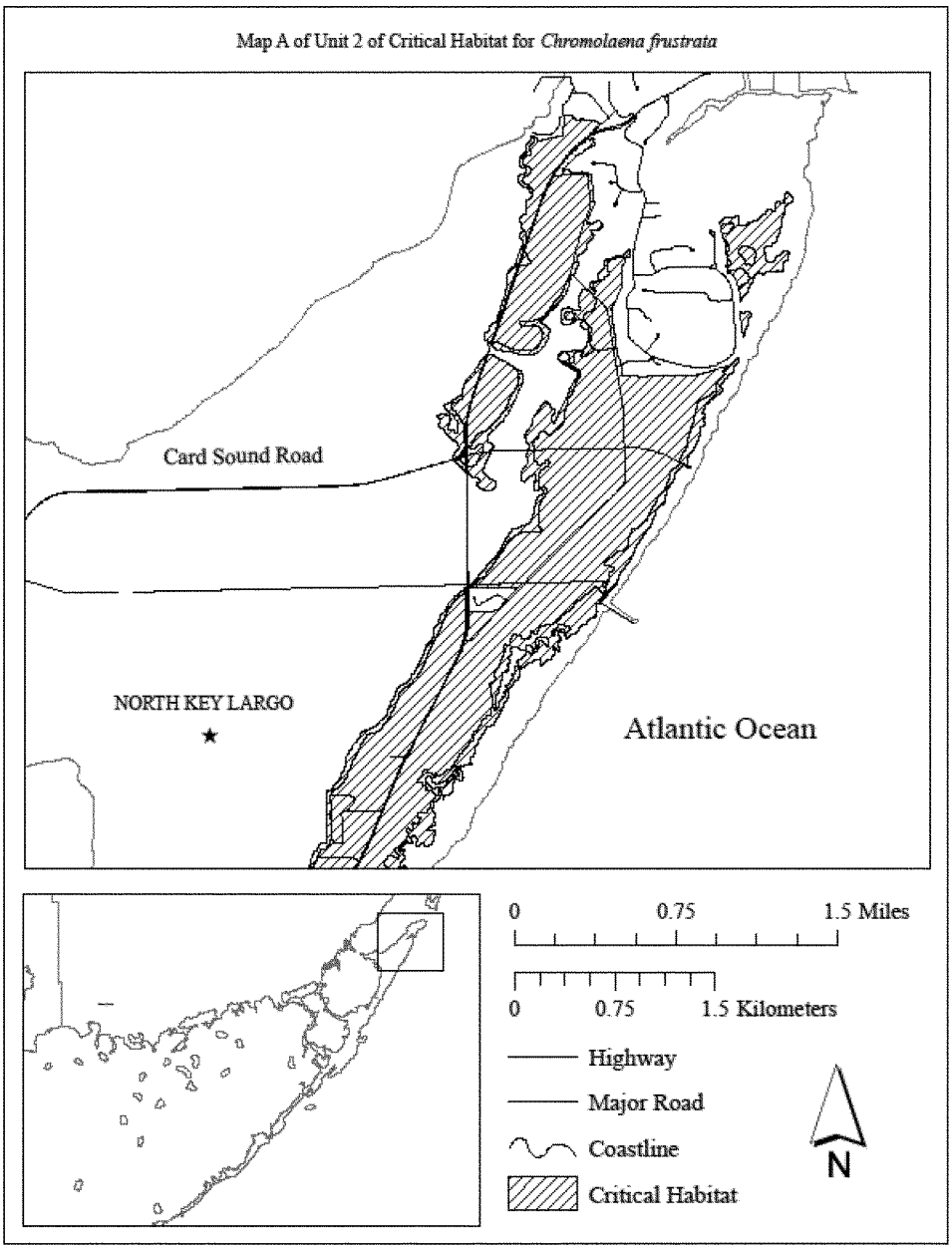


(7) Unit 2: Key Largo, Monroe County, Florida. Index

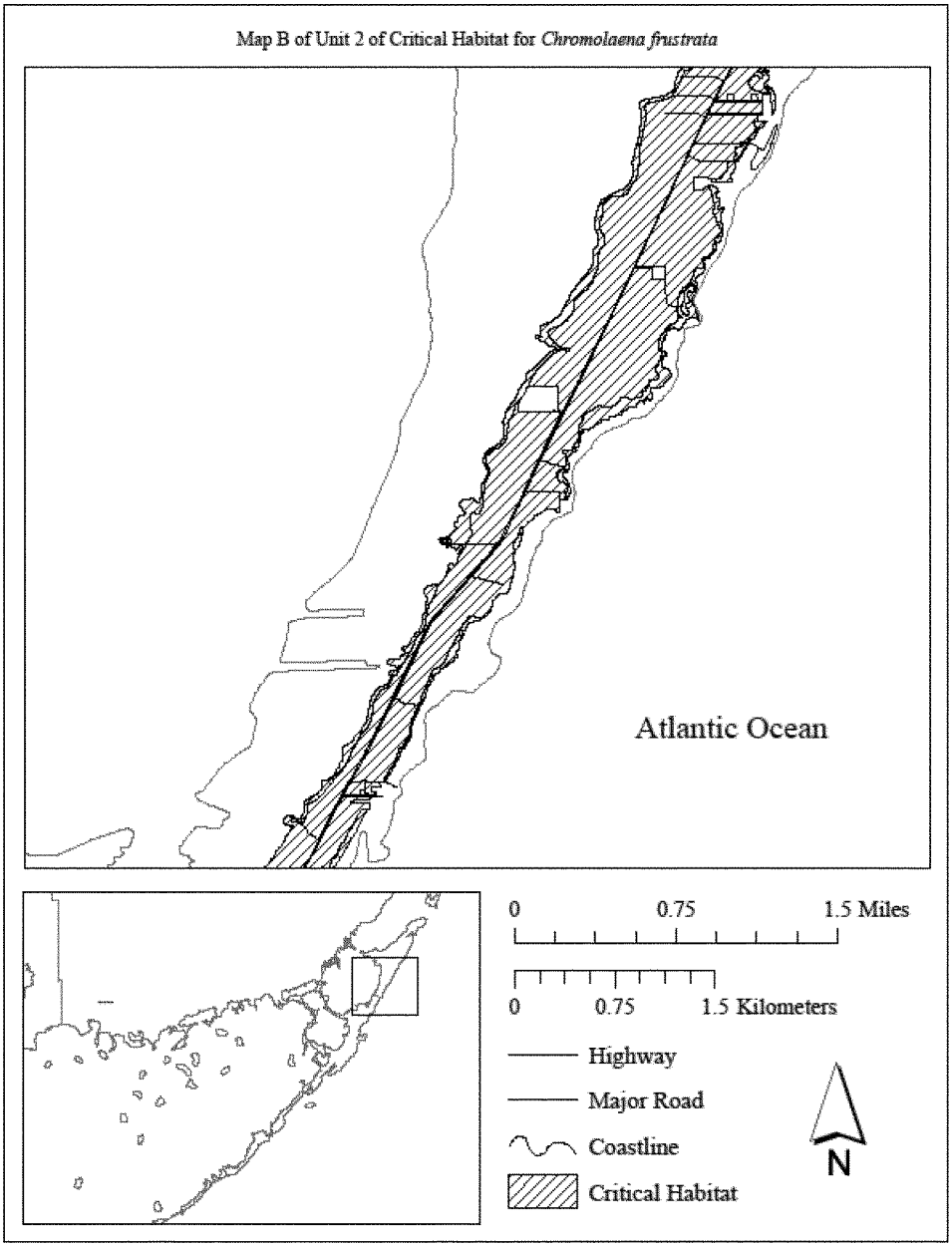
(i) Index map of Unit 2 follows:



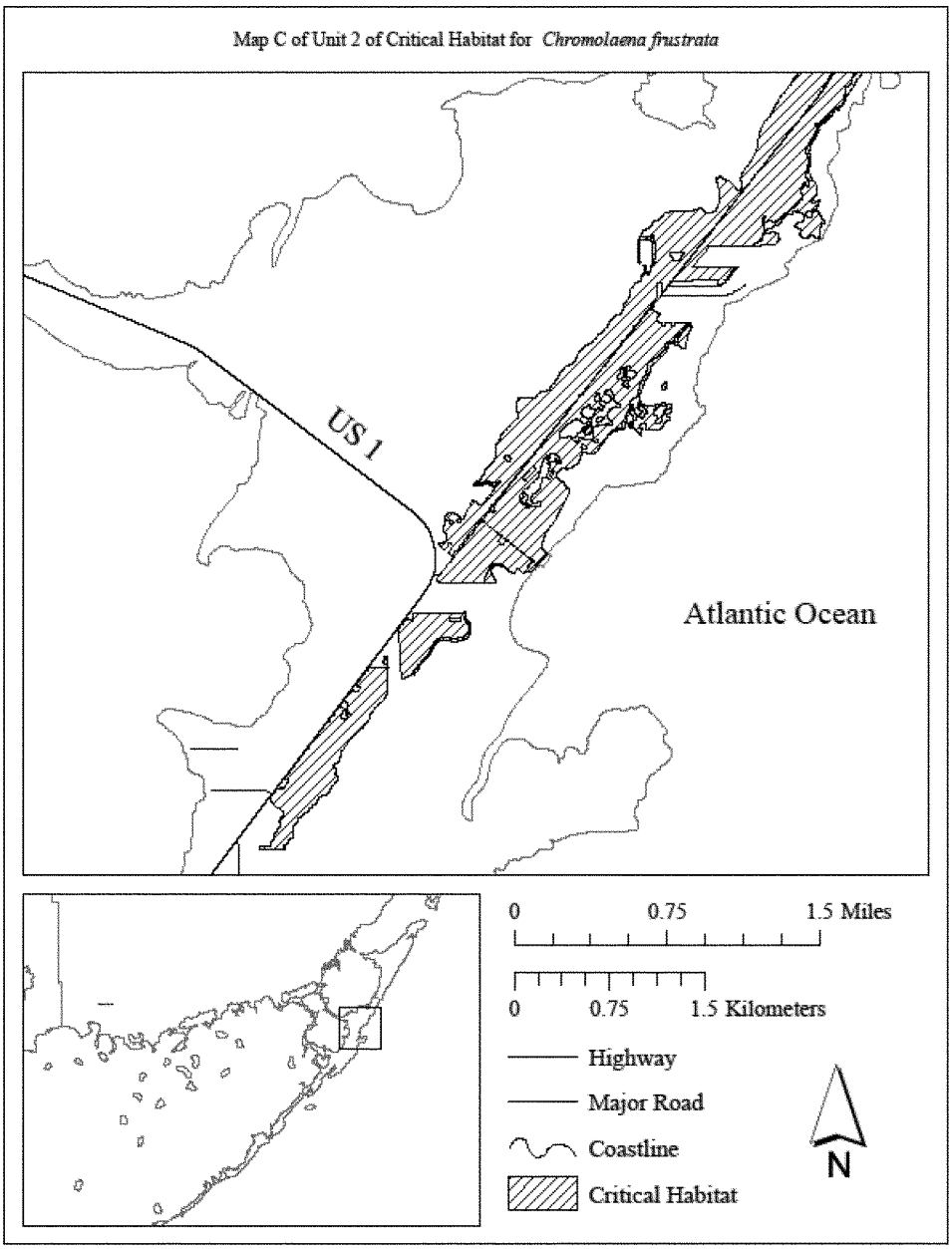
(ii) Map A of Unit 2 follows:



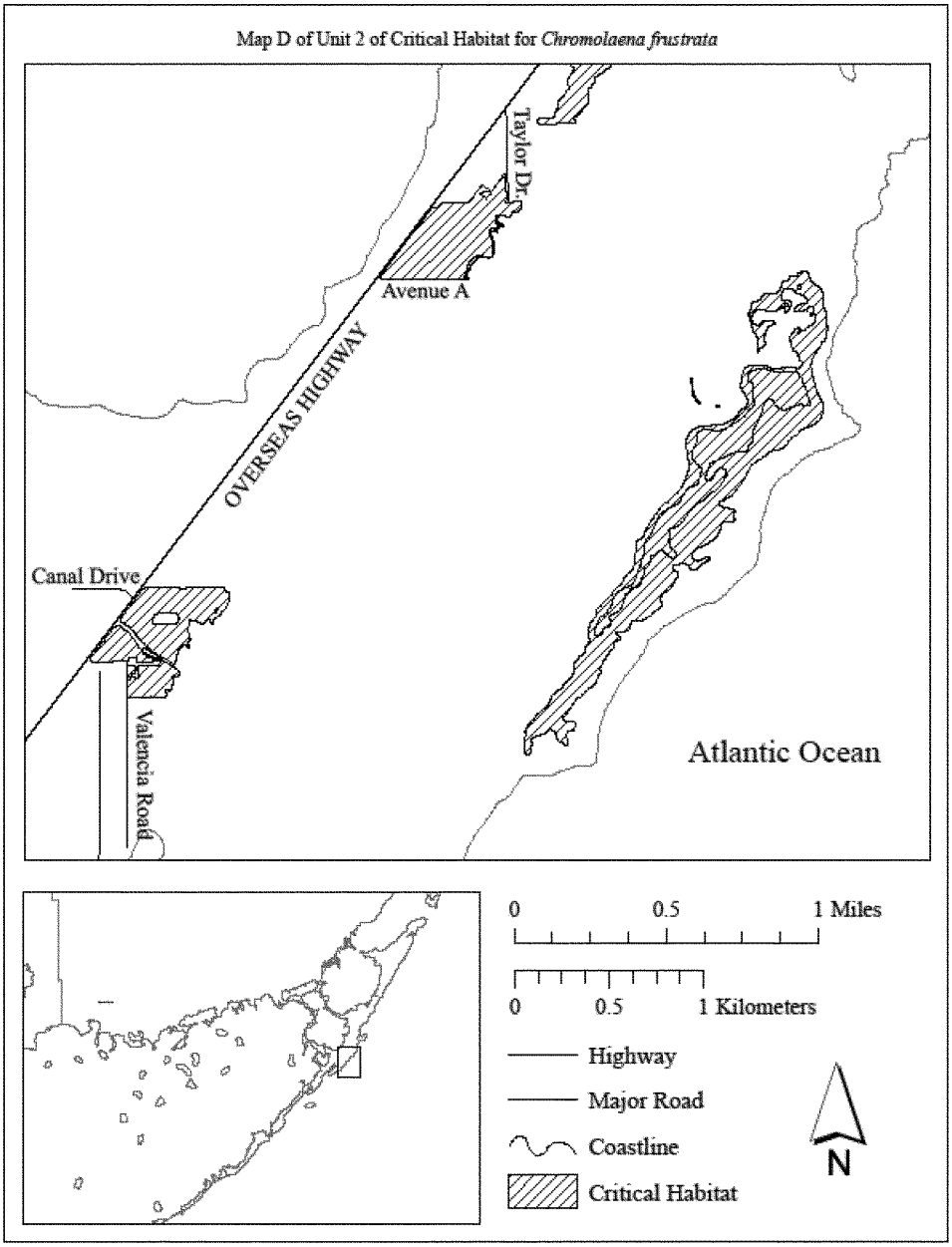
(iii) Map B of Unit 2 follows:



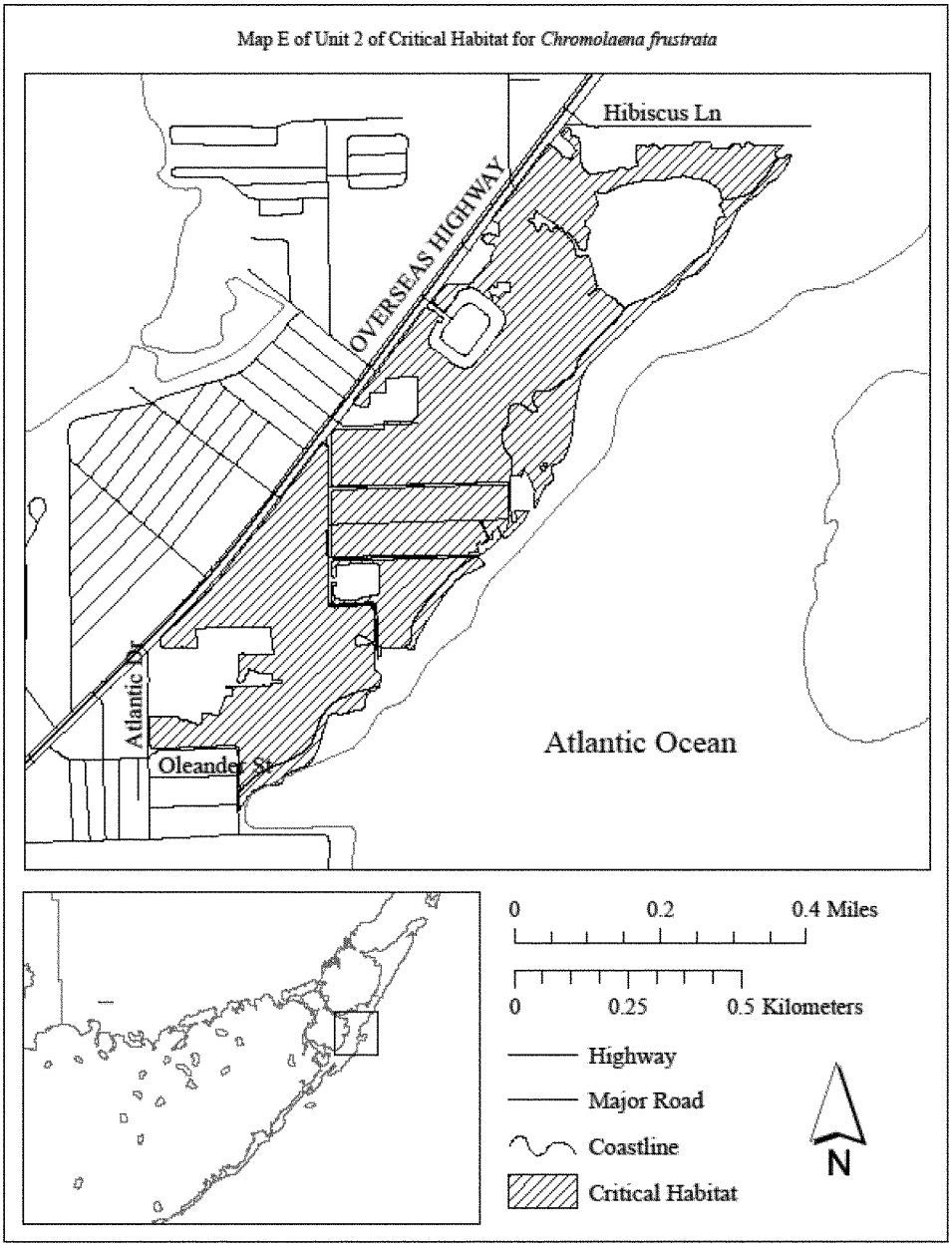
(iv) Map C of Unit 2 follows:



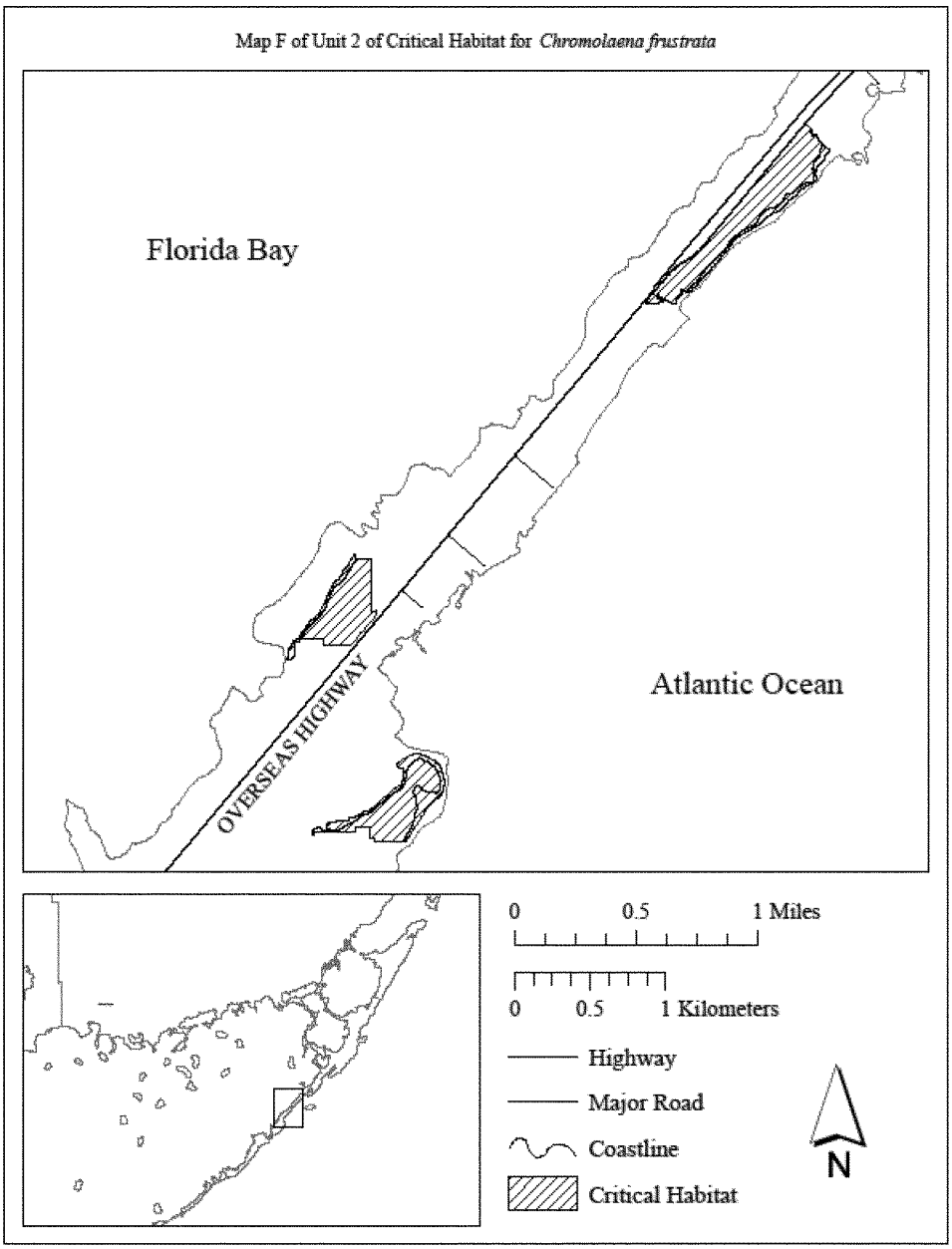
(v) Map D of Unit 2 follows:



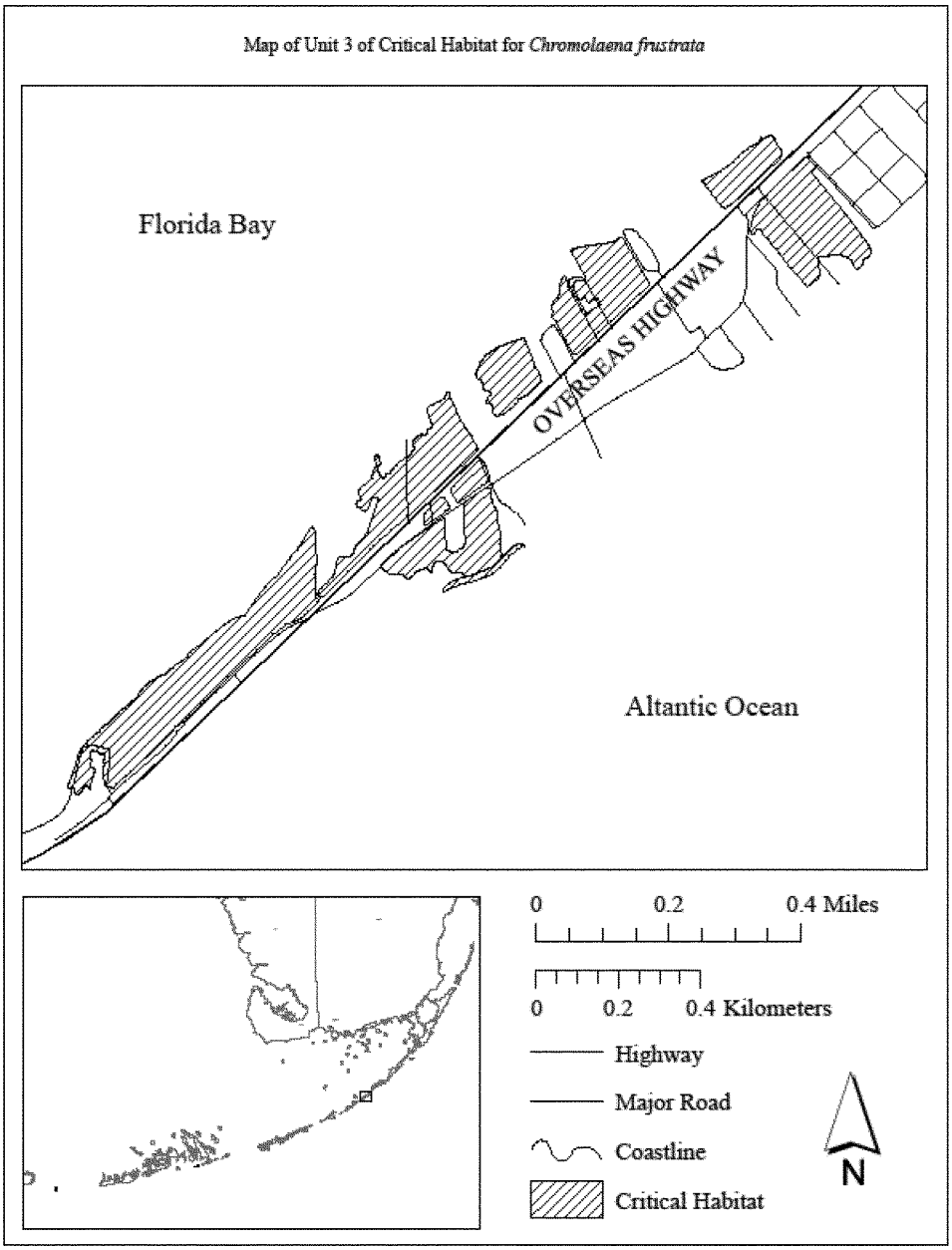
(vi) Map E of Unit 2 follows:



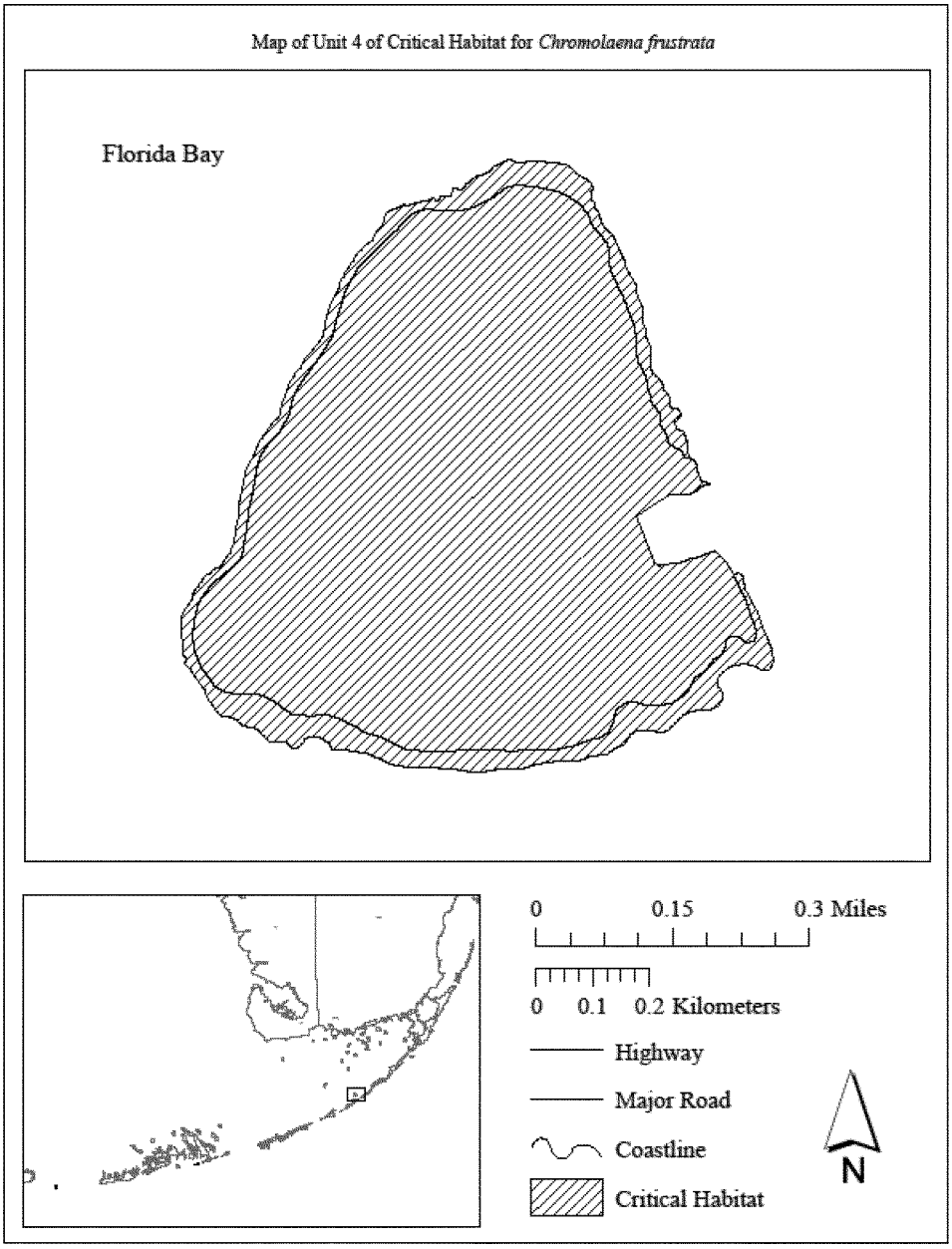
(vii) Map F of Unit 2 follows:



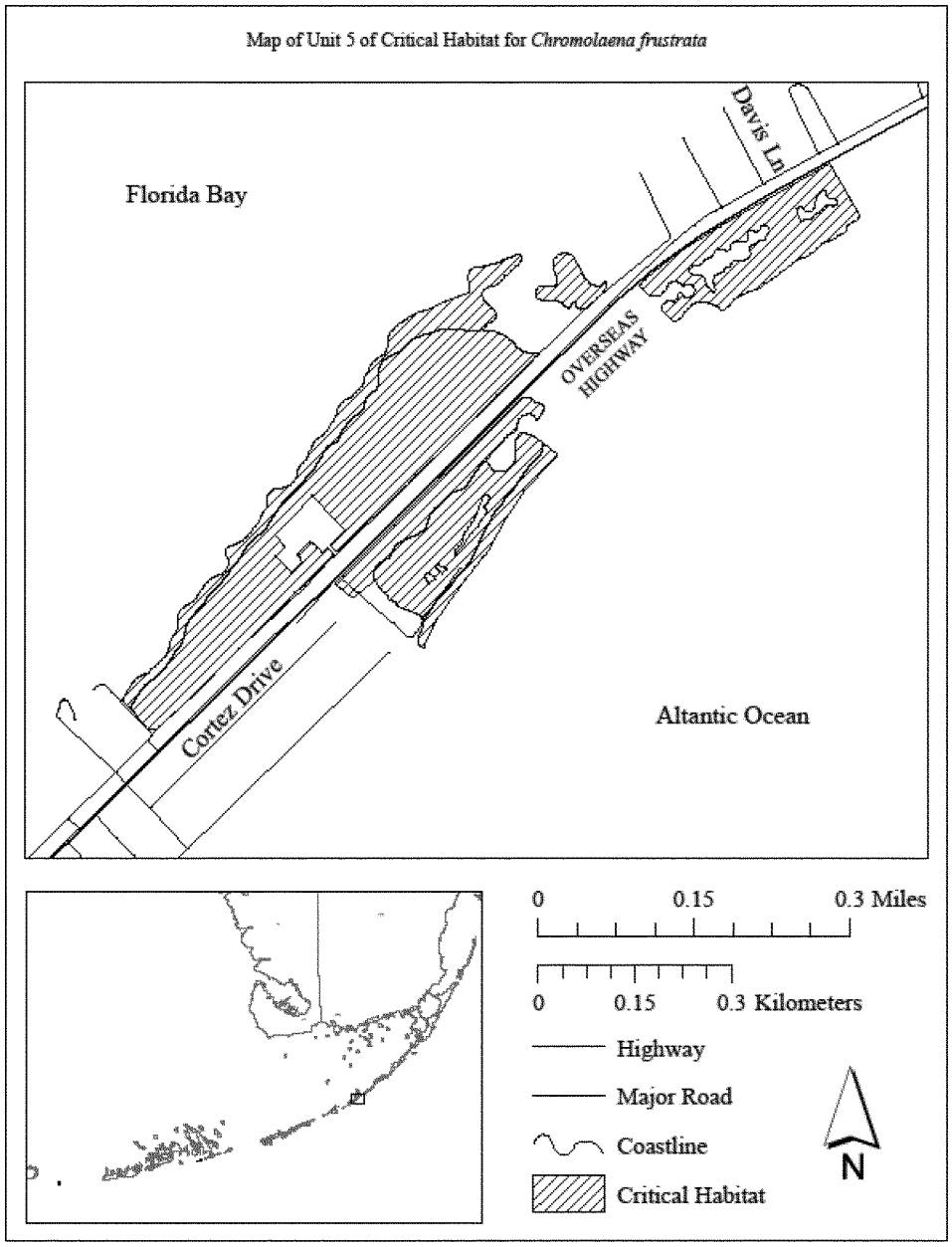
(8) Unit 3: Upper Matecumbe Key, Monroe County, Florida. Map of Unit 3 follows:



(9) Unit 4: Lignumvitae Key, Monroe County, Florida. Map of Unit 4 follows:

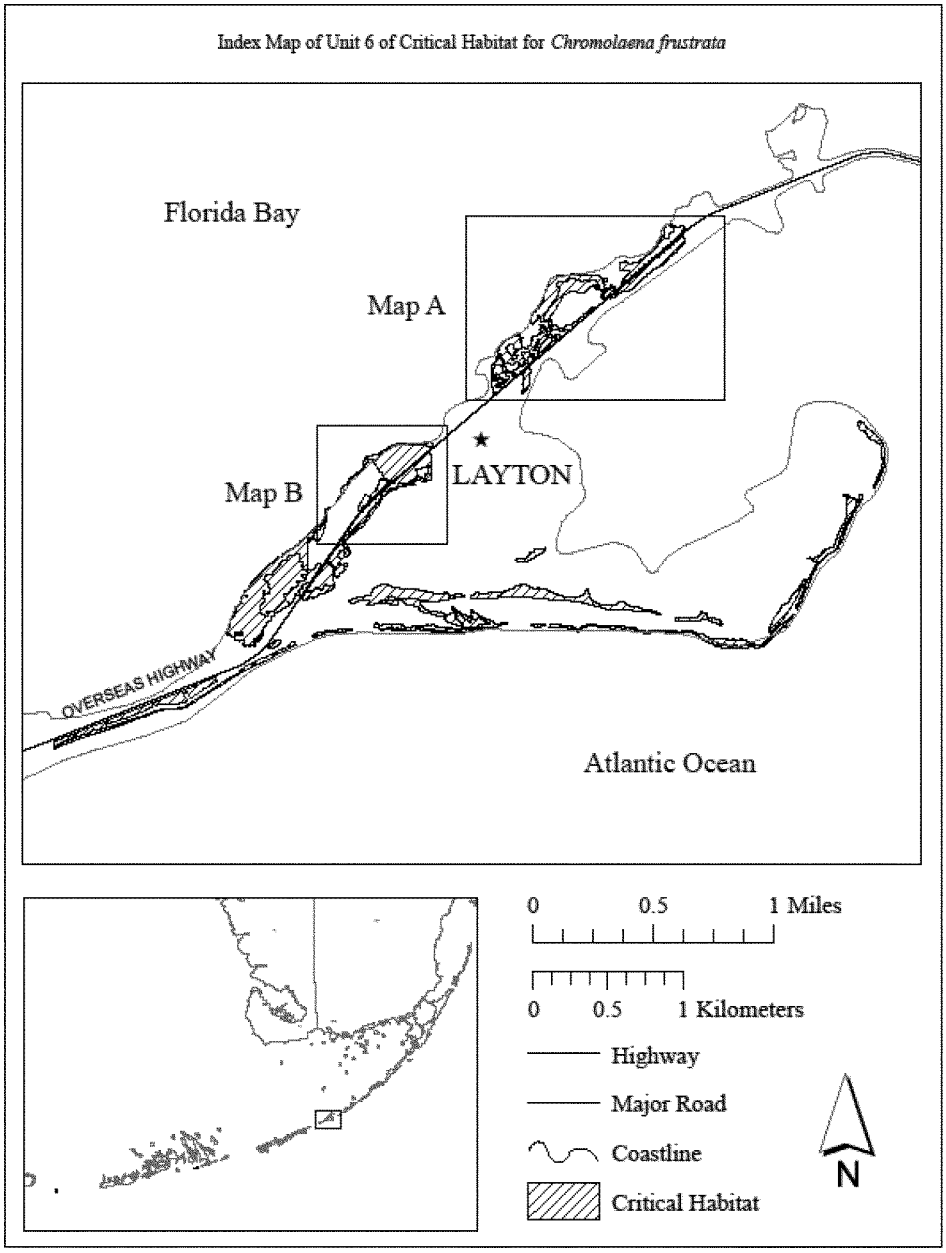


(10) Unit 5: Lower Matecumbe Key, Monroe County, Florida. Map of Unit 5 follows:

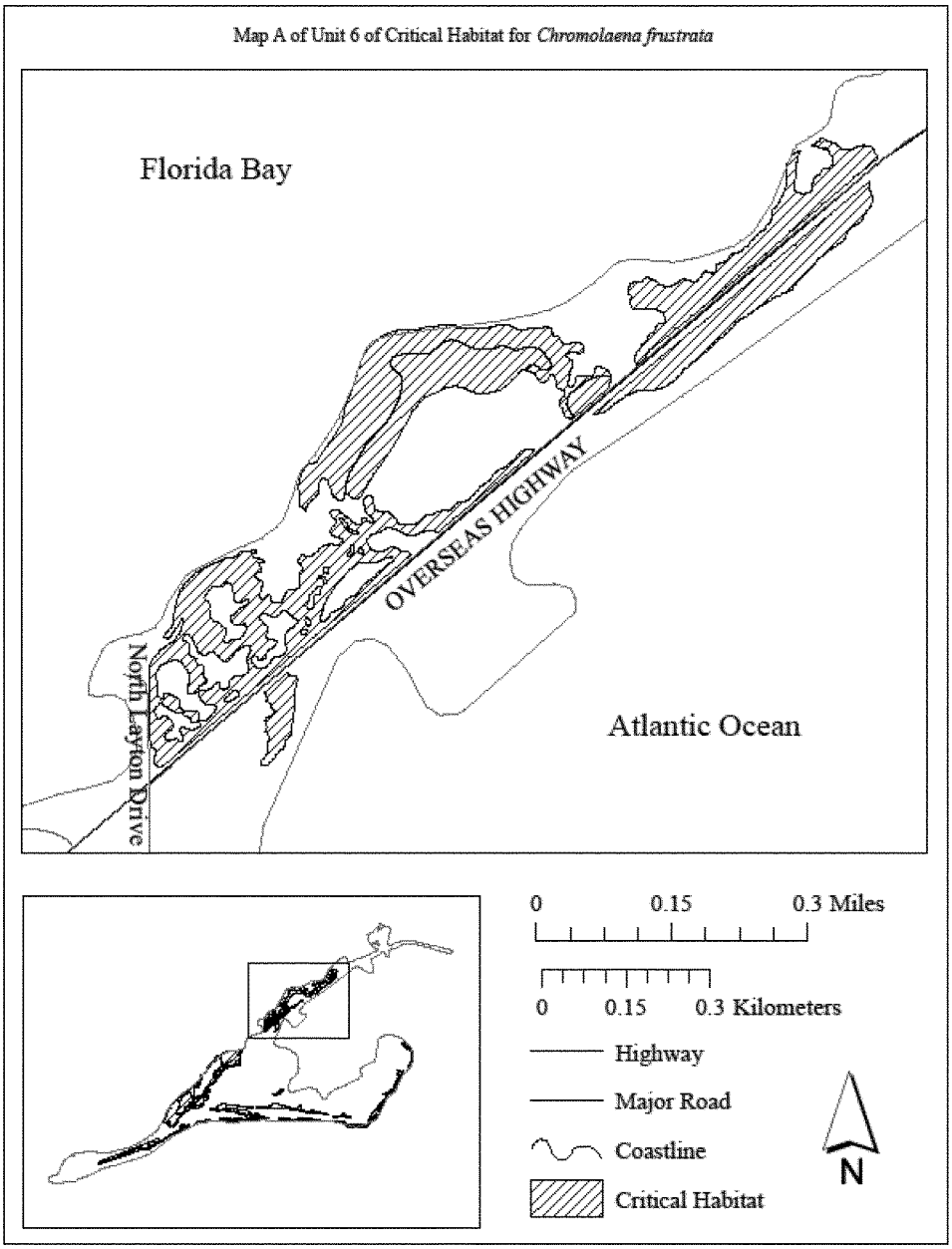


(11) Unit 6: Long Key, Monroe County, Florida.

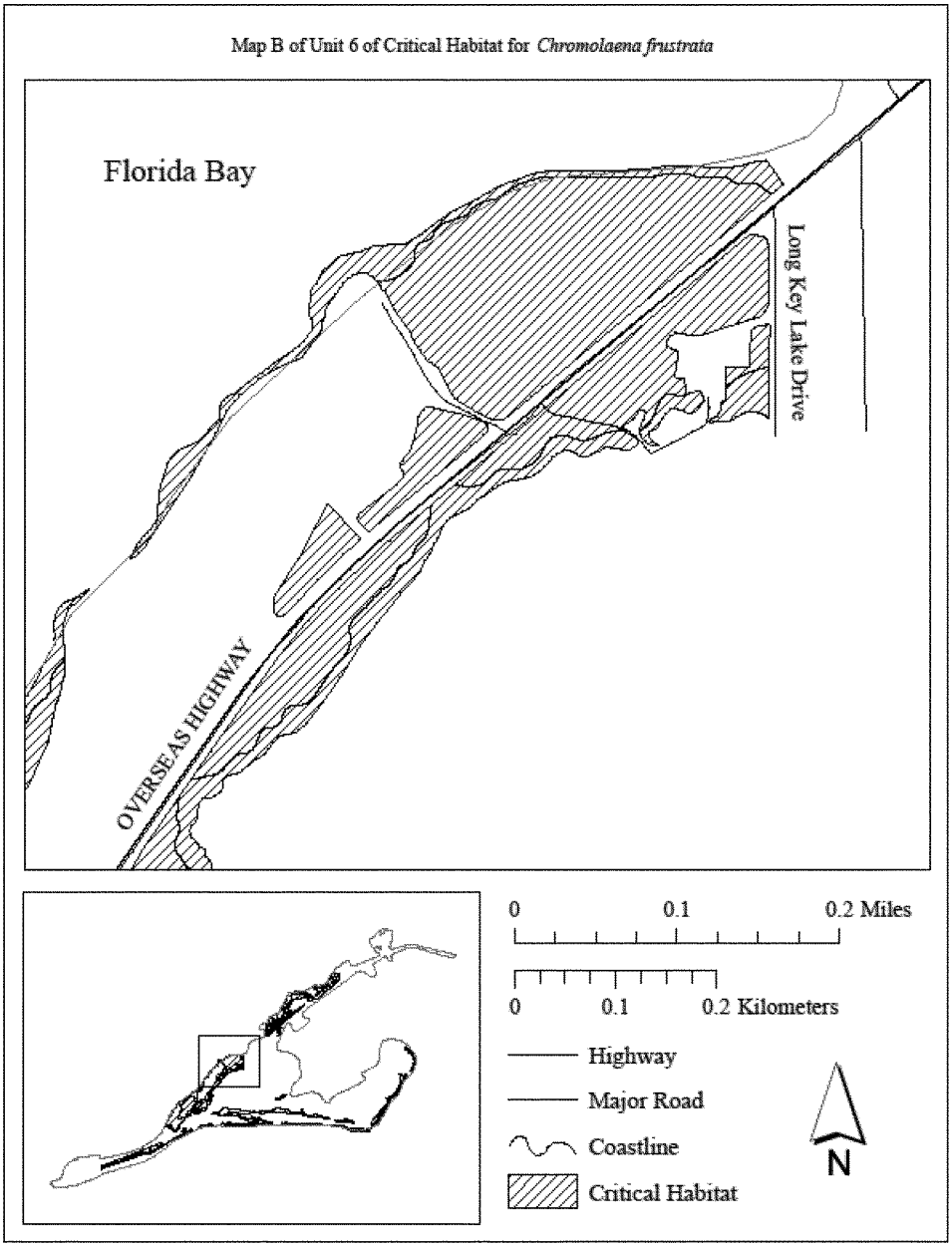
(i) Index map of Unit 6 follows:



(ii) Map A of Unit 6 follows:

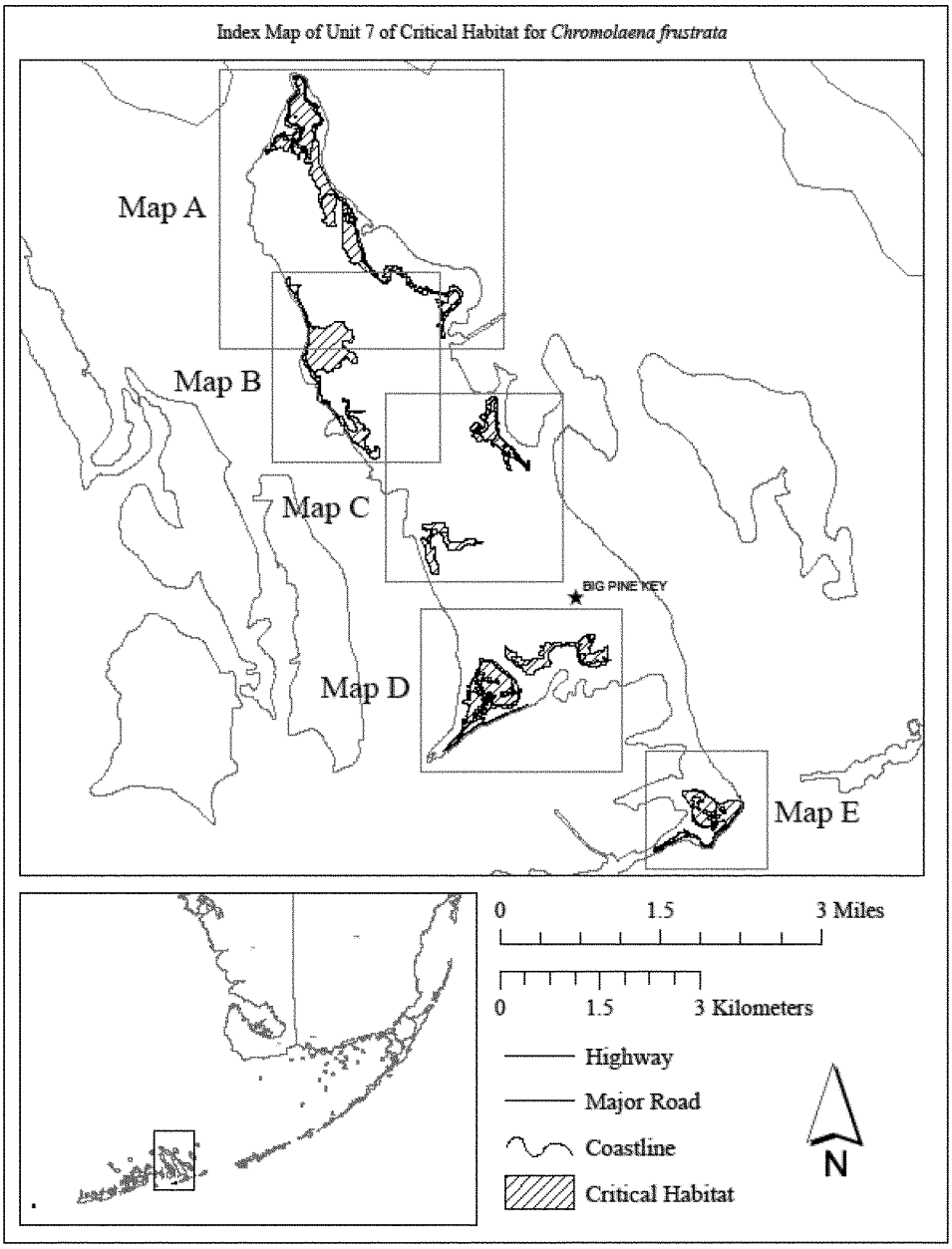


(iii) Map B of Unit 6 follows:

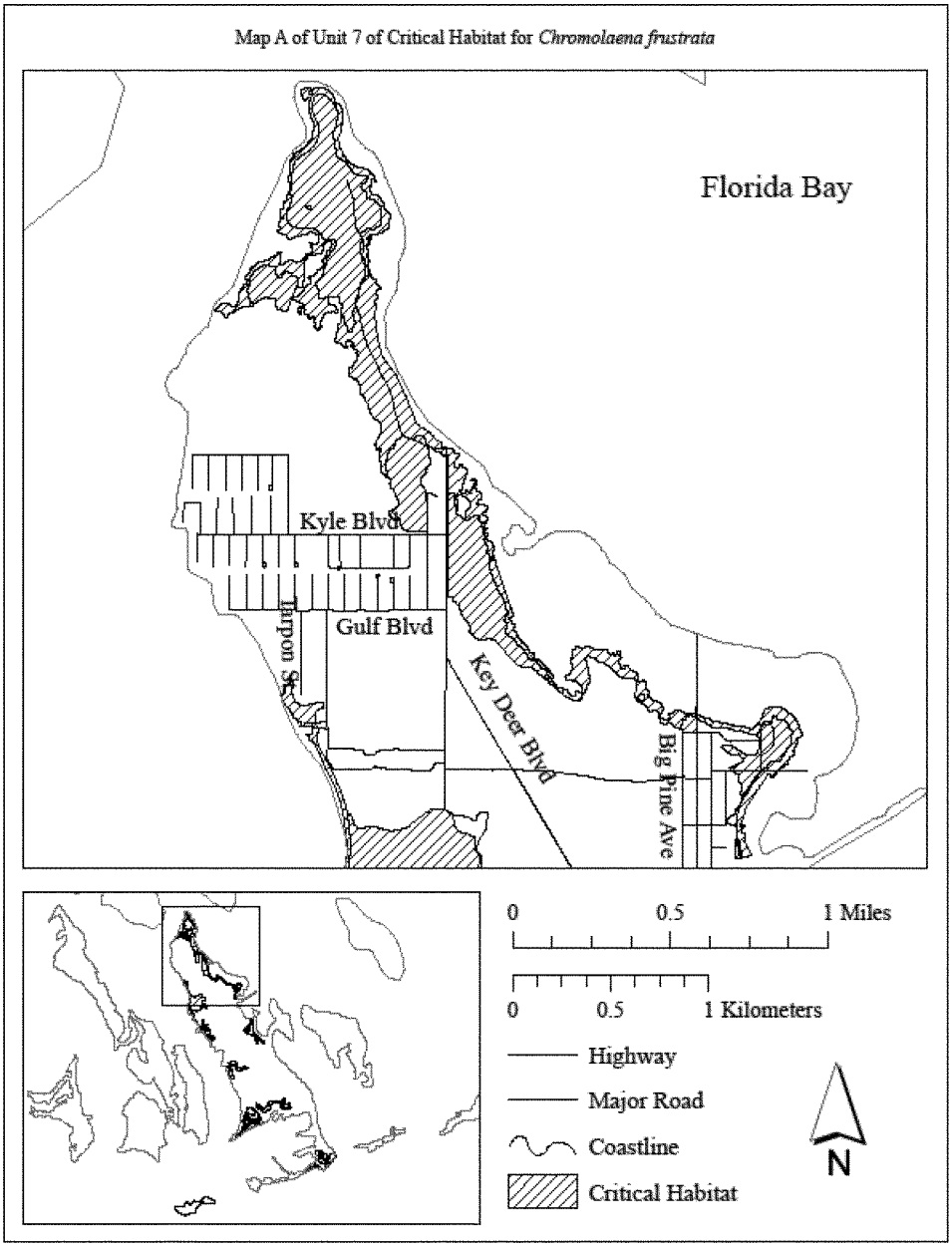


(12) Unit 7: Big Pine Key, Monroe County, Florida.

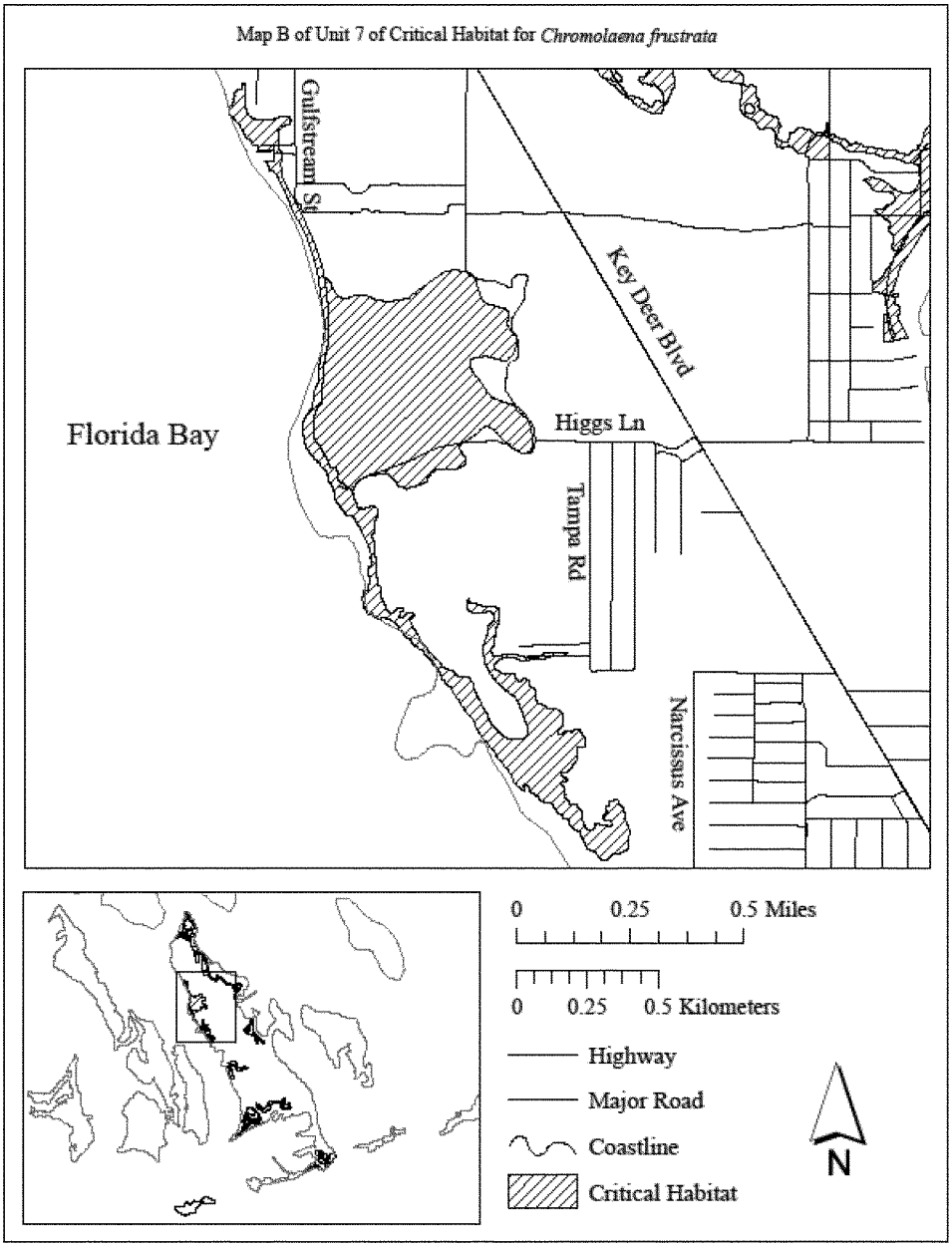
(i) Index map of Unit 7 follows:



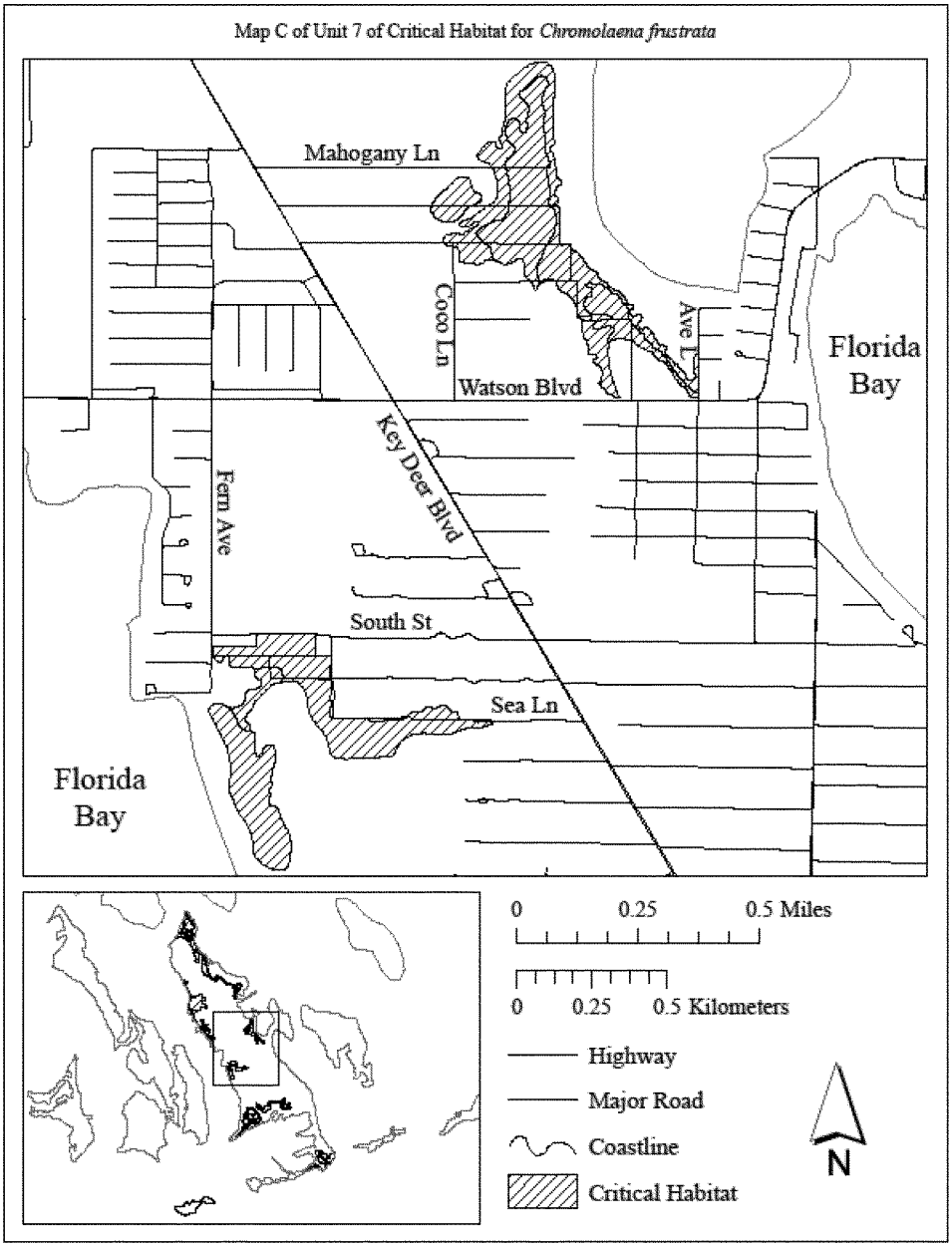
(ii) Map A of Unit 7 follows:



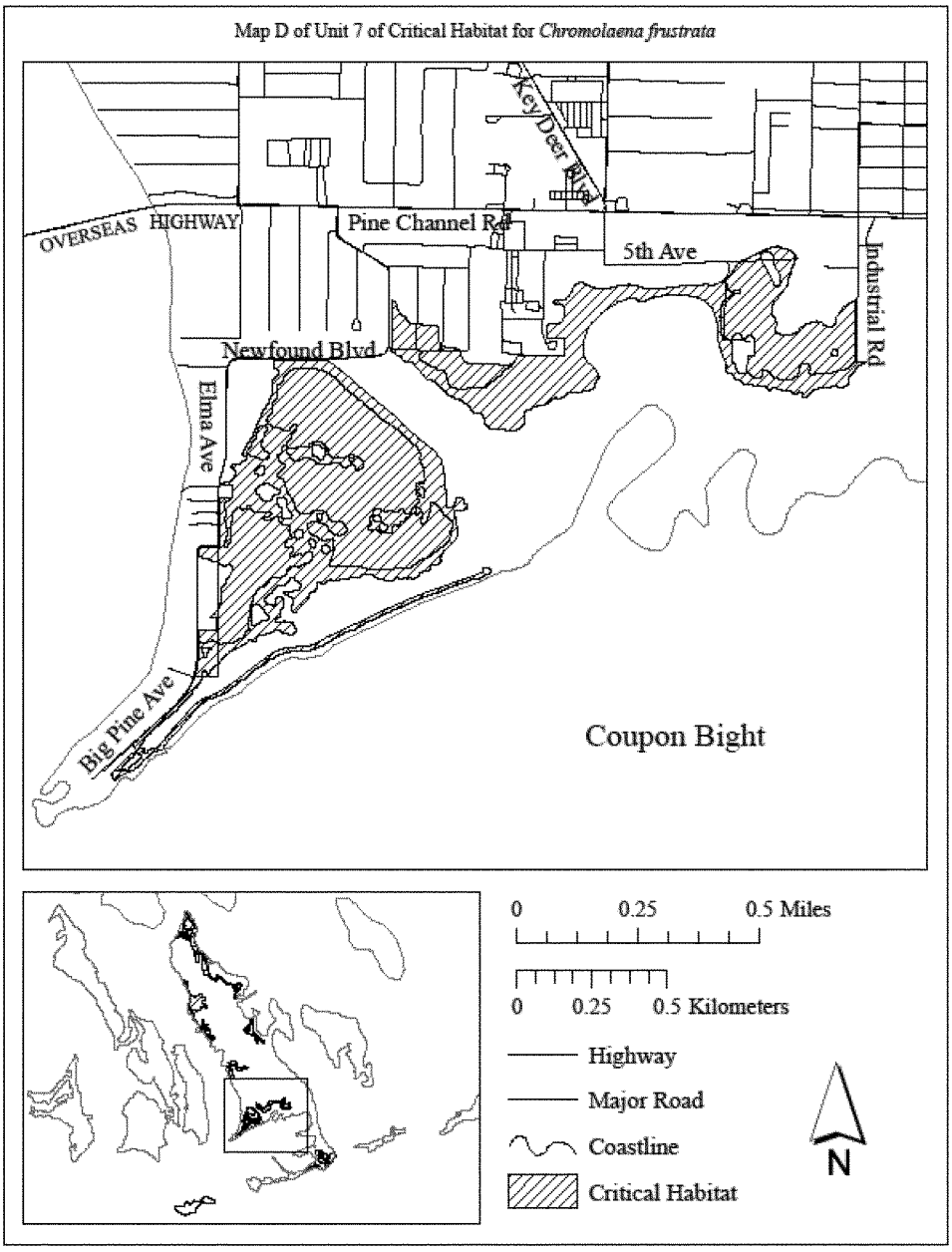
(iii) Map B of Unit 7 follows:



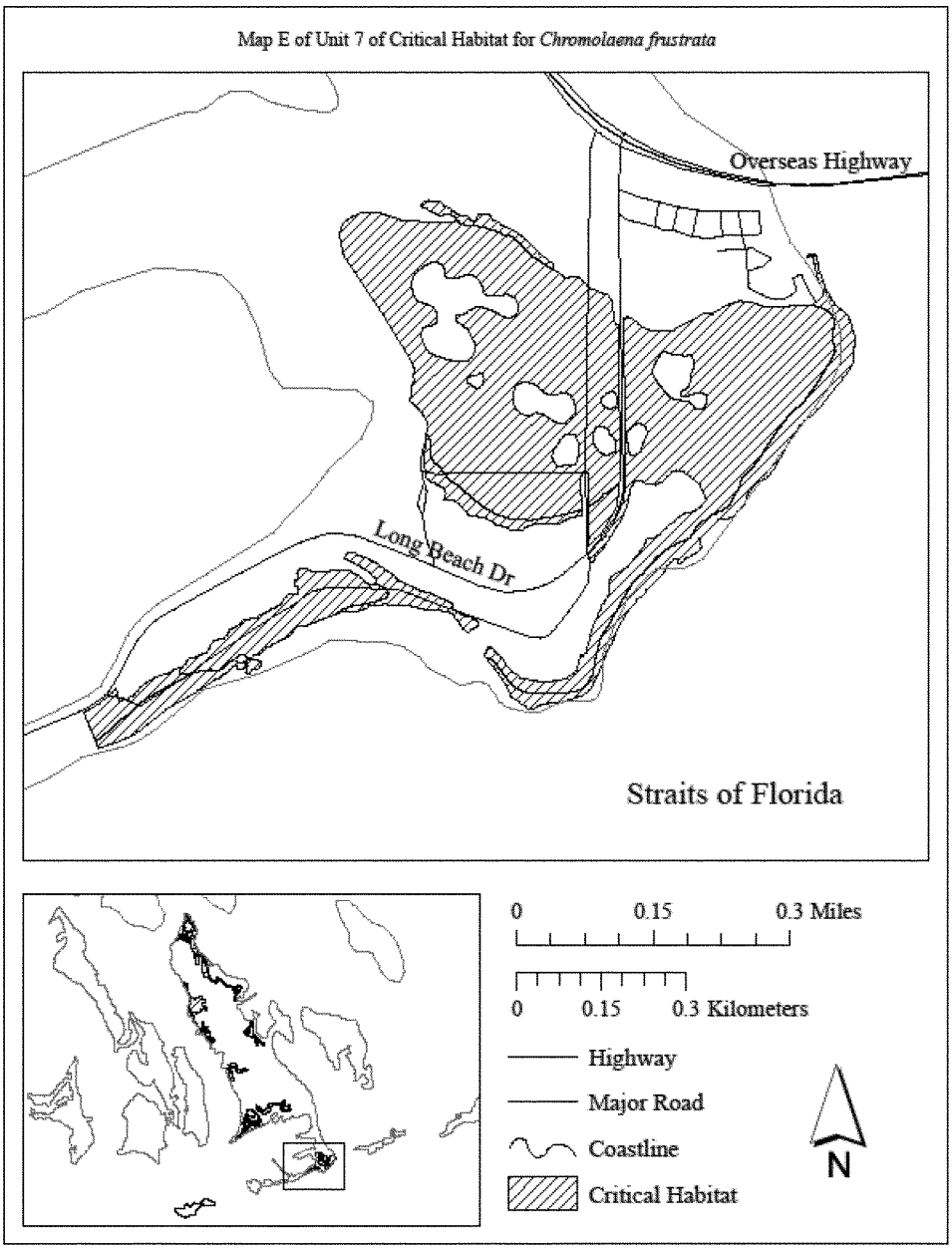
(iv) Map C of Unit 7 follows:



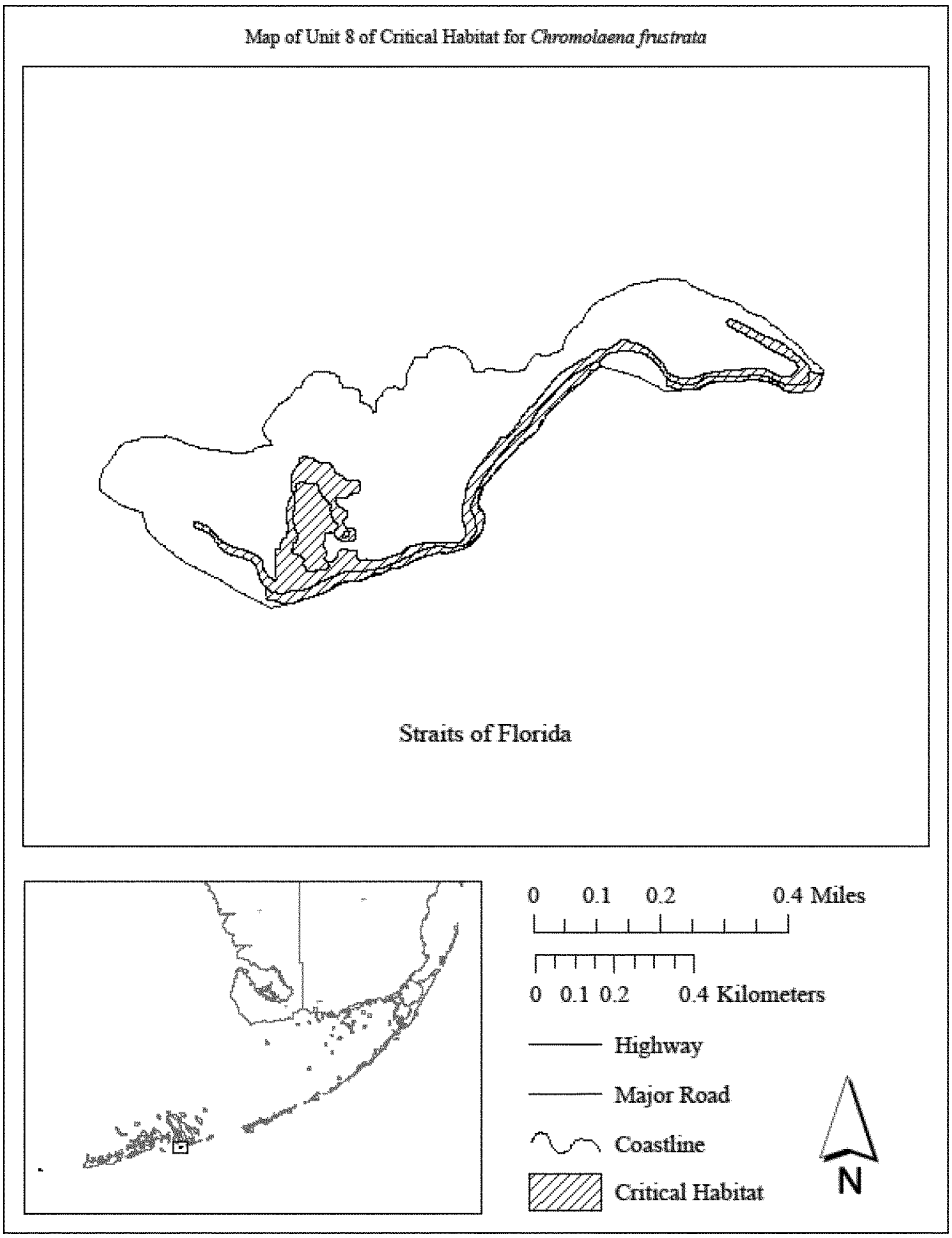
(v) Map D of Unit 7 follows:



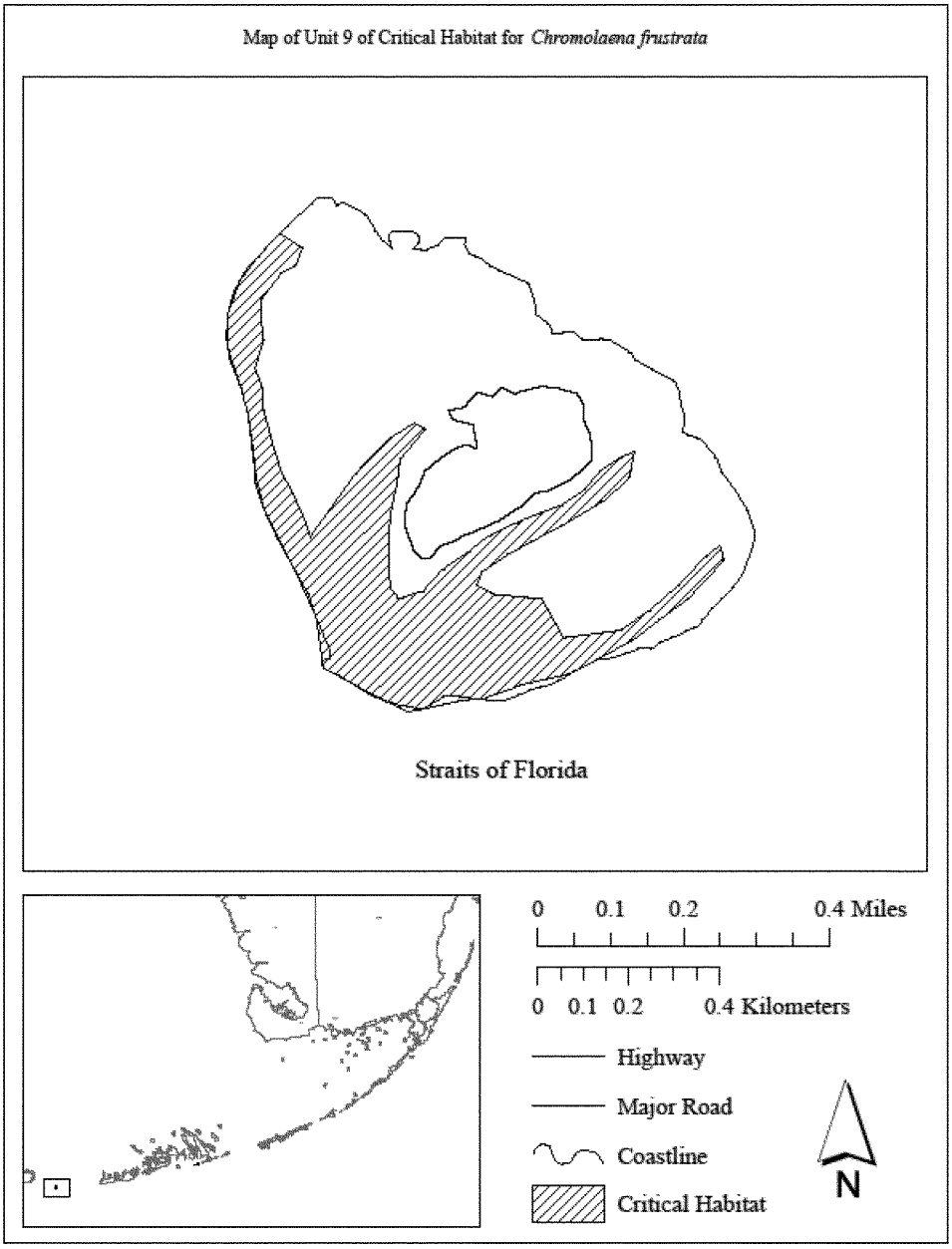
(vi) Map E of Unit 7 follows:



(13) Unit 8: Big Munson Island, Monroe County, Florida. Map of Unit 8 follows:



(14) Unit 9: Boca Grande Key, Monroe County, Florida. Map of Unit 9 follows:



* * * * *

Dated: September 25, 2012.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–24466 Filed 10–10–12; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 197 October 11, 2012

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Electricity Market Transparency Provisions of Section 220 of the Federal Power Act; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–12–000; Order No. 768]

Electricity Market Transparency Provisions of Section 220 of the Federal Power Act

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission is revising its regulations pursuant to section 220 of the Federal Power Act (FPA), as enacted by section 1281 of the Energy Policy Act of 2005 (EPAct 2005), to facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce. In doing so, the Commission revises its regulations to require market participants that are excluded from the Commission's jurisdiction under FPA section 205 and have more than a *de minimis* market presence to file Electric Quarterly Reports (EQR) with the Commission.

In addition, the Commission revises the existing EQR filing requirements applicable to market participants in the interstate wholesale electric markets by adding new fields for: reporting the trade date and the type of rate; identifying the exchange used for a sales transaction, if applicable; reporting whether a broker was used to consummate a transaction; reporting electronic tag (e-Tag) ID data; and reporting standardized prices and quantities for energy, capacity and booked out power transactions. The Commission also requires EQR filers to indicate in the existing ID data section whether they report their sales transactions to an index publisher and, if so, to which index publisher(s), and, if applicable, identify which types of transactions are reported. The Commission also eliminates the time zone from the contract section and the Data Universal Numbering System (DUNS) data requirement. These refinements to the existing EQR filing requirements reflect the evolving nature of interstate wholesale electric markets, will increase market transparency for the Commission and the public, and will allow market participants to file the information in the most efficient manner possible.

DATES: *Effective Date:* This rule will become effective December 10, 2012.

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SUPPLEMENTARY INFORMATION:

Order No. 768

Final Rule

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Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony T. Clark.

Final Rule

Issued September 21, 2012.

1. To facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce, the Federal Energy Regulatory Commission (Commission) pursuant to section 220 of the Federal Power Act (FPA) [1] revises its regulations to require market participants that are excluded from the Commission's jurisdiction under section 205 of the FPA [2] and have more than a *de minimis* market presence to file Electric Quarterly Reports (EQR) with the Commission.[3] After consideration of the comments filed in response to the Notice of Proposed Rulemaking (NOPR),[4] the Commission concludes that the requirements in this Final Rule will allow the Commission and the public to gain a more complete picture of interstate wholesale electric power and transmission markets by providing additional information concerning price formation and market concentration in these electric markets. Public access to additional sales and transmission-related information in the EQR improves market participants' ability to assess supply and demand fundamentals and to price interstate wholesale electric market transactions. It also strengthens the Commission's ability to identify potential exercises of market power or manipulation and to

[1] EPAct 2005, Public Law 109–58, 119 Stat. 594 (2005).

[2] 16 U.S.C. 824d.

[3] This Final Rule refers to market participants that are not public utilities under section 201(f) of the FPA as ''non-public utilities.'' FPA section 201(f) provides: No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) or that sells less than 4,000,000 megawatt hours of electricity per year, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto. 16 U.S.C. 824(f). In the NOPR, the Commission proposed to amend Part 35 to add a definition of ''non-public utility,'' and incorrectly referenced 16 U.S.C. 824f. In this Final Rule, we have corrected the reference, which now refers to 16 U.S.C. 824(f).

[4] *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act,* Notice of Proposed Rule Making, FERC Stats. & Regs. ¶ 32,676 (2011) (NOPR).

better evaluate the competitiveness of interstate wholesale electric markets.

2. In adopting the requirements in this Final Rule, the Commission has balanced the need to increase transparency with the burden on non-public utilities associated with filing the EQR by revising some of the proposals in the NOPR. As explained below, the Commission uniformly adopts a 4,000,000 MWh *de minimis* threshold for all non-public utilities, including for non-public utilities that are Balancing Authorities. The Commission also will not require non-public utilities to report the following types of wholesale sales: (1) Sales by a non-public utility, such as a cooperative or joint action agency, to its members; and (2) sales by a non-public utility under a long-term, cost-based agreement required to be made to certain customers under a Federal or state statute.

3. In addition, the Commission revises the existing EQR filing requirements applicable to market participants in the interstate wholesale electric markets. The Commission revises the EQRs currently filed by public utilities under FPA section 205(c) and that will be filed by non-public utility filers under FPA section 220. These revisions include the addition of new fields for: (1) Reporting the trade date and the type of rate; (2) identifying the exchange used for a sales transaction, if applicable; (3) reporting whether a broker was used to consummate a transaction; (4) reporting electronic tag (e-Tag) ID data; and (5) reporting standardized prices and quantities for energy, capacity, and booked out power transactions. The Commission also requires EQR filers to indicate in the existing ID data section whether they report their sales transactions to an index publisher and, if so, to which index publisher(s) and, if applicable, which types of transactions are reported. The Commission also eliminates the time zone from the contract section and the Data Universal Numbering System (DUNS) data requirement. These refinements to the existing EQR filing requirements reflect the evolving nature of interstate wholesale electric markets, will increase market transparency for the Commission and the public, and will allow market participants to file the information in the most efficient manner possible.[5]

4. The requirement for certain non-public utilities to file EQRs will be implemented at the same time as the requirement for all EQR filers (both public utilities and non-public utilities) to report the data fields discussed in this rule, *i.e.,* beginning the third quarter of 2013.

I. Introduction

A. Order No. 2001

5. The Commission set forth the EQR filing requirements in Order No. 2001.[6] Order No. 2001 requires public utilities to electronically file EQRs summarizing transaction information for short-term and long-term cost-based sales and market-based rate sales and the contractual terms and conditions in their agreements for all jurisdictional services.[7] The Commission established the EQR reporting requirements to help ensure the collection of information needed to perform its regulatory functions over transmission and sales of electric energy,[8] while making data more useful to the public and allowing public utilities to better fulfill their responsibility under FPA section 205(c)[9] to have rates on file in a convenient form and place.[10] As noted in Order No. 2001, the EQR data is designed to ''provide greater price transparency, promote competition, enhance confidence in the fairness of the markets, and provide a better means to detect and discourage discriminatory practices.''[11]

6. Since issuing Order No. 2001, the Commission has provided guidance and refined the reporting requirements, as necessary, to simplify the filing requirements and to reflect changes in the Commission's rules and regulations.[12] For instance, in 2007 the Commission adopted an Electric Quarterly Report Data Dictionary, which provides in one document the definitions of certain terms and values used in filing EQR data.[13] Moreover, in 2007, the Commission required transmission capacity reassignments to be reported in the EQR.[14] The refinements to the existing EQR requirements that we are adopting in this Final Rule build upon the Commission's prior improvements to the reporting requirements and further enhance the goals of providing greater price transparency, promoting competition, instilling confidence in the fairness of the markets, and providing a better means to detect and discourage anti-competitive, discriminatory, and manipulative practices.

B. EPAct 2005

7. In EPAct 2005, Congress added section 220 to the FPA,[15] directing the Commission to ''facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce'' with ''due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.''[16] FPA section 220 grants the Commission authority to obtain and disseminate ''information about the availability and prices of wholesale electric energy and transmission service to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public.''[17] The statute specifies that the Commission may obtain this information from ''any market participant,''[18] except for entities with a *de minimis* market presence.[19] EPAct

[5] The Commission has proposed to change the process for filing EQRs. Specifically, the Commission has proposed to replace the Visual FoxPro-based EQR software with two new filing options. *See Revisions to Electric Quarterly Report Filing Process,* 139 FERC ¶ 61,234 (2012).

[6] *Revised Public Utility Filing Requirements,* Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334, *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *order on clarification,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 72 FR 56735 (Oct. 4, 2007), 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 73 FR 1876 (Jan. 10, 2008), 121 FERC ¶ 61,289 (2007), *order revising filing requirements,* Order No. 2001–I, 73 FR 65526 (Nov. 4, 2008), 125 FERC ¶ 61,103 (2008).

[7] Order No. 2001, FERC Stats. & Regs. ¶ 31,127.

[8] *Id.* PP 13–14.

[9] 16 U.S.C. 824d(c).

[10] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31.

[11] *Id.*

[12] *See, e.g., Revised Public Utility Filing Requirements for Electric Quarterly Reports,* 124 FERC ¶ 61,244 (2008) (providing guidance on the filing of information on transmission capacity reassignments in EQRs); *Notice of Electric Quarterly Reports Technical Conference,* 73 FR 2477 (Jan. 15, 2008) (announcing a technical conference to discuss changes associated with the EQR Data Dictionary).

[13] Order No. 2001–G, 120 FERC ¶ 61,270.

[14] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 817, *order on reh'g,* Order No. 890–A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification,* Order No. 890–B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification,* Order No. 890–D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126.

[15] 16 U.S.C. 824t.

[16] In addition, FPA section 220(b)(1–2) directs the Commission to exempt from disclosure information that is ''detrimental to the operation of an effective market or [that would] jeopardize system security,'' and ''to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of proprietary trading information.'' 16 U.S.C. 824t(b)(1–2).

[17] *Id.* 824t(a)(2).

[18] *Id.* 824t(a)(3)(A).

[19] *Id.* 824t(d).

2005 added a similar transparency provision in the Natural Gas Act,[20] which led to additional filing and posting requirements for the sale or transportation of physical natural gas in interstate commerce in Order Nos. 704 and 720.[21]

8. The Commission did not previously extend transparency requirements under FPA section 220 to wholesale electricity markets because the Commission was considering other reforms to its regulation of electricity markets.[22] In particular, the Commission was undertaking open access transmission service reforms and the more general review of competition in wholesale electricity markets.[23] As a result of these efforts, the Commission issued two final rules. In Order No. 890, the Commission exercised its remedial authority ''to limit further opportunities for undue discrimination, by minimizing areas of discretion, addressing ambiguities and clarifying various aspects of the *pro forma* [Open Access Transmission Tariff].'' [24] Moreover, in Order No. 719, the Commission made reforms ''to improve the operation [and competitiveness] of organized wholesale electric power markets'' in connection with ''fulfilling its statutory mandate to ensure supplies of electric energy at just, reasonable and not unduly discriminatory or preferential rates.'' [25] Although these final rules improved transparency in wholesale markets in a number of ways, the Commission believes the revisions required in this Final Rule are necessary to facilitate price transparency in wholesale electricity markets.

C. Procedural History

9. On January 21, 2010, the Commission issued a Notice of Inquiry [26] seeking comments on whether the Commission should apply the EQR filing requirements to non-public utilities and whether the Commission should consider other refinements to the existing EQR filing requirements. Based on comments received in response to the Transparency NOI, the Commission drafted the proposals in the NOPR. The Commission issued the NOPR in this proceeding on April 21, 2011. In response, the Commission received 28 comments.[27]

II. Discussion

A. Extending the EQR Filing Requirements to Non-Public Utilities

1. Need for Information From Non-Public Utilities and Commission's Legal Authority

a. Value of Information From Non-Public Utilities

i. NOPR

10. In the NOPR, the Commission stated that the market transparency provisions in section 220 of the FPA authorize the Commission to ''prescribe such rules as the Commission determines necessary and appropriate'' for the dissemination of ''information about the availability and prices of wholesale electric energy and transmission service.'' [28] The Commission explained that the transparency provisions expand the Commission's authority to collect such information not only from jurisdictional utilities, but also ''from any market participant'' [29] with more than a *de minimis* market presence.[30] The Commission also stated that the phrase ''any market participant'' is not defined in section 220 and is not limited to public utilities subject to the Commission's jurisdiction under section 205 of the FPA. The Commission interpreted ''any market participant'' to include non-public utilities that fall under FPA section 201(f).[31] The Commission stated that such an interpretation of ''any market participant'' is consistent with the broad mandate in section 220 to ''facilitate price transparency in the markets for the sale and transmission of electric energy in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.'' Furthermore, the Commission stated that, in EPAct 2005, Congress amended section 201(b)(2) of the FPA to provide that, ''[n]otwithstanding section 201(f),'' the entities described in section 201(f) shall be subject to the Commission's jurisdiction for purposes of carrying out certain provisions, including FPA section 220. Thus, the Commission concluded that reading FPA section 201(b)(2) in conjunction with section 220, EPAct 2005 granted the Commission authority to collect information concerning the availability and prices of wholesale electric energy and transmission service from entities that are not public utilities. Accordingly, the Commission proposed to fulfill its responsibility under section 220 of the FPA by requiring non-public utilities with more than a *de minimis* market presence in wholesale markets to comply with the EQR filing requirements.

11. As part of its justification for its proposals in the NOPR, the Commission explained that applying the EQR filing requirements to non-public utilities that fall above the *de minimis* threshold will increase price transparency to the public and the Commission and aid the Commission in its oversight of wholesale power and transmission markets. The Commission stated that non-public utilities have a significant presence in national and regional wholesale electricity markets [32] so that obtaining information about their sales transactions is important to unmasking

[20] 15 U.S.C. 717t–2.

[21] *See Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704, 73 FR 1014 (Jan. 4, 2008), FERC Stats. & Regs. ¶ 31,260 (2007), *order on reh'g,* Order No. 704–A, 73 FR 55726 (Sept. 26, 2008), FERC Stats. & Regs. ¶ 31,275, *order dismissing reh'g and clarification,* Order No. 704–B, 125 FERC ¶ 61,302 (2008), *order granting clarification,* Order No. 704–C, 75 FR 35632 (June 23, 2010), 131 FERC ¶ 61,246 (2010); *see also, Pipeline Posting Requirements under Section 23 of the Natural Gas Act,* Order No. 720, 73 FR 73494 (Dec. 2, 2008), FERC Stats. & Regs. ¶ 31,283 (2008), *order on reh'g,* Order No. 720–A,75 FR 5178 (Jan. 21, 2010), FERC Stats. & Regs. ¶ 31,302, *order on reh'g and clarification,* Order No. 720–B, 75 FR 44893 (July 30, 2010), FERC Stats. & Regs. ¶ 31,314 (2010), *vacated, Texas Pipeline Ass'n v. FERC,* 661 F.3d 258 (2011).

[22] *See Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act,* Notice of Proposed Rulemaking, 72 FR 20791 (April 26, 2007), FERC Stats. & Regs. ¶ 32,614, at PP 9–11 (2007) (Natural Gas Transparency NOPR) (''The Commission does not propose action with respect to electric markets at this time. The Commission has recently addressed and is currently addressing electric market transparency in other proceedings.'').

[23] *Id.*

[24] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 40.

[25] *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g,* Order No. 719–A, 74 FR 37776 (July 29, 2009), FERC Stats. & Regs. ¶ 31,292, *order on reh'g and clarification,* Order No. 719–B, 129 FERC ¶ 61,252 (2009).

[26] *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act,* Notice of Inquiry, 75 FR 4805 (Jan. 29, 2010), FERC Stats. & Regs. ¶ 35,565 (2010) (Transparency NOI).

[27] *See* Attachment B for a list of commenters and their abbreviated names as used here.

[28] 16 U.S.C. 824t(a)(2).

[29] *Id.* 824t(a)(3). This section states, in relevant part, that ''[t]he Commission may obtain the information described in paragraph (2) from *any market participant.*'' *Id.* (emphasis added).

[30] *Id.* 824t(d).

[31] *See id.* at 824t(a)(3)(A).

[32] In the NOPR, the Commission stated that, based on the most recent data available in the 2009 U.S. Energy Information Administration's (EIA's) Form 861, non-public utilities account for significant volumes of the 3.2 billion MWh of total annual wholesale electricity sales made within the 48 contiguous states (excluding ERCOT). The Commission noted that about 29 percent of those wholesale sales were made by non-public utilities, with non-public utilities accounting for 60 and 70 percent of wholesale sales within the Western Electric Coordinating Council (WECC) and SERC Reliability Corporation (SERC) regions, respectively, and about 80 percent of all wholesale sales that occur within the Florida Reliability Coordinating Council (FRCC). *See* NOPR, FERC Stats. & Regs. ¶ 32,676 at P 23.

how prices are formed in electricity markets. The lack of information from non-public utilities results in an incomplete picture of these markets, and hampers the ability of the public and the Commission to detect and address the potential exercise of market power and manipulation.

ii. Comments

12. Several commenters argue that extending the EQR filing requirements to non-public utilities will not increase transparency in wholesale electric markets regulated by the Commission.[33] NYMPA/MEUA argue that, contrary to the Commission's contention in the NOPR, reporting information about the limited wholesale sales made by municipal utilities will add little to the Commission's oversight of the markets it regulates.[34] Southwestern Power Administration states that it makes cost-based sales pursuant to statute; therefore, its sales play no role in price formation in wholesale markets and do not materially affect wholesale prices or rates paid to jurisdictional entities.[35] NRECA states that the majority of wholesale sales by non-public utilities are sales to their members pursuant to long-term bilateral contracts, which do not take place within wholesale electricity markets and have no impact on wholesale market prices. APPA, Public Systems, and TAPS argue that requiring Regional Transmission Operators (RTOs) and Independent System Operators (ISO) to make bid information publicly available with a shorter time lag is the most effective way to improve market transparency and oversight of RTO and ISO markets.[36]

13. APPA, supported by NRECA, asserts that the Commission's estimate of sales by non-public utilities overstates the percentage of sales made by non-public utilities.[37] For instance, APPA argues that not all wholesale sales are reported in EIA Form 861, and that wholesale power sales in Alaska, Hawaii, and ERCOT cannot be excluded from the percentage of nationwide wholesale sales made by non-public utilities because EIA data are not reported in sufficient detail to accurately determine which sales should be excluded.[38] In particular, APPA states that its analysis of EIA data indicates that non-public utilities accounted for only 19.4 percent of wholesale sales in the United States in 2009 rather than 29 percent, as stated in the NOPR. In addition, APPA argues that the NOPR's estimates of non-public utility wholesale sales by region, i.e., 80 percent in FRCC, 70 percent in SERC, and 60 percent in WECC, are overstated because EIA reports a power marketer's sales as being from a single region even though it may make sales in several regions. APPA also argues that the EQR data supports its contention that the Commission overstated in the NOPR the percentage of wholesale sales attributable to non-public utilities.[39]

14. NRECA also argues that the NOPR overestimated the number of wholesale sales made by non-public utilities in regional markets because the EIA data used to calculate those numbers do not distinguish between non-public utility sales made to members and non-members and appear to omit certain large power marketers as they do not report sales by NERC Reliability Region.[40] In particular, NRECA states that the percentage of non-public utility wholesale sales in FRCC was less than 80 percent of all wholesale sales in FRCC, with only two non-public utilities in FRCC selling above 4,000,000 MWh of wholesale energy in 2009, primarily to their own members. NRECA contends that the Commission made a similar mistake in its analyses of non-public utility sales in the Western Electricity Coordinating Council.[41]

15. Other commenters, such as EEI and Joint Market Monitors, not only argue that the Commission has the authority to require non-public utilities to submit EQRs, but also that this information will increase transparency. Moreover, Joint Market Monitors argue that the Commission's jurisdiction over market manipulation constitutes a standalone basis for requiring all market participants to file EQRs. Joint Market Monitors state that the Commission's market-based rate program is based on a theory of regulation through competition, which relies on a lack of market power or adequate mitigation to ensure just and reasonable pricing.[42]

16. Moreover, certain commenters agree with the Commission that information from non-public utilities will increase transparency in interstate wholesale electric power and transmission markets.[43] Joint Market Monitors assert that the jurisdictional status of a market participant has no bearing on the impact of its participation and conduct on electricity markets. Furthermore, Joint Market Monitors agree that the Commission must have an understanding of what transpires in a market as a whole to fully understand any particular part of it. Given that all market participants participate in price formation, Joint Market Monitors argue that all market participants should be required to provide data adequate to ensure that the Commission is able to fulfill its basic regulatory duties.[44]

17. Pennsylvania Commission states that cooperatives and municipalities play a significant role in serving Pennsylvania residents; thus, expanding EQR requirements to include them will strengthen the Commission's ability to monitor wholesale markets and Pennsylvania Commission's ability to monitor its retail markets for anti-competitive and manipulative behavior.[45]

18. EEI states that public utilities would benefit from access to EQR information from non-public utilities in undertaking analyses used for market-based rate applications.[46] In contrast, LPPC asserts that information regarding long-term agreements would not assist the Commission in conducting a delivered price test (DPT) for market-based rate authorizations and mergers. LPPC asserts that the delivered price test measures concentration in short-term markets and focuses on the ability

[33] *See, e.g.,* California DWR at 1–2; NRECA at 4; NYMPA/MEUA at 3; Southwestern Power Administration at 3.

[34] NYMPA/MEUA at 3.

[35] Southwestern Power Administration at 3.

[36] APPA at 4; Public Systems at 2; TAPS at 17–20.

[37] APPA at 9–10; NRECA at 8.

[38] APPA at 8–9.

[39] *Id.* at 10. For example, APPA states that Morgan Stanley Capital Group's 2009 wholesale sales reported on EIA Form 861 are assigned to the ReliabilityFirst Corporation (RFC) region of North American Electric Reliability Corporation (NERC), but that the company's fourth quarter 2009 EQR shows that not all of those sales were in the RFC region. Morgan Stanley reported energy sales and bookouts of 27.5 million MWhs in WECC and 5.1 million MWhs in SERC. APPA concludes that for that quarter, ''Morgan Stanley sold more in the WECC region than any public power utility or cooperative sold in WECC for all of 2009, but the Morgan Stanley sales were not part of FERC's analysis of the WECC region.'' APPA makes a similar observation regarding sales by Constellation Energy Commodities Group for fourth quarter 2009 and notes that Calpine Energy Services and Dynegy Power Marketing both report large amounts of wholesale sales on the 2009 EIA Form 861, but leave the NERC region blank. EQRs for the fourth quarter show that Calpine sold 22.2 million MWhs in WECC, 3.1 million MWhs in SERC, and 136,000 MWhs in FRCC; Dynegy sold 1.1 million MWhs in WECC. APPA claims that regional calculations based on EIA Form 861 data would not include those sales in the appropriate regions, thus overstating the percentage of non-public utilities' sales in those regions.

[40] NRECA at 7–8.

[41] *Id.*

[42] Joint Market Monitors at 3.

[43] *See, e.g.,* DC Energy at 3; EEI at 3–6; Joint Market Monitors at 3; NYMPA/MEUA at 3; Pacific Northwest IOUs at 2; Pennsylvania Commission at 6; Powerex at 4; Ronald Rattey at 10; Shell Energy at 2.

[44] Joint Market Monitors at 3–4.

[45] Pennsylvania Commission at 7.

[46] EEI at 3–4.

of suppliers to deliver energy to relevant markets as measured by their short-term variable costs. LPPC therefore contends that disclosure of the prices reflected in long-term wholesale contracts between non-public utilities would do nothing to improve the accuracy of determining either short-term destination market prices or the short-term variable costs of potential suppliers.[47]

iii. Commission Determination

19. We conclude that FPA section 201(b)(2), read in conjunction with section 220, grants the Commission authority to collect information about the availability and prices of wholesale electric energy and transmission service from non-public utilities notwithstanding section 201(f) .[48] We further conclude, for the reasons discussed in the NOPR and based on our review of the record, that it is appropriate to adopt the NOPR proposal to extend EQR filing requirements to non-public utilities above the *de minimis* threshold under FPA section 220 with the following modifications. In the NOPR, the Commission proposed to require non-public utilities above the *de minimis* threshold to report all of their wholesale sales in the EQR to increase price transparency to the public and the Commission. The Commission modifies its NOPR proposal by excluding the following types of wholesale sales from the EQR reporting requirement for non-public utilities above the *de minimis* threshold: (1) Sales by a non-public utility, such as a cooperative or joint action agency, to its members; and (2) sales by a non-public utility under a long-term, cost-based agreement required to be made to certain customers under a Federal or state statute.

20. The NOPR explained that transactions made by both public utility and non-public utility market participants provide critical pricing information that market participants can use to make better-informed decisions about, among other things, sales, purchases, and infrastructure investments. Moreover, access to reliable data reduces differences in available information among various market participants, results in greater market confidence, lowers transaction costs, and ultimately supports competitive markets, which helps lower electricity costs for consumers.

21. The NOPR also pointed out that non-public utilities have a significant presence in national and regional wholesale electric markets so that obtaining information about their sales transactions is important to unmasking how prices are formed in electric markets. Therefore, the lack of information from non-public utilities results in an incomplete picture of these markets, and hampers the ability of the public and the Commission to detect and address the potential exercise of market power and manipulation.[49]

22. In addition, as stated in the NOPR, obtaining EQR information from non-public utilities would strengthen the Commission's oversight of its market-based rate program under FPA section 205 and provide a better basis for considering whether to approve merger and acquisition proposals under FPA section 203.[50] The Commission's market-based rate program is grounded in an *ex ante* analysis of whether to grant a seller market-based rate authority and an *ex post* analysis of whether a seller with market-based rate authority has obtained the ability to exercise market power since it was granted authorization to transact at market-based rates or since its last updated market power analysis.[51] As stated in the NOPR, one tool used to conduct an *ex ante* analysis is the DPT, which is used if a seller fails one of the indicative screens of market power. The NOPR stated that obtaining more complete price and volume information for sales of electricity by non-public utilities would more accurately reflect market prices, improve the quality of the DPT results and assist the Commission in identifying whether sellers can exercise market power.[52] After consideration of various comments and careful balancing of the need to facilitate price transparency against the burden on non-public utilities associated with filing the EQR, the Commission modifies its NOPR proposal, as discussed above, by excluding certain non-public utility wholesale sales from the EQR reporting requirement. In particular, the Commission modifies its NOPR proposal by excluding the following types of wholesale sales from the EQR reporting requirement for non-public utilities above the *de minimis* threshold: (1) Sales by a non-public utility, such as a cooperative or joint action agency, to its members; and (2) sales by a non-public utility under a long-term, cost-based agreement required to be made to certain customers under a Federal or state statute. For purposes of this rulemaking, the Commission refers to non-public utility wholesale sales not subject to either of these two exclusions as ''surplus'' market sales. The Commission finds that information about a non-public utility's sales to its members, or by a non-public utility under a long-term, cost-based agreement required to be made to certain customers under statute, will not materially contribute to additional price transparency. These types of sales do not significantly impact wholesale price formation in electric markets because these sales generally take place between a non-public utility and a pre-determined customer without arm's-length negotiations. In addition, the benefit of obtaining information about such sales by non-public utilities may not outweigh the burden imposed on the non-public utilities that would need to report such sales in the EQR.

23. The Commission adopts the NOPR proposal to exempt utilities located entirely in Alaska and Hawaii from the EQR filing requirements because they are electrically isolated from the contiguous United States. In addition, this Final Rule does not apply to a transaction for the purchase or sale of wholesale electric energy or transmission services within ERCOT as it is described in section 212(k)(2)(A) of the FPA.[53]

24. APPA and NRECA argue that the NOPR overestimated the amount of nationwide wholesale sales made by non-public utilities. APPA contends that its calculations indicate that non-public utilities account for 19.4 percent of nationwide wholesale sales rather than 29 percent, as stated in the NOPR. APPA also points out that its calculation of non-public utility sales does not exclude certain sales in Alaska, Hawaii

[47] LPPC at 9–10.

[48] FPA section 201(b)(2) explicitly applies certain FPA provisions, including the transparency provision under FPA section 220, to entities covered by FPA section 201(f). This contrasts with the Natural Gas Act (NGA), which does not contain a similar provision setting forth the applicability of the transparency provision under NGA section 23 to natural gas pipelines that are exempted from the Commission's NGA jurisdiction under NGA section 1(b). On appeal of Order Nos. 720 and 720–A, whereby the Commission required major intrastate natural gas pipelines to post certain information under NGA section 23, the Fifth Circuit Court of Appeals concluded that the Commission's authority under NGA section 23 does not extend to intrastate pipelines because they are exempted from the Commission's NGA jurisdiction by NGA section 1(b). *See Texas Pipeline Ass'n* v. *FERC,* 661 F.3d at 262.

[49] NOPR, FERC Stats. & Regs. ¶ 32,676 at P 11.

[50] *Id.* P 27.

[51] The Ninth Circuit Court of Appeals has upheld the Commission's market-based rate program because it relies on a ''system [that] consists of a finding that the applicant lacks market power (or has taken sufficient steps to mitigate market power), coupled with strict reporting requirements to ensure that the rate is 'just and reasonable' and that markets are not subject to manipulation.'' *State of California, ex rel. Bill Lockyer* v. *FERC,* 383 F.3d 1006, 1013 (9th Cir. 2004), *cert. denied* (S. Ct. Nos. 06–888 and 06–1100, June 18, 2007)).

[52] NOPR, FERC Stats. & Regs. ¶ 32,676 at P 27.

[53] 16 U.S.C. 824t(f).

and ERCOT due to the lack of sufficient detail in EIA data.[54] Even if non-public utilities account for approximately 19.4 percent of nationwide wholesale sales, as APPA contends, the Commission finds this percentage of sales in the nationwide wholesale electricity market to be significant. APPA and NRECA also argue that the Commission's analysis using EIA Form 861 data overstated the number of non-public utility wholesale sales in regional markets. Although EIA data is not sufficiently detailed to provide a complete and precise estimate of wholesale sales made by non-public utilities, the Commission's market analysis using EIA data nevertheless indicates that non-public utilities account for a significant portion of sales in certain regional markets. The lack of publicly available data regarding non-public utility sales challenges the ability of the public and the Commission to rely on existing information sources to form an accurate picture of wholesale electricity markets and does not provide the level of price transparency that this Final Rule seeks to achieve.

25. As noted in the NOPR, the Commission believes its effort to increase transparency broadly across all wholesale markets subject to the Commission's jurisdiction by requiring additional information in the EQR is just as important as efforts the Commission has taken to improve transparency in RTO and ISO markets.[55] Obtaining information about sales in markets outside of RTO and ISO regions will enable the Commission and the public to better understand non-public utilities' effect on market dynamics. For example, in the Pacific Northwest, the supply of power from non-public utilities ebbs and flows with the water levels powering hydroelectric facilities. During times of high flows, power prices may fall and public utilities' fossil fuel and wind-fired generation can become less competitive. During times of drought or dry seasons, power prices may rise.

26. With respect to the suggestion by certain commenters that the Commission should require shorter time lags for RTO and ISO postings of bid and offer data, we note that the Commission has previously addressed the time lag for such data and we will not address that issue again here. Specifically, in Order No. 719, the Commission shortened the release period for bid and offer data and provided RTOs and ISOs with the flexibility to propose a different lag period.[56] Furthermore, the EQR provides a level of transparency that RTO or ISO postings of bid and offer data do not, because it informs the public which market participants are involved across markets and at what level.

27. We disagree with LPPC's statements that information about long-term agreements between non-public utilities would not assist the Commission in conducting a DPT analysis for market-based rate authorizations and mergers. The DPT measures market concentration by identifying the sellers that could compete to sell electricity in a relevant market. In defining the relevant market, the DPT identifies potential suppliers based on market prices, input costs, and transmission availability, and calculates each supplier's economic capacity and available economic capacity for each season/load condition.[57] A supplier's economic capacity measures the amount of generating capacity owned or controlled by a potential supplier with variable costs low enough that energy from such capacity could be economically delivered to the destination market.[58] To determine the total supply in the relevant market, the DPT adds the total amount of economic or available economic capacity located in the relevant market (including capacity owned by the seller and competing suppliers) with that of economic or available economic capacity that can be imported into the relevant market.[59] Economic capacity is based on total nameplate or seasonal capacity of generation owned or controlled through contract and firm purchases, reduced by operating reserves, and long-term firm sales. Available economic capacity is calculated by deducting long-term obligations including native load obligations from the economic capacity value. Therefore, information about long-term sales agreements between non-public utilities can be used to help determine the total supply in the relevant market. In addition, information about sales made by non-public utilities, including under long-term agreements, can assist the Commission in performing *ex post* analyses to determine whether a seller with market-based rate authority has obtained the ability to exercise market power since the original authorization to transact at market-based rates or since its last updated market power analysis.

b. Existing Sources of Information

i. NOPR

28. In the NOPR, the Commission concluded that existing sources of information regarding non-public utility wholesale electricity market transactions did not provide sufficient price transparency. The Commission considered the information made publicly available by the Energy Information Administration (EIA) Form 861, Rural Utilities Service (RUS) Form 12, RTO or ISO postings related to wholesale market prices and market participant bid/offer data, daily index publications, organized exchanges, commercial data providers, and through the Open Access Same-Time Information System (OASIS). Thus, the Commission proposed to expand EQR filing requirements to non-public utilities to provide price transparency that is not available through these existing sources of information.

ii. Comments

29. Certain commenters agree with the Commission that information available from existing price publishers and trade processing services is incomplete and, thus, inadequate.[60] However, other commenters argue that the Commission's NOPR is overly broad and proposes to collect duplicative information.[61] They further argue that the Commission must tailor its request to collect information that it currently lacks. California DWR asserts that the Paperwork Reduction Act requires the Commission to certify that a new reporting requirement such as this one is not unnecessarily duplicative of information otherwise reasonably accessible to the Commission. In addition, California DWR asserts that FPA section 220(a)(4) similarly requires that, before additional reporting to ensure price transparency in electric markets may be ordered, the Commission must make a determination

[54] APPA at 8–9.

[55] *See* NOPR, FERC Stats. & Regs. ¶ 32,676 at P 25.

[56] Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 421, *order on reh'g,* Order No. 719–A, FERC Stats. & Regs. ¶ 31,292 at P 156.

[57] *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 106, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, 73 FR 25832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268, *order on reh'g,* Order No. 697–B, 73 FR 79610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, 74 FR 30924 (June 29, 2009), FERC Stats. & Regs. ¶ 31,291 (2009), *aff'd sub nom. Montana Consumer Counsel* v. *FERC,* No. 08–71827, 2011 U.S. App. LEXIS 20724 (9th Cir. Oct. 13, 2011).

[58] *See id.* P 96.

[59] *See id.* P 37.

[60] *See, e.g.,* DC Energy at 3; EEI at 3–6; Joint Market Monitors at 3; NYMPA/MEUA at 3; Pacific Northwest IOUs at 2; Pennsylvania Commission at 6; Powerex at 4; Ronald Rattey at 10; Shell Energy at 2.

[61] California DWR at 3–5; NRECA at 4–5; Public Systems at 13–16.

that existing data sources are insufficient. California DWR states that in this respect, the NOPR disregards redundant requirements, and requires governmental entities to reformat and re-report already existing data.[62]

30. Numerous commenters argue that sufficient information is already publicly available to meet the objectives of FPA section 220 to ''ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors'' without requiring non-public utilities to file EQRs.[63] NRECA argues that the additional information that would be available in the EQR does not justify the increased burden on non-public utilities.[64] For instance, NRECA states that, as recognized in the NOPR, non-public utilities annually file Form EIA–861 ''Annual Electric Power Industry Report'' and that cooperatives receiving RUS financing also are required to file RUS Form 12.[65] California DWR adds that the NOPR concedes that data is available from EIA as well as from RTOs and ISOs.[66]

31. NRECA states that a substantial amount of information is available from these sources and others. For example, it asserts that EIA provides access to the daily volumes, high and low prices, and weighted average prices from hubs around the country and that Energy Management Institute provides results of a daily survey of wholesale transactions that it conducts in all the major trading regions of the country. NRECA further submits that forward market prices are available through the New York Mercantile Exchange and the Intercontinental Exchange (ICE). NRECA argues that it is inappropriate to increase reporting burdens on consumer-owned entities merely to avoid some effort on the part of the government to collect this information from various sources. NRECA concludes that the increased burden on non-public utilities that would be imposed by the EQR filing requirement is not justified by the information that would be obtained.[67]

32. California DWR, Public Systems, and TAPS also note that significant amounts of data also are available from RTOs and ISOs.[68] California DWR states that most of the desired information may be obtained from existing sources such as RTOs, ISOs or Commission-jurisdictional counterparties of governmental entities.[69] EEI and Public Systems argue that the Commission should collect EQR information directly from RTOs and ISOs because, as the Commission recognized in the NOPR, RTOs, and ISOs already make information publicly available.[70] Public Systems state that ISO–NE., the Commission, and others publish reams of data that facilitate price transparency in the New England markets. They note that ISO–NE's ''Markets'' page provides links to numerous data compilations and descriptions, including a real-time ''LMP Price Ticker'' and a link to its real-time ''LMP Map.''[71] Public Systems further state that the NOPR would require non-public utilities to repackage the voluminous market-settlement data that they receive from the RTO and to file that data in EQRs.

33. Public Systems state that the NOPR does not rely on data that RTOs already publish ''to the maximum extent possible'' under FPA section 220. Rather, argues Public Systems, the NOPR identifies certain information gaps in existing sources, such as information about bilateral transactions in the RTO market or sales outside of the RTO markets, and then uses those gaps to justify requiring non-public utilities to file EQRs covering *all* of their wholesale transactions, including those settled in the RTO markets. Public Systems state that, as a result, the NOPR would require a non-public utility with more than a *de minimis* presence in organized markets to file data about bilateral transactions and sales outside the RTO markets in its EQR along with voluminous market-settlement data that they receive from the RTO.[72]

34. California DWR states its wholesale transactions already are captured in EIA reports and California ISO postings, with the exception of non-California ISO bilateral transactions that California DWR may engage in. Thus, argues California DWR, the NOPR would require extensive duplication through a full EQR filing to collect a relatively small amount of data. California DWR states that in this respect, the NOPR disregards redundant requirements, and requires governmental entities to reformat and re-report already existing data.[73] Similarly, EEI also encourages the Commission to ensure that the EQR only requires reporting of information that is truly necessary, though it states that it agrees with the Commission that available information from existing price publishers and trade processing services is incomplete and thus inadequate.[74]

iii. Commission Determination

35. The Commission finds that the degree of price transparency provided by existing sources of information about wholesale markets is insufficient for the Commission to fulfill Congress' directive in FPA section 220 to facilitate price transparency in interstate markets for the sale and transmission of electric energy. As discussed in the NOPR,[75] the Commission has considered the degree of price transparency provided by a number of sources of publicly available information, including EIA Form 861 and RUS Form 12,[76] RTO and ISO postings, index publications, organized exchanges, commercial data providers, and through OASIS, and concludes that the degree of price transparency provided by these existing information sources is not sufficient to help ensure an adequate level of transparency in jurisdictional markets.

36. In general, the Commission and the public need a more compete picture of markets across the country, including smaller markets, even if a significant part of those markets is served by non-public utilities. Market dynamics, including markets dominated by non-public utilities, can change throughout the year through a host of factors including weather conditions, outages, and contract expirations.

37. Annual data collections from two of the most significant publicly available forms that capture information about non-public utility power sales, the EIA Form 861 and the RUS Form 12, do not provide sufficiently detailed or

[62] California DWR at 3, 5–6.

[63] *See, e.g.* California DWR at 4–5; NRECA at 2, 5; Transmission Dependent Utility Systems at 3.

[64] NRECA at 5–6. Allegheny, Associated Electric Cooperative, and South Mississippi Electric each support NRECA's comments.

[65] NRECA at 4–6 (''This form [EIA–861] includes information regarding peak load, generation, electric purchases, sales, revenues, customer counts and demand-side management programs, green pricing and net metering programs, and distributed generation capacity.'' RUS Form 12 ''includes information regarding electric purchases, sales and revenues.'').

[66] California DWR at 3.

[67] NRECA at 5.

[68] California DWR at 3; Public Systems at 14; TAPS at 18.

[69] California DWR at 2–3.

[70] EEI at 21; Public Systems at 13.

[71] Public Systems at 14–15. Public Systems explains that the ''LMP Map'' shows: (1) Day-ahead market locational marginal prices (LMP) for the current hour, by load zone, along with the relevant binding constraints; (2) corresponding LMPs and constraints for the real-time energy market; and (3) real-time reserve-market clearing prices and regulation prices.

[72] *Id.* at 15.

[73] California DWR at 4–5.

[74] EEI at 6.

[75] NOPR, FERC Stats. & Regs. ¶ 32,676 at PP 34–39.

[76] RUS Form 12 was recently renamed the RUS Financial and Operating Report Electric Power Supply.

timely information to assess those market dynamics. As stated in the NOPR, EIA Form 861 does not detail individual wholesale transactions, including the counterparty, location, price, and delivery timeframe as well as other transaction details combined in the EQR.[77] Instead, EIA Form 861 filers report their aggregated annual volume of sales for resale and corresponding revenues. In addition, cooperatives that fall under 7 U.S.C. 901 provide accounting details, including the energy purchaser and other contract details for individual energy sales in RUS Form 12. However, as stated in the NOPR, RUS Form 12 provides only limited price transparency because the form does not contain information on delivery location and timing, which are critical elements for gaining insight into price formation.[78]

38. As recognized by certain commenters, and in the NOPR,[79] RTOs, and ISOs make available a significant amount of information about the availability and prices for wholesale sales and transmission service within these markets. However, as stated in the NOPR, the Commission believes that it is equally important to increase transparency broadly across all markets subject to the Commission's jurisdiction by requiring market participants, including non-public utilities with more than a *de minimis* presence in those markets, to provide information through EQRs.[80] The Commission finds that this information should include not only non-public utilities' bilateral transactions in an RTO or ISO market or sales outside of the RTO or ISO markets, but also sales made by non-public utilities to the RTO or ISO markets. The EQR provides a level of transparency that RTO or ISO postings do not because it informs the public which market participants were involved across markets and at what level. Obtaining information about such sales will improve transparency by providing the public and the Commission with the ability to view a broader universe of non-public utility sales. Specifically, the EQR provides a greater level of transparency by providing information in one place about a filer's wholesale transactions, including the counterparty, delivery location, price, and delivery timeframe as well as other transaction details. Furthermore, in response to Public Systems' concern that non-public utilities would be required to repackage voluminous market-settlement data that they receive from the RTO and to file that data in EQRs, we note that Order No. 2001 permitted RTOs and ISOs to file power sales transaction information on behalf of members or market participants as an agent, if authorized to do so by the member or market participant.[81] The Commission has also encouraged efforts that allow market participants to request EQR-ready settlement reports from RTOs and ISOs and will continue to do so.[82]

39. Moreover, the Commission finds that the information collected through the EQR filing requirements in this Final Rule will not result in unnecessary duplication of information accessible to the Commission and the public. Market transparency is not served if market participants are required to piece together various sources with disparate, inconsistent, or potentially incomplete data. The EQR will facilitate price transparency by providing a uniform electronic information system with filers timely reporting data under a consistent set of rules for a specific period of time.

c. De Minimis Threshold

i. NOPR

40. In the NOPR, the Commission proposed that a non-public utility would be exempt under the *de minimis* market presence threshold from filing EQRs if it makes 4,000,000 MWh or less of annual wholesale sales (based on an average of the wholesale sales it made in the preceding three years), unless the non-public utility is a Balancing Authority that makes 1,000,000 MWh or more of annual wholesale sales (based on an average of wholesale sales it made in the preceding three years). Furthermore, the Commission concluded that FPA section 220 focuses on the availability and prices of ''wholesale electric energy and transmission service,'' and therefore proposed to use only the wholesale electricity sales made by non-public utilities for purposes of calculating the *de minimis* market presence threshold. The Commission proposed that a non-public utility use the annual wholesale sales volume it currently reports to EIA as ''Sales for Resale'' to calculate whether it meets the *de minimis* threshold.

ii. Comments

(a) Setting the Threshold

41. Many commenters support the Commission's proposal in the NOPR to set a *de minimis* threshold of 4,000,000 MWh of annual wholesale sales for non-public utilities.[83] LPPC asserts that EQR information from non-public utilities with relatively small roles in the marketplace would be of minimal value to the Commission and the public, and contribute little to transparency goals.[84]

42. However, other commenters suggest lowering the *de minimis* threshold to 1,000,000 MWh for all non-public utilities.[85] EEI and Pacific Northwest IOUs state that this would more accurately and fairly honor the statutory exception for *de minimis* participants, and would provide a clearer picture of transactions occurring in the nation's electricity markets and the operation of those markets.[86] DC Energy states that the threshold should be lowered to 1,000,000 MWh to ensure that all entities that may have an impact on wholesale market prices are required to submit EQR data and to provide for complete price transparency across the wholesale electricity markets.[87]

43. EEI submits that setting the threshold at 4,000,000 MWh would still leave a significant portion of the market unreported. EEI states that by setting the threshold at 1,000,000 MWh, the Commission would gain substantial additional information while inconveniencing a modest number of non-public utilities. EEI explains that, according to the EIA, of the 3,265 entities (including both public and non-public utilities) that filed the Form EIA–861 in 2009, 138 had sales over 4,000,000 MWh representing 91.8 percent of total U.S. wholesale sales, whereas 254 had sales over 1,000,000 MWh representing 98.7 percent of total U.S. wholesale sales. Of the 116 entities with sales between 1,000,000 and 4,000,000 MWh, EEI asserts that 67 were public power agencies and cooperatives representing approximately 3.9 percent of total U.S. wholesale sales, and the remaining 49 were investor-owned utilities and private power marketers representing 3.0 percent of such sales.[88] EEI further states that according to the

[77] *See* NOPR, FERC Stats. & Regs. ¶ 32,676 at P 35.

[78] *Id.*

[79] *Id.* P 25.

[80] *Id.*

[81] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 336.

[82] Order No. 2001–E, 105 FERC ¶ 61,352 at P 12.

[83] *See, e.g.,* Allegheny at 4; APPA at 4; Cities/M–S–R at 8–9; LPPC at 3; NRECA at 2; NYMPA/MEUSA at 1; Pennsylvania Commission at 8; Powerex at 3; Public Systems at 7; TAPS at 4.

[84] LPPC at 1.

[85] *See, e.g.,* DC Energy at 5; EEI at 7; Pacific Northwest IOUs at 2.

[86] EEI at 7; Pacific Northwest IOUs at 2.

[87] DC Energy at 5.

[88] EEI at 8 (citing NOPR, FERC Stats. & Regs. ¶ 32,676 at P 125).

NOPR's burden statement, only five non-public utility Balancing Authorities are picked up if the threshold for Balancing Authorities is reduced from 4,000,000 to 1,000,000 MWh.[89]

44. Conversely, other commenters suggest that the Commission should increase the 1,000,000 MWh annual wholesale sale threshold for Balancing Authorities to 4,000,000 MWh or less.[90] NRECA suggests that a threshold of at least 4,000,000 MWh annual wholesale sales, akin to that used for non-Balancing Authorities, would still capture sales by non-public utility Balancing Authorities with a significant market presence without exposing small Balancing Authorities to a reporting requirement that would place a significant burden on them with no corresponding benefit to the Commission or to the market. NRECA states that the proposed 1,000,000 MWh threshold reflects an approximately 114 MW baseload energy sale, which is too small to have more than a *de minimis* impact on any market. Therefore, NRECA asserts that the requirement places the burden of filing EQRs on Balancing Authorities that do not have more than a *de minimis* market presence.[91]

45. Similarly, TAPS requests that the Commission apply the 4,000,000 MWh wholesale sales *de minimis* threshold uniformly, regardless of whether the non-public utility is a Balancing Authority. TAPS asserts that applying a lower *de minimis* threshold to non-public utilities that are Balancing Authorities is insufficiently explained, unduly discriminatory, and inconsistent with the statute. TAPS argues that the Commission's authority to require reporting by non-public utilities turns on whether the non-public utility at issue has a *de minimis* market presence. TAPS states that being a Balancing Authority does not magnify the market impact of a non-public utility's sales. TAPS states that nothing in the NOPR justifies a finding that a Balancing Authority that sells 1,000,000 MWh at wholesale annually has more than a *de minimis* market presence, and that there is nothing about being a Balancing Authority that should lead to such a conclusion.[92]

46. Finally, Shell Energy supports adopting a *de minimis* level below which specific transactions would not be required to be reported in the EQRs. Shell Energy states that a minimum threshold for reporting by all EQR filers could be either a volume cut-off or a capacity cut-off, and that a reasonable threshold would be transactions below 10 MWh or under $1,000. Alternatively, Shell Energy asserts that the Commission should exclude from EQR reporting any transactions that are under 10 MWh or $1000 and are undertaken simply for balancing energy with an RTO or ISO. Shell Energy explains that it is involved in large numbers of such balancing transactions, each of a very small volume and the reporting of such transactions is onerous while not providing very helpful information to the Commission.[93]

(b) *Applying the Threshold*

47. Several commenters suggest that the Commission should exclude intra-familial sales by non-public utilities for purposes of the annual sales threshold.[94] NRECA notes that FPA section 220(d) provides that, ''[t]he Commission shall not require entities who have a *de minimis* market presence to comply with the reporting requirement of this section.''[95] Allegheny, NRECA, and Public Systems state that intra-familial sales transactions do not result in any ''market presence'' because they take place entirely outside of the markets.[96] NRECA argues, as such, intra-familial sales are outside the scope of transactions in section 220 of the FPA.[97]

48. According to NRECA, member cooperatives enter into long-term, cost-based, pass-through power contracts. NRECA states that the prices and volumes of such power sales are not influenced by market prices, and have no influence on market prices because they are established without regard to wholesale markets.[98] Allegheny submits that such sales are essentially the distribution cooperative members supplying themselves. Allegheny further states that these G&T cooperative sales are not market sales and do not affect the general marketplace for electricity because: (1) The sales are available only to the member-owners; (2) the member-owners are required to purchase the amounts covered by the contract and therefore they cannot purchase these amounts in the market; and (3) the G&T cooperatives cannot elect to sell these resources to third parties instead of to their members. Therefore, Allegheny asserts that such sales should be excluded from the 4,000,000 MWh threshold.[99]

49. Allegheny, NRECA, Public Systems, and Transmission Dependent Utility Systems submit that intra-familial transactions by non-public utilities are functionally equivalent to the operation of vertically-integrated public utilities.[100] NRECA states that it would be unjust and unreasonable for the Commission to require non-public utilities to include intra-familial transactions in calculating the 4,000,000 MWh sales threshold and in reporting data in EQRs when it does not require investor-owned utilities to report transfers between their bulk power and distribution functions, because those contracts do not have any relationship to markets for the wholesale sale of power.[101]

50. NRECA further alleges that the Commission's justification for including intra-familial transactions in calculating the 4,000,000 MWh threshold is not valid; the inclusion of such transactions in EQRs will not assist the Commission or the public in understanding RTO or ISO market price formation because these transactions do not impact the market price.[102] Transmission Dependent Utility Systems suggest that the Commission should restrict any EQR filing obligations imposed on G&T cooperatives that are non-public utilities to wholesale sales to parties other than their distribution cooperative members where those wholesale sales to third parties equal or exceed the 4,000,000 MWh threshold.[103]

51. TAPS suggests that if the Commission adopts a final rule providing that G&T cooperatives' cost-based sales to their members do not count toward determining where the cooperative has more than a *de minimis* wholesale market presence, comparability requires that joint action agency sales to members be treated in the same fashion.[104] Associated Electric Cooperative and NRECA comment that if the Commission does not exclude intra-familial transactions, it should at least not require both tiers of G&T cooperatives in a three-tier system to

[89] *Id.*

[90] *See, e.g.,* NRECA at 16; TAPS at 6.

[91] NRECA at 16–17.

[92] TAPS at 6.

[93] Shell at 12.

[94] *See, e.g.,* Allegheny at 4; Associated Electric Cooperative at 3; NRECA at 10; Public Systems at 2; Transmission Dependent Utility Systems at 3.

[95] NRECA at 12.

[96] Additionally, TAPS states that the fact that joint action agencies and G&T cooperatives cost-based inter-familial sales are not market sales justify excluding those transactions. TAPS at 10.

[97] NRECA at 12.

[98] *Id.* at 10–11.

[99] Allegheny at 4–5.

[100] NRECA at 11–12; Allegheny at 5; Transmission Dependent Utility Systems at 5; Public Systems at 11.

[101] NRECA at 11–12.

[102] *Id.* at 12.

[103] Transmission Dependent Utility Systems at 8.

[104] TAPS at 10.

report their sales on their EQRs, because this would result in double reporting.[105]

52. Cities/M–S–R state that the proposal that EIA data should be used by the joint action agency to determine whether it meets the *de minimis* threshold for filing EQRs is reasonable and should be included in the final rule. However, Cities/M–S–R request that sales by joint action agencies to the joint action agencies' members should be excluded from reporting because the EIA data currently posted from 2009 do not appear to include in the ''Sales for Resale'' figure the sales from joint action agencies to their members. Accordingly, Cities/M–S–R state that it is not clear how the Commission plans to compile data regarding sales by joint action agencies to their own members. If the Commission does not exclude transactions between joint action agencies and their members, then Cities/M–S–R request that the Commission clarify how joint action agencies should determine their volume of sales for purposes of determining whether or not they exceed the threshold.[106]

53. Southwestern Power Administration states that the Commission's proposal of a *de minimis* threshold with no procedure for waiver is unreasonable for entities largely reliant upon recent weather patterns to determine sales volumes. Southwestern Power Administration explains that its annual sales from Corps Hydropower facilities are dependent upon annual inflows, which vary greatly from year-to-year. Establishing a threshold based on a one- to three-year timeframe may require utilities such as Southwestern Power Administration, which are dependent upon inflow in order to make sales, subject to the filing requirements simply because of a period of above average rainfall and may not truly reflect the utility's presence in the region.[107]

iii. Commission Determination

54. The Commission will uniformly adopt a 4,000,000 MWh *de minimis* threshold for all non-public utilities, including for non-public utilities that are Balancing Authorities. Specifically, the Commission will exempt under the *de minimis* market presence threshold non-public utilities that make 4,000,000 MWh or less of annual wholesale sales (based on an average of the wholesale sales it made in the preceding three years). To ensure the uniform application of the *de minimis* threshold, the Commission will not adopt the NOPR proposal to require a non-public utility that is a Balancing Authority making 1,000,000 MWh or more of annual wholesale sales to file EQRs. Instead, the Commission will apply the 4,000,000 MWh threshold to these non-public utility Balancing Authorities. As set forth in the NOPR, the Commission will use wholesale sales, as reported in EIA Form 861, ''Sales for Resale,'' to calculate the *de minimis* market presence threshold.

55. In response to commenters that suggest a 1,000,000 MWh *de minimis* threshold, we note that the 4,000,000 MWh threshold adopted by this Final Rule will significantly increase transparency, particularly in certain markets with large non-public utility concentrations. In requiring non-public utilities to report EQR information, we must balance transparency benefits associated with the data collection with any burdens it may create. EEI comments that EIA Form 861 data indicates that setting the threshold at 1,000,000 MWh instead of 4,000,000 MWh would capture sales from an additional 67 public power agencies and cooperatives representing approximately 3.9 percent of the nation's wholesale sales. However, the Commission finds that the value of collecting information from non-public utilities making between 1,000,000 and 4,000,000 MWh of annual wholesale sales does not outweigh the burden that would be imposed on these small non-public utilities. This determination is consistent with the definition of a small utility under the Regulatory Flexibility Act[108] and Small Business Act.[109] The Small Business Administration's implementing regulations at 13 CFR 121.201 define a utility as small ''if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' This 4,000,000 MWh threshold is also consistent with the threshold used in FPA section 201(f) to exclude certain electric cooperatives from the Commission's jurisdiction.[110] Therefore, the Commission will not lower the *de minimis* threshold to 1,000,000 MWh of annual wholesale sales for non-public utilities, as suggested by certain commenters.

56. We will not adopt Shell Energy's suggestion to establish a *de minimis* reporting threshold for EQR filers based on their transactional volumes or capacity or exclude from reporting certain transactions undertaken for balancing energy with an RTO or ISO. As set forth in Order No. 2001, public utilities are required to file information in the EQR to comply with the requirement under FPA section 205(c) to show all rates, terms, and conditions of jurisdictional services.[111] The Commission has granted waiver of the EQR filing requirements for certain small public utility entities based on a number of factors.[112] Based on the statutory requirement for all public utility rates, terms and conditions to be on file with the Commission and the ability for small public utility entities to apply for waiver from the EQR filing requirement, the Commission concludes it is not necessary to establish a minimum reporting threshold based on the volume or nature of transactions undertaken by public utilities. The Commission also finds that this Final Rule appropriately sets the *de minimis* threshold for non-public utility filers based on their annual wholesale sales rather than on the volume or nature of their transactions.

57. Consistent with the NOPR proposal, the Commission finds it appropriate to use the total annual wholesale sales volumes reported as ''Sales for Resale'' in EIA Form 861 for purposes of calculating the *de minimis* threshold.[113] Basing the threshold calculation on the total annual wholesale sales figure already reported by non-public utilities in EIA Form 861 will avoid the need for them to make a separate calculation of annual wholesale sales for EQR purposes and ensure a consistent method for calculating the threshold. Therefore, in response to Cities/M–S–R's request for clarification of how joint action agencies should determine whether they exceed the *de minimis* threshold, we clarify that they should use the wholesale sales volumes reported as their ''Sales for Resale'' figure in EIA Form 861. However, as

[105] NRECA at 17; Associated Electric Cooperative at 3–4.

[106] Cities/M–S–R at 10–11.

[107] Southwestern Power Administration at 4–5.

[108] *See* 5 U.S.C. 601.

[109] *See* 15 U.S.C. 632.

[110] FPA section 201(f) provides, in relevant part: ''[n]o provision in this subchapter shall apply to, or be deemed to include * * * an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) or that sells less than 4,000,000 megawatt hours of electricity per year.'' 16 U.S.C. 824(f).

[111] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at PP 11, 44.

[112] *See Bridger Valley Elect. Assoc., Inc.,* 101 FERC ¶ 61,146 (2002).

[113] EIA Form 861 instructions for Line 12, define ''Sales for Resale'' as the amount of electricity sold for resale purposes, including ''sales for resale to power marketers (reported separately in previous years), full and partial requirements customers, firm power customers and nonfirm customers.'' *See* EIA, Annual Electric Power Industry Report Instructions, *available at http://www.eia.gov/survey/form/eia_861/instructions.pdf.*

explained below, the Commission will not require non-public utilities to report sales made to members, or intra-familial sales, in the EQR.[114] In light of the determination to exclude from the EQR reporting requirement sales by cooperatives or joint action agencies to their members, we will not address comments concerning how to report such member sales.

58. In response to Southwestern Power Administration's comments that its annual sales vary greatly from year-to-year due to rainfall rates, the Commission finds that using a three-year average of total wholesale sales to calculate an entity's filing status helps moderate possible fluctuations in an entity's filing status. Moreover, information capturing fluctuations in wholesale sales can provide valuable details on the competitiveness of electricity markets.[115]

2. Filing Requirements for Non-Public Utilities

a. Scope of EQR Filing Requirements for Non-Public Utilities

i. NOPR

59. The Commission proposed to require a non-public utility with more than a *de minimis* market presence to report the same contractual and transactional information about its wholesale sales and transmission service, including cost-based and market-based sales, transmission service, and transmission capacity reassignments, that public utilities currently report. The Commission also proposed to include sales made by G&T cooperatives, joint action agencies, state agencies, and power or water districts to their own members. The Commission proposed to exclude, however, certain fields that it concluded may not be applicable to filings made by non-public utilities. As an example, the Commission noted that non-public utilities may not possess an appropriate FERC Tariff Reference to include in contract data Field Number 19 (FERC Tariff Reference) and transaction data Field Number 50 (FERC Tariff Reference) and would mark ''Not Required'' or ''n/r'' in these fields.

ii. Comments

60. EEI agrees that the Commission should require all parties to file the same basic EQR information. However, EEI also encourages the Commission to ensure that the EQR only requires reporting of information that is necessary and useful for the Commission to collect and that market participants can provide in the normal course of business.[116]

61. Several commenters argue that the Commission should not require entities such as joint action agencies, state agencies, power districts, and G&T cooperatives to report sales made to their own member utilities or long-term distribution customers under long-term agreements.[117] TAPS asserts that requiring joint action agencies and G&T cooperatives to report their cost-based sales to members is contrary to FPA section 220 because it imposes reporting requirements that do not advance the section's objective of enhancing market transparency. TAPS contends that reporting such sales would provide no information regarding the rates, terms or conditions under which a joint action agency would be willing to sell power to a non-member, nor would it provide information about the alternative rates, terms, and conditions under which the members could obtain power from other sources.[118]

62. APPA similarly argues that such sales play no role in price formation. According to APPA, sales by a joint action agency to its members are cost-based sales under long-term contracts that do not reflect current commercial conditions or market supply and demand.[119] Cities/M–S–R state that such sales typically reflect only the cost of production of the energy and the repayment of bond financing and are not arm's-length transactions that reflect market conditions; thus, such transactions should not be reported.[120]

63. While Public Systems agree that such sales are technically wholesale sales, they argue that such sales are not market sales and therefore do not reflect the rates, terms, or conditions on which a joint action agency would be able or willing to sell energy at wholesale to any other entities.[121] Transmission Dependent Utility Systems state that distribution cooperatives form G&T cooperatives to obtain cost efficiencies and that they enter into long-term contracts with their members to serve as security to finance generation and transmission facilities. Transmission Dependent Utility Systems argue that even though sales by a G&T cooperative to its members are wholesale sales, these sales are not the type of arm's-length sales between two wholesale market participants that determine market prices. Instead, Transmission Dependent Utility Systems argue that the initial purchase of power by the G&T cooperative is the significant transaction. According to Transmission Dependent Utility Systems, such sales are already reported in the EQR by the selling market participant. Thus, Transmission Dependent Utility Systems argue that there is no additional price information to be gleaned from the flow-through of purchased power from a G&T cooperative to its distribution member cooperative.[122]

64. A number of commenters argue that joint action agencies and G&T cooperatives are analogous to vertically-integrated utilities.[123] APPA states that joint action agencies are virtually vertically integrated with their member distribution systems, and argues that if they were literally vertically integrated, then there would be no wholesale sale to report. APPA argues that the same is true of sales by state agencies and power districts to neighboring distribution utilities through full requirement or other types of firm, long-term contracts.[124] TAPS argues that transactions involving G&T cooperatives and joint action agencies are wholesale sales in name only, and arise only because the individual members were too small to conduct such activities on their own and had to create a distinct legal entity to perform them on a joint basis.[125] Public Systems also assert that joint action agencies and G&T cooperatives use contracts to accomplish what vertically-integrated utilities accomplish through their corporate structure and thus sales to their members should not be considered wholesale sales.[126]

65. Public Systems and TAPS argue that requiring joint action agencies and G&T cooperatives to report sales to their members is unduly discriminatory because the Commission does not require other non-market transactions that affect the amount of demand served through the market.[127] For instance, TAPS states that the Commission does not require a load-serving entity to report when it engages in demand response, installs energy efficiency

[114] We note that while the threshold calculation is based on total wholesale sales, entities may not have to report all of their wholesale sales. For additional discussion, see *supra* § II.A.1.a. and *infra* § II.A.2.a.

[115] *See* discussion at *supra* P 18.

[116] EEI at 6–7.

[117] *See, e.g.,* APPA at 4; Cities/M–S–R at 9; Public Systems at 9; TAPS at 11.

[118] TAPS at 11.

[119] APPA at 4–5.

[120] Cities/M–S–R at 10.

[121] Public Systems at 9.

[122] Transmission Dependent Utility Systems at 5–6.

[123] *See, e.g.,* APPA at 5; Public Systems at 12; TAPS at 9.

[124] APPA at 5.

[125] TAPS at 9.

[126] Public Systems at 10.

[127] Public Systems at 12; TAPS at 12.

measures, or relies on its own generation to serve its load even though such activities reduce the load-serving entity's need for market purchases.[128]

66. TAPS also argues that it may be difficult to fit joint action agency sales to members into the categories the Commission has developed to describe other types of transactions. TAPS contends that this is evidence that such sales are not market transactions and cannot be compared to them meaningfully.[129]

67. Transmission Dependent Utility Systems argue that there is no potential in the transaction between the G&T cooperative and its member for exploitation of the kind that the FPA is intended to prevent. In support, Transmission Dependent Utility Systems state that the Commission has recognized in a number of orders that affiliate abuse is not a concern for cooperatives owned by other cooperatives.[130] APPA also cites to a Commission order that reasoned that ''sales of power by G&T cooperatives to their member G&T cooperatives or their member distribution cooperatives do not constitute marketing functions under the Standards of Conduct.''[131] Thus, APPA contends that there is no need for a joint action agency to report sales to members in its EQR.

68. Cities/M–S–R disagree with the Commission's assertion that if a joint action agency, state agency, or power or water district did not supply its members then its members would have to purchase supply from other sources in the market. Instead, Cities/M–S–R assert that without the joint action agency, a member would likely develop its own resource.[132]

69. TAPS asserts that if a member makes a sale of excess power into the market, then it would be required to report that sale in the EQR, assuming that the selling member had more than a *de minimis* market presence. Thus, TAPS argues that a potential resale at wholesale of power supplied by a joint action agency or G&T cooperative to its members does not justify requiring joint action agencies and G&T cooperatives to report sales to their members.[133]

70. If the Commission does not exclude a G&T cooperative's sales to its members from reporting requirements, then NRECA argues that the Commission should not require cooperatives with multiple tiers of G&T cooperatives to report their sales. For example, NRECA states that Basin Electric Power Cooperative, a G&T cooperative, sells electric power and energy at wholesale to its 'Class A' members, which are also G&T cooperatives. NRECA further states that the Class A members, acting as middlemen, then sell power and energy at wholesale to their distribution cooperative members at essentially the same price as they paid. Given that the price is essentially identical, NRECA argues that the Commission should not require both tiers of these G&T cooperatives to report; otherwise it will lead to double counting.[134]

71. APPA states that a more reasonable alternative would be for the Commission to require state agencies and power districts to report such transactions in their EQRs only to the extent that the applicable firm, long-term contract expires in less than three years.[135] Similarly, LPPC encourages the Commission to exempt from reporting agreements of longer than three years between non-public utilities.[136] In support, LPPC states that much of the power sold pursuant to these long-term arrangements is not available to private entities purchasing power in Commission-jurisdictional markets due to Internal Revenue Service Code restrictions. According to LPPC, these restrictions generally prohibit non-public utilities from selling more than a minimal amount of electricity to private entities; power sold in excess of this limit jeopardizes the nonpublic utility's tax-exempt financing.[137]

72. In contrast, EEI asserts that non-public utilities should report transaction and contract information on sales between non-jurisdictional entities as well as between non-jurisdictional and jurisdictional entities to provide a more complete picture of energy markets.[138]

iii. Commission Determination

73. The Commission adopts the NOPR proposal to require non-public utilities to report the same information about wholesale sales, transmission service, and transmission capacity reassignments that are currently reported by public utilities, with modifications. Expanding the same EQR data elements to non-public utilities will help ensure comparability and consistency with filings by public utilities, which will make it easier for the public and the Commission to use the information. In addition, requiring the same sales and transmission-related information from non-public utilities will allow the Commission to better evaluate the performance of wholesale markets as a whole and make it easier to determine whether jurisdictional prices are just and reasonable.[139]

74. Many commenters argue that the Commission should not require non-public utilities to report wholesale sales made to their own members or made under long-term, cost-based agreements. As mentioned above, the Commission will modify its NOPR proposal to exclude the following types of wholesale sales from the EQR reporting requirement for non-public utilities above the *de minimis* threshold: (1) sales by a non-public utility, such as a cooperative or joint action agency, to its members; and (2) sales by a non-public utility under a long-term, cost-based agreement required to be made to certain customers under Federal or state statute.[140] To the extent wholesale sales made by a non-public utility do not meet either of these criteria, the non-public utility must report those sales in the EQR.

75. The Commission recognizes that certain data fields in the EQR may not be applicable to filings made by non-public utilities. As stated in the NOPR, non-public utilities may not possess a FERC Tariff Reference (Field Numbers 19 and 50) for certain wholesale contracts and transactions. In cases where a FERC Tariff Reference is not applicable, the Commission will require that a filer mark ''NPU,'' (to indicate ''Non-Public Utility'') in those fields. If a non-public utility has a previously filed reciprocity open access transmission tariff (OATT), it should refer to that reciprocity OATT in Field Number 19 under FERC Tariff Reference. In addition, non-public utilities should mark ''NPU'' with respect to the ''cost-based'' or ''market-based'' options available under ''Product Type Information'' captured in Field Number 30, because these options are defined based on types of Commission-approved tariffs. If transmission capacity is reassigned

[128] TAPS at 12.

[129] *Id.* 14.

[130] Transmission Dependent Utility Systems at 7–8 (citing *Desert Generation & Transmission, Inc.,* 115 FERC ¶ 61,306, at P 14 (2006)).

[131] APPA at 5–6 (citing *Standards of Conduct for Transmission Providers,* Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g and clarification,* Order No. 717–A, FERC Stats. & Regs. ¶ 31,297 (2009), *order on reh'g and clarification,* Order No. 717–B, 129 FERC ¶ 61,123, *order on reh'g and clarification,* Order No. 717–C, 131 FERC ¶ 61,045, at P 21 (2010)).

[132] Cities/M–S–R at 9–10.

[133] TAPS at 13.

[134] NRECA at 17–18.

[135] APPA at 7, n.11.

[136] LPPC at 4.

[137] *Id.* at 6.

[138] EEI at 6.

[139] See NOPR, FERC Stats. & Regs. ¶ 32,676 at P 45.

[140] *See* discussion at *supra* § II.A.1.a.

under a non-public utility's reciprocity OATT, the non-public utility should follow the existing conventions for transmission providers reporting transmission capacity reassignments in the EQR.

b. Burden

i. NOPR

76. In the NOPR, the Commission recognized that extending the EQR filing requirements to non-public utility market participants will impose a new burden on those market participants. The Commission agreed that it would make every effort to provide guidance and technical assistance prior to implementation of the EQR filing requirements for non-public utilities.

ii. Comments

77. Some commenters question whether the Commission has adequately considered the burden imposed on non-public utilities. For example, Southwestern Power Administration asserts that section 220 of the FPA provides the Commission with limited authority to seek information from certain non-public utilities and requires the Commission to weigh the value of the information against the regulatory burden it would impose on those entities. Southwestern Power Administration argues that requiring it to report information about its sales will serve no useful purpose that would justify the burden of reporting this information and that the Commission has not shown otherwise.[141]

78. California DWR argues that the NOPR fails to comply with Federal statutes that require the Commission to carefully consider the costs and benefits of imposing burdens on governmental entities. For instance, California DWR states that the Paperwork Reduction Act requires agencies to certify that a new reporting requirement is not unnecessarily duplicative and that the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written statement of intergovernmental mandates that describe the analyses and consultations on the unfunded mandate.[142] California DWR also states that Executive Order 12866 requires agencies to propose or adopt regulations after it determines that the benefits of the intended regulation justify the costs and that the Regulatory Right to Know Act requires agencies to conduct cost-benefit analysis of their regulatory initiatives and report their findings to the Office of Management and Budget.[143]

79. Southwestern Power Administration states that it does not have the staffing needed to track and report EQR data, and that hiring additional staff to comply would pose increased costs with no commensurate benefit to its customers or incremental improvement to market transparency.[144] California DWR argues that the NOPR as written would give non-public utilities an incentive to self-supply to avoid wholesale power sales in order to reduce reporting burdens, which appears contrary to business requirements.[145]

80. If the Commission requires non-public utilities to submit EQRs, then NRECA argues that the Commission could reduce the burden on non-public utilities by simplifying the filing requirements as it relates to billing adjustments. NRECA states that it is common practice for a cooperative to bill its members under long-term contracts on the basis of budgets and that these charges are later trued-up to reflect the actual costs associated with the sale. NRECA states that EQR regulations require entities to file either revised EQRs or new transactions with the class name ''Billing Adjustments'' to report changes in billing data after the initial EQR filing deadlines. NRECA asserts that it would be very burdensome for cooperatives that use budget-based billing to submit revised EQRs or Billing Adjustments to reflect true-ups to actual costs. Thus, NRECA argues that the Commission should simplify the filing requirements for cooperatives that use budget-based billing by specifying that true-ups associated with budget-based billing do not trigger the requirement to submit revised EQRs or Billing Adjustments.[146]

81. LPPC encourages the Commission to provide sufficient lead time to enable non-public utilities to comply, and suggests a period of six months from the date of the final rule. LPPC also requests that the Commission have staff assist in training programs that will facilitate compliance.[147]

iii. Commission Determination

82. The Commission has carefully weighed, in developing this Final Rule, the burden associated with an entity filing the EQR against the benefits associated with greater transparency in the nation's wholesale electric markets. The Commission concludes that the burden of reporting information in the EQR is outweighed by the benefits of greater transparency provided by the EQR.

83. The burden of preparing an EQR filing varies, depending on the complexity of a company's transactions. If a company has a few long-term contracts of limited complexity, its EQR filing is simple: an unchanging description of its contracts from quarter to quarter with monthly or quarterly reports of the transactions under that contract. As the company's sales activities become more complex, with more frequent adjustments to price and a greater variety of counterparties and sales locations, its technological capabilities for tracking its transactions tend to become more sophisticated. As a result, complex, detailed EQRs tend to be associated with companies more capable of generating such a filing. Filers whose participation in the electric wholesale markets occurs under long-term, cost-based contracts with a limited number of counterparties will expend relatively little effort in complying with the EQR filing requirement. In addition, we believe that excluding from the reporting requirement sales by non-public utilities under long-term, cost-based agreements required to be made to certain customers under Federal or state statute will help lessen the burden on non-public utilities. Therefore, we believe that non-public utilities would not be encouraged to self-supply to avoid the reporting requirements, as suggested by California DWR.

84. In response to NRECA's concern about the difficulty for non-public utility cooperatives that use budget-based billing to submit revised EQRs or billing adjustments to reflect true-ups or actual costs, the Commission will not require true-ups by non-public utility cooperatives with budget-based billing in the EQR. The Commission's policy regarding refilings or billing adjustments stems from the statutory requirement under FPA section 205(c) to have a public utility's rates on file. Specifically, in recognition of the fact that public utilities may not have complete, final data for the full quarter by EQR filing deadlines, the Commission requires that any additions or changes to an EQR filing must be made by the end of the following quarter, when the filer is expected to file the best available new data.[148] Filers are

[141] Southwestern Power Administration at 2–3.

[142] California DWR at 6–7 (citing Paperwork Reduction Act, 44 U.S.C. 3506(c)(3) (2006); Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, *et seq.* (2006)).

[143] *Id.* at 5–6 (citing Executive Order 12866, 58 FR 51735 (Oct. 4, 1993); Regulatory Right to Know Act, 31 U.S.C. 1105 (2006)).

[144] Southwestern Power Administration at 4.

[145] California DWR at 7.

[146] NRECA at 18–19.

[147] LPPC at 10.

[148] Order No. 2001–E, 105 FERC ¶ 61,352 at PP 9–10. According to the EQR Data Dictionary, a

Continued

required to file material changes, either as a full refiling or as a transaction with the class name ''Billing Adjustment.'' [149] It is worth emphasizing that refiling EQRs, with a billing adjustment to reflect the receipt of new information, is only necessary if the filer considers the change to previous EQR totals to be material.[150] The Commission has found that this policy balances the need for timely, accurate EQR data, while reducing the burden on filing entities by identifying price changes on a transaction-by-transaction basis due to some after-the-fact billing transaction long after the EQR was due.[151] In the case of budget-based billing, non-public utility cooperatives are not covered by FPA section 205 and the true-up process will likely have little effect on the market dynamics the Commission is trying to capture with this Final Rule. For these reasons, the Commission will exclude true-ups by non-public utility cooperatives associated with budget-based billing from the EQR's refiling or billing adjustment policy.

85. We agree with LPPC that the Commission should provide sufficient lead time to enable non-public utilities to comply. Over the past ten years, the Commission has been proactive in its outreach on many aspects of the EQR; in issuing this Final Rule, the Commission acknowledges that new filers will need the opportunity to learn about the filing. Accordingly, non-public utility filers are required to file EQRs beginning with the third quarter (Q3) of 2013, covering the period July through September 2013. The Commission directs staff to assist filers with compliance. For example, the Commission intends to convene a staff-led technical conference, to be announced at a future date, to assist non-public utilities in collecting and filing EQR data.

B. Refinements to the Existing EQR Requirements

1. General Refinements

a. Trade Date & Time and Type of Rate

i. NOPR

86. In the NOPR, the Commission proposed to require any market participant that is required to file an EQR to report in the EQR the date on which parties to a reported transaction agreed upon a price (trade date) and the type of rate by which the price was set. The Commission stated in the NOPR that the term ''trade date'' means ''the date upon which the parties agree upon the price of a transaction.'' The Commission also proposed four types of rates: ''fixed,'' ''formula,'' ''index,'' and ''RTO/ISO price.'' A fixed rate would be defined as a fixed charge per unit of consumption. A formula rate would be defined as a calculation of a rate based upon a formula that does not contain an index component. An index rate would be defined as a calculation of a rate based upon an index or a formula that contains an index component. An ''RTO/ISO price'' would be defined as a rate that is based on an RTO/ISO published price or formula that contains an RTO/ISO price component. The Commission also proposed to require market participants to report the time of trade, defined as ''the time upon which the parties agree upon the price of a transaction.''

ii. Comments

87. DC Energy, Joint Market Monitors, and Pennsylvania Commission support the Commission's proposal to require the trade date and time and type of rate in EQR.[152] However, as discussed further below, many commenters are opposed to parts of the proposal.

(a) Trade Date

88. With respect to the proposed requirement to report the trade date, Powerex states it should not be onerous to report such data because market participants likely already track it.[153] However, some commenters question the need for trade data and note some difficulty in ascertaining the appropriate date to report. EEI questions the need for trade date information, arguing that contracts negotiated to cover specific transactions will include trade-specific details so that transactions can be distinguished based on the associated contract information in the EQR. In addition, EEI suggests that, if the Commission requires reporting of trade dates, it should clarify that the trade date is the effective date of the legally binding agreement between parties with respect to the transaction. In this vein, EEI contends that the ''official'' trade date agreed to by market participants for each transaction and documented in trade capture systems and related transaction documentation is the appropriate date to use. EEI states that its members and other market participants document the ''official'' date in their trade capture systems and related transaction documentation. EEI also recommends that the requirement for trade date apply only to transactions entered into after the Commission adopts a final rule.[154]

89. EPSA asks the Commission to clarify whether RTO or ISO sales are included in the date/time reporting requirement as these transactions do not meet the Commission's proposed definition of agreement of the parties upon a price because RTO or ISO mitigation schemes may alter awarded prices, which are not known to the market participant and are not received until after the flow data. EPSA notes that in its NOI comments it expressed concern that the date parties agree to a price is not synonymous with the transaction date. EPSA adds that there are several elements apart from price, including volume, point of delivery, nature of firmness, credit terms, duration, enabling agreement status, upon which the parties must reach agreement before they execute that trade. EPSA states that ''[i]f the final rule makes time and date determinations based on the setting of price there will be a need to clearly explain how that is done for the many scenarios in the power business; only with this additional explanation can complying entities ensure that EQR data is not only transparent but useful.''[155] Entergy questions the usefulness of the trade date and notes examples of situations where the price in effect when the transaction was entered would not be the rate when the transaction began.[156] Entergy adds that, for hourly market sales, a trade date would be difficult to determine because it may be subject to review and agreement at a later date.[157]

(1) Commission Determination

90. The Commission adopts, with modification, the NOPR proposal to require reporting of the trade date in the EQR. The NOPR proposed to define the trade date as the date on which parties

Billing Adjustment (BA) designates an incremental material change to one or more transactions due to a change in settlement results. BA may be used in a refiling after the next quarter's filing is due to reflect the receipt of new information. It may not be used to correct an inaccurate filing. *See* Order No. 2001–G, 120 FERC ¶ 61,270 at P 33.

[149] Order No. 2001–E, 105 FERC ¶ 61,352 at PP 9–10.

[150] Order No. 2001–G, 120 FERC ¶ 61,270 at PP 33–34.

[151] *Id.*

[152] *See, e.g.,* DC Energy at 4–5; Joint Market Monitors at 4–5; and Pennsylvania Commission at 4.

[153] Powerex at 14.

[154] EEI at 12–13.

[155] EPSA at 7.

[156] Entergy at 2 (''while a rate may be arranged at the outset, changes in tariff rates and other circumstances may affect the rate between the time the transaction was made and the date the transaction flows'').

[157] *Id.* at 2–3. Entergy provides the example of a price for an hourly market sale being agreed upon during the day ahead or on an hourly basis, but the final prices being subject to review and agreement at a later date. *Id.* at 3.

to a reported transaction agreed upon a price. We will clarify this definition of trade date, as suggested by EEI, to state that it is ''the date upon which the parties made the legally binding agreement on the price of the transaction.''

91. As stated in the NOPR, the trade date for transactions currently is not provided or collected publicly.[158] The trade date is essential to assessing the significance of prices in relation to market conditions in effect at that time. The EQR only collects the start and end date of physical transactions as well as other data details for contracts. In current EQR filings, trades entered into months before the transaction start and end dates are indistinguishable from trades entered into minutes before the transaction occurs, making it difficult to determine whether pricing is appropriate given market conditions. In addition, many of the prices reported in the EQR result from confirmation made under master agreements and the prices are not set in the contracts themselves, so the Commission is not able to determine from EQR data when the price was set. The Commission concludes that requiring market participants to report the date on which parties to a reported transaction agreed upon a price (trade date) is necessary to improve market transparency. The trade date should be reported in the EQR transaction section accompanied by each specific sales transaction.

92. We further clarify that, in cases where pricing detail is provided in the contract description, the Contract Execution Date should be considered the trade date. Where applicable, this clarification will virtually eliminate any additional burden associated with this field by allowing the filer to complete the trade date field for each transaction by using a date (Contract Execution Date in the contracts section) already provided in the filing. It also will obviate the need to identify whether this requirement applies to transactions with trade dates before the initial filing that includes this field. It is unlikely that a transaction will occur during or after the first filing under these new rules that both became legally binding before the effective date of this Final Rule and does not have an appropriate Contract Execution Date already reported.

93. In response to EPSA, we clarify that RTO and ISO transactions do, in fact, reflect an agreement of the parties upon a price. Parties are legally bound by the terms of the relevant RTO or ISO tariff and sellers agree to sell a product at the price at which their offer is awarded. Although the price may be altered after it is awarded due to the application of mitigation or other RTO or ISO market rules, we clarify that the trade date should reflect the price at the time of the initial award. RTOs and ISOs operate a number of different markets where similar products are offered. For example, energy can be offered day-ahead or real-time. Capacity is offered monthly, annually and several years in advance. In each of these cases, the addition of a trade date will help the Commission and the public gain a better understanding of the market environment in which a given transaction was consummated.

94. In response to Entergy's concern about hourly transactions being changed at a later date, we clarify that filers are expected to identify the price associated with the transaction as it was agreed to. If there is some disagreement or uncertainty between the parties regarding the terms of the transaction on the ''trade date,'' the Commission has promulgated a refiling policy to allow the selling party to correct those terms when the disagreement is settled or the uncertainty is eliminated. Correcting the reporting, however, does not change the fact that the reported transaction occurred because the parties to the transaction had agreed to something on a given date. That date would not change even if the parties' understanding of what they agreed to evolves.

95. In addition, in response to EEI's suggestion that the Commission should hold a technical conference to discuss the requirement for trade date data, the Commission notes that it intends to convene a staff-led technical conference following issuance of this Final Rule, to be announced at a future date, to discuss the additional fields required under this Final Rule, including the field for trade date.

(b) Time of Trade

96. Several commenters indicate concerns about the NOPR's proposal to require market participants to report the time of trade. Some commenters contend that the time of trade, defined in the NOPR as the time upon which parties agree upon the price of a transaction, can be difficult to identify definitively.[159] Certain commenters argue that the time parties agree on price may not be the time the trade occurred or was finalized.[160] For example, EDF Trading states that parties may agree to the price or pricing mechanism hours or even days before they come to an agreement regarding other material terms of the transaction, meaning that the time upon which parties agree upon the price of a transaction frequently will not correspond to the time at which parties execute or confirm that transaction.[161]

97. Several commenters also state that the actual price of a transaction may be subject to revision even after parties have reached agreement on the price.[162] For example, Westar asserts that if a market participant is party to a liquidated damages contract and the transaction is curtailed, the party will not know the price of the contract until weeks after the power is delivered.[163] Entergy states that rates for future transactions may be affected by changes in tariff rates and other circumstances between the time when the transaction was made and the date the transaction flows. Further, Entergy states that some hourly market sales may have final prices that are subject to review and agreement at a later date.[164] Finally, EPSA states that the Commission needs to clarify whether RTO or ISO sales are included in the date/time reporting requirement as these transactions do not meet the Commission's proposed definition of agreement of the parties upon a price.[165]

98. Some commenters also indicate that existing trade capture systems are not set up to capture the time of trade.[166] For example, Powerex states that the time of trade is not currently recorded and significant work would be required to record time of trade, which would need to account for trades made verbally.[167] EDF Trading states that under its existing systems and procedures, a trader gathers information regarding each transaction as he or she completes it, but does not enter the details of each transaction until later in the day when the trader has completed most trading activities. EDF Trading states that its electronic system creates a time stamp as soon as a trader enters a transaction and this system generates information reported in EDF Trading's EQRs. EDF Trading asserts that, if the

[158] NOPR, FERC Stats. & Regs. ¶ 32,676 at P 91.

[159] *See, e.g.,* EDF Trading at 7; EEI at 10–11; Entergy at 2–3; EPSA at 6–7; Pacific Northwest IOUs at 2; Westar at 2.

[160] *See, e.g.,* EDF Trading at 7; EEI at 10–11; Entergy at 2–3; EPSA at 7.

[161] EDF Trading at 7.

[162] *See, e.g.,* Entergy at 2–3; EPSA at 6–7; Westar at 3.

[163] Westar at 3.

[164] Entergy at 2–3.

[165] EPSA at 6 (''ISO/RTO mitigation schemes sometimes alter awarded prices, which are unknown to the market participant and are not received until substantially after the flow date.'').

[166] *See, e.g.,* EDF Trading at 7–8; EEI at 9; Entergy at 1–2; EPSA at 5; Financial Institutions Energy Group at 7; Pacific Northwest IOUs at 2; Powerex at 14; Shell Energy at 8; Westar at 3.

[167] Powerex at 14.

Commission requires market participants to report time of trade information, traders will be forced to interrupt their trading activities to enter each trade into the system electronically as soon as parties agree on pricing. According to EDF Trading, such a requirement would eliminate flexibility, reduce trading opportunities, potentially increase the bid/ask spreads, and impose additional time burden on traders during the trading day, the time of day when the markets are at their most active.[168] Similarly, EPSA states that a new requirement to log times will inhibit desk personnel and frustrate liquid markets.[169]

99. Financial Institutions Energy Group states that time of trade data may be prone to inaccuracies, noting that errors may arise from such factors as clocks that run slow or fast, clocks that are not synched, traders forgetting to look at the time or write it down, time zone confusions, and illegible handwriting. Financial Institutions Energy Group adds that the time on a time-stamped trade confirmation from a third party entity, such as a broker, cannot be independently verified.[170]

100. EEI and Powerex urge the Commission not to apply the proposal to report time of trade to existing transactions. Powerex states that it has some transactions that will continue to be reported to the Commission for years to come and it is not sure how to identify the time of trade for these long-term transactions.[171] Likewise, EEI suggests that the requirement should only apply prospectively for transactions entered into after the Commission adopts the final rule in this proceeding.[172]

101. EEI also suggests that the Commission hold a technical conference to: (1) Explore the need for time of trade or trade date data; (2) gain a better understanding of impacts on EQR filers and affected systems; and (3) ensure that any such reporting requirement is carefully tailored to maximize benefits while minimizing the burden on reporting entities.[173]

(1) Commission Determination

102. The Commission will not require the time of trade, as proposed in the NOPR. As noted in many comments, it may be difficult to specify definitively the time at which parties agreed upon the price of a transaction and the actual price of the transaction may be revised after parties have agreed on the price. In addition, certain commenters expressed concern that existing trade capture systems are not set up to capture the time of trade and such a requirement may impose additional time burden on market participants. In light of these comments, the Commission has determined not to require reporting of the time of trade.

(c) Type of Rate

103. EEI questions the need for information regarding the type of rate for each transaction and contends that the specific nature of the rate involved in a transaction can already easily be determined using the Contract Service Agreement ID information provided in the EQR contract data. In addition, EEI argues that the burden of providing rate type information separately will outweigh its value and asserts that rate type information may be difficult to specify, will be of little use, could be misleading, and will cause errors.[174] EEI states that, if the Commission requires rate type information, the Commission should allow substantial flexibility, recognizing the wide variety of rates currently in use.[175]

104. Finally, EEI asks for clarification as to what type of rate would apply to the following examples: (1) A formula rate with a gas or fuel index (or any other index that is not an energy or capacity index); (2) a rate used for an exchange agreement where one party pays an additional charge in addition to supplying return energy; (3) a rate structure that goes up (and/or down) a stated amount each year; and (4) a formula that is tied to an RTO price, i.e., the greater of the RTO price or the contract price.[176]

(1) Commission Determination

105. The Commission adopts the NOPR proposal to require the type of rate by which the price was set for each transaction to be reported in EQR, with slight modifications to the terms used to describe the types of rates. Specifically, the names proposed in the NOPR, ''fixed price,'' ''formula,'' ''index,'' and ''RTO/ISO price'' will be changed to ''fixed,'' ''formula,'' ''electric index,'' and ''RTO/ISO,'' as discussed below. For many of the same reasons discussed above in relation to trade date, the Commission disagrees with EEI's assertion that the information provided in the EQR contract data is sufficient for the Commission to discern which transactions belong to which of the following four types of rates proposed: ''fixed,'' ''formula,'' ''electric index,'' and ''RTO/ISO.'' The contract section of the EQR is incomplete in terms of identifying the manner in which the rate on a given transaction is calculated. Further, where a rate is detailed, the rate descriptions are entered as free-form text providing no opportunity to compare across similar transactions. For the many transactions without detailed rate descriptions, on the other hand, rate type will provide critical information not contained in the current filings.

106. Obtaining information about the type of rate associated with each transaction is critical to understanding the role of transactions within the market. Like the trade date, rate type will allow interested parties to better understand the market context of a given transaction. For instance, was the price a fixed number that both parties agreed on or an indexed number that was determined by the market? This distinction is particularly important in identifying potential market manipulation where fixed price transactions may be used to affect larger, index-priced positions. For these reasons, the Commission will require types of rates to be reported in a separate field in the EQR. The type of rate should accompany each specific sales transaction and be reported in the EQR transaction section.

107. EEI's comment that specifying the type of rate may be difficult for certain transactions is noted. To provide clarification, the following description will be referenced in the EQR Data Dictionary and one of the names of one of the rate type options will be changed. If the price is the result of an RTO/ISO market and the sale is made to the RTO/ISO, its rate type is ''RTO/ISO.'' If no variables are used to determine the rate, it should be marked as ''fixed.'' This would include transactions where the specific price is stated or a specific price with a predetermined escalator is provided (e.g., $35.00/MWh, increasing by 2 percent each year). Under a transaction classified with the rate type ''fixed,'' both parties would know on the trade date the exact price of the product(s) in that transaction.

108. If the transaction uses an electric-based index in any way, either as a base price or as a means to determine a basis, it should be identified as an ''electric index.'' This represents a clarification from the NOPR which included the

[168] EDF Trading at 7–8.

[169] EPSA at 5.

[170] Financial Institutions Energy Group at 8.

[171] Powerex at 14.

[172] EEI at 13.

[173] *Id.* at 14.

[174] In particular, EEI notes that reporting rate type will require EQR filers to determine: whether a formula rate with a gas or fuel index (or any other index that is not an energy or capacity price index) is an ''index'' or ''formula'' rate; what rate type to use for an exchange agreement; and what to report if a trade is a combination of types. *Id.* at 15.

[175] *Id.* at 14–15.

[176] *Id.* at 15.

broader rate type ''index.'' If the price in the transaction is otherwise determined by a formula, including a formula that uses indices that do not describe specific electric prices, such as a cost of living index or coal or natural gas prices, it should be designated as rate type ''formula.'' In summary, the Commission will adopt this field with the following limited list of rates that are appropriate for this field: ''fixed,'' ''formula,'' ''electric index'', and ''RTO/ISO.''

b. Resale of Financial Transmission Rights in Secondary Markets

i. NOPR

109. In the NOPR, the Commission declined to require entities to report information about financial transmission rights in the EQR.

ii. Comments

110. The NOPR proposal not to collect information in EQRs about resales of financial transmission rights was supported by all who commented on the matter. EEI states that collecting this information would not significantly improve price transparency.[177] Financial Institutions Energy Group states that the burden imposed by adding a new reporting requirement for FTR trades in secondary markets would not be justified by the minimal value of the data.[178]

iii. Commission Determination

111. As indicated in the NOPR, requiring financial transmission rights data to be reported by market participants in the EQR, in addition to the information already provided by RTOs and ISOs, would not significantly improve price transparency in these markets. Although little information is available on secondary sales of financial transmission rights, there is also little evidence of an active secondary market. For these reasons, the Commission will not require reporting of secondary sales of FTRs at this time, but will continue to monitor market developments if in the future such a requirement becomes necessary.

c. Standardizing the Unit for Reporting Energy and Capacity Transactions

i. NOPR

112. In the NOPR, the Commission proposed to include a new field in the EQR transaction section to standardize the units for reporting energy and capacity within the EQR. Specifically, the Commission proposed to require a market participant to report energy transactions as $/MWh and capacity transactions as $/MW-month.

ii. Comments

113. Financial Institutions Energy Group and Joint Market Monitors support the NOPR proposal to use standardized units of $/MWh and $/MW-month for reporting energy and capacity transactions, respectively.[179] Joint Market Monitors state that standardization will avoid the considerable time and resources spent by analysts to ensure than the units conform before conducting any meaningful analysis.[180] Joint Market Monitors also state that, in some cases, the proposed standardization is needed so that the data reported can actually be utilized. Pennsylvania Commission supports the proposal to standardize units insofar as having common units for reporting energy and capacity will simplify data interpretation.[181]

114. Several commenters recommend revisions or clarifications to the NOPR proposal to standardize units. EEI agrees that common units for reporting energy and capacity transactions would simplify interpretation of the data, but requests clarification that such conversion consist only of KWh to MWh and KW to MW (i.e., filers can still report transactions in MW-Month, MW-Day, KVA, MVAR, etc.). EEI also states that some entities report capacity in KVAR and other units that do not easily convert to MW and certain rates, such as backup rates, may not fit well with standard units. As such, EEI suggests that the Commission also allow reporting in alternative units while encouraging EQR filers to use standard units if logical and feasible. In addition, EEI notes that the Commission will likely have to increase the number of digits in the ''Rate'' field to accommodate reporting in MWh.[182]

115. Entergy asserts that it currently reports transactions in accordance with the units used in the underlying contracts; thus many of the transactions it reports would require translation to match the proposed standardization. Entergy suggests that the Commission consider modifying the EQR software to include an automatic conversion formula to reduce errors and inconsistencies that would result from each reporting entity developing its own conversions.[183]

iii. Commission Determination

116. The Commission generally adopts the NOPR proposal to standardize the units for reporting energy and capacity sales within the EQR transaction section. In the NOPR, the Commission proposed to add a new field to capture a common unit for reporting energy and capacity transactions. However, instead of adding only one field, the Commission will include two new fields to the EQR transaction section and will require filers to standardize the units for reporting both prices and quantities for energy, capacity, and booked out power transactions within the EQR. Accordingly, filers must specify the quantity for energy in MWh and the price for energy in $/MWh. Filers must specify the quantity for capacity as MW-month and the price for capacity in $/MW-month. For booked out power transactions, filers must use the same quantity and price conventions associated with energy or capacity, as appropriate.

117. Standardized units will provide greater transparency and facilitate the Commission's and public's ability to analyze EQR data. Specifically, with price and quantity expressed consistently across all filings, EQR filers and users will benefit from the increased ease of comparing data for analysis and quality control. The Commission notes that, in 2011, energy sales were reported in the EQR approximately 1 percent of the time in units other than $/MWh and that capacity sales were reported in the EQR 86 percent of the time in units other than $/MW-month. In the case of energy transactions, these statistics refute Entergy's assertion that many of the transactions reported in the EQR would require translation. In response to EEI's comment, we recognize that some entities currently do not report in units that can be easily converted to $/MWh for energy and $/MW-month for capacity, however, we note that such conversions are even more difficult, if not impossible, for entities not actually involved in the transaction, including the Commission and the public. The Commission will ensure the appropriate number of digits in the EQR software to accommodate the conversion.

118. The Commission rejects Entergy's suggestion that having the EQR software do the data conversion would eliminate some of the potential

[177] EEI at 8.

[178] Financial Institutions Energy Group at 4.

[179] Financial Institutions Energy Group at 3–4; Joint Market Monitors at 5–6.

[180] Joint Market Monitors at 5–6. (stating that ''a substantial portion of bilateral capacity sales in the California ISO's markets have been reported without any indication of the amount of capacity (MW) covered by the sale,'' rendering such data ''useless'').

[181] Pennsylvania Commission at 5.

[182] EEI at 16.

[183] Entergy at 3.

errors that might arise in having filers convert their own data from the units specified in the underlying contracts. There are many simple conversions that the EQR software could make. However, in certain instances, there may be insufficient information for the EQR software to accurately perform conversions. For example, capacity transactions are commonly reported in a ''flat rate'' price with a quantity of ''one.'' Transactions reported in this manner do not provide sufficient information regarding the price of a transaction and do not allow for conversion to a standardized unit. Adding new fields that display standardized prices and quantities will address these issues.

d. Omitting the Time Zone From the Contract Section of the EQR

i. NOPR

119. The Commission proposed to eliminate the Contract Time Zone (Field Number 45) from the EQR.

ii. Comments

120. The NOPR proposal to eliminate time zone information in the contracts section was supported by those that commented on the matter.[184] EEI states that time zone information is unnecessary and that eliminating it will reduce burden on filers.[185]

iii. Commission Determination

121. The Commission agrees with commenters supporting the elimination of the Contract Time Zone (i.e., currently Field Number 45) from existing EQR requirements. We find that this information is unnecessary and its elimination will reduce filers' burden. The Commission will, however, continue to require EQR filers to report the time zone where the transaction took place in the transaction section (i.e., new Field Number 56).

2. Additional EQR Enhancements

a. Identify Transactions Reported to Index Publishers

i. NOPR

122. The Commission proposed to require all market participants that are required to file an EQR to report in the transaction section of the EQR the particular electric or natural gas index price publisher to which they have reported their sales transactions, if applicable. The Commission also proposed to eliminate the requirement, under 18 CFR 35.41(c), that a market-based rate seller notify the Commission whether it is reporting transactions to an electricity or natural gas index publisher.

ii. Comments

123. DC Energy, Joint Market Monitors, and Pennsylvania Commission support the Commission's proposal to require all EQR filers to report in the transaction section of the EQR the index price publisher(s) to which they have reported their sales transactions.[186] Joint Market Monitors state that information about reporting to an index publisher will assist transparency in pricing.[187] Pennsylvania Commission states that such information is critical to better enable the Commission to understand how index prices are established and how market forces affect index prices.[188]

124. Other commenters assert that, if adopted, the proposal to identify every transaction reported to index publishers would result in a manual, burdensome process.[189] For example, EEI states that not all trades are reported to index publishers and that information on whether a trade is reported is not usually captured on a trade-by-trade basis in company trade capture systems. As such, EEI states that this proposal would require significant changes to business processes and systems as well as create a disincentive for companies to report transactions to index publishers.[190] EPSA states that the NOPR does not clearly state whether companies would report the names of publishers to whom they report generally or if they have to identify a publisher's name for every transaction that has been reported. EPSA argues that reporting the index publisher name for every transaction would be a difficult and expensive manual process.[191]

125. Financial Institutions Energy Group suggests that the Commission clarify that reporting entities have no responsibility for how brokers or trading facilities may use their data. Specifically, Financial Institutions Energy Group contends that if a broker elects to publish a daily index using information from trades it completed on behalf of its customers, reporting entities cannot be responsible for disclosing such use in any reporting notice or for trying to discern which of their trades were or were not included in the index.[192]

126. Certain commenters recommend alternatives to the Commission's proposal. EEI suggests an alternative proposal that would require an EQR filer to identify, in a general statement, the index publishers to which the filer provides transactional information and the types of transactions reported. Shell Energy similarly suggests that, instead of requiring sellers to identify the index developer to which a transaction was reported, the Commission could require that EQR filers reporting to index publishers make their reporting criteria available to the Commission.[193] Financial Energy Institutions Group also urges the Commission to retain the practice of requiring sellers to alert the Commission on their reporting status at a more generalized level, and, if needed, require additional detail in a reporting status statement. In addition, Financial Institutions Energy Group proposes that the Commission could embed these status reports in the EQR, somewhat like it has in FERC Form 552 for natural gas trades.[194]

iii. Commission Determination

127. The Commission will adopt the proposal in the NOPR to require all filers to report in the EQR the index price publisher to which they have reported their sales transactions, if applicable, with modifications. In light of comments by EPSA, EEI, Financial Institutions Energy Group and Shell Energy, expressing concern that identifying each applicable transaction in the transaction section would result in a manual and burdensome process, the Commission will allow index publisher information to be reported more generally, in the ID data section of the EQR, instead of on a transactional basis. Specifically, EQR filers should report in the ID data section of the EQR whether their transactions are reported to an index publisher, and if so, which index publisher(s). In addition, if EQR filers report specific types of transactions to index price publisher(s), they should specify the type(s) of transactions that they report.

128. For the reasons stated in the NOPR, the Commission believes that requiring filers to identify the index price publishers in the EQR to which they report their wholesale sale transactions would provide the Commission, market participants, and the public with greater transparency

[184] *See, e.g.,* EEI at 8–9; Financial Institutions Energy Group at 4.

[185] EEI at 8–9.

[186] *See, e.g.,* DC Energy at 4–5; Joint Market Monitors at 4–5; Pennsylvania Commission at 5.

[187] Joint Market Monitors at 5.

[188] Pennsylvania Commission at 5.

[189] *See, e.g.,* EEI at 16–17; EPSA at 8–9; Financial Institutions Energy Group at 10; Shell Energy at 8–10.

[190] EEI at 16–17.

[191] EPSA at 8–9.

[192] Financial Institutions Energy Group at 10.

[193] Shell Energy at 10.

[194] Financial Institutions Energy Group at 9.

into the market forces affecting those index prices and the level of companies' sales used to calculate the index prices.[195] In addition to market participants' significant use of index prices in contracting for sales in the physical electricity market, the use of index prices has expanded to forming settlement prices for financial products.[196] Given that physical spot markets are used to settle financial swaps, there is an incentive to manipulate the physical markets to benefit larger financial positions.[197] We find that greater transparency will further our understanding of how index prices are formed, thereby enhancing public confidence in their accuracy and reliability, improving the Commission's ability to monitor price formation in wholesale markets and potential exercises of market power and manipulation, and helping to ensure robust indices.[198]

129. Moreover, obtaining information from market participants, not only jurisdictional power sellers with market-based rate authorization from the Commission, about the sales reported to specific index publishers will strengthen the Commission's and public's ability to determine whether these index prices reflect market forces and provide market participants with greater confidence in the accuracy of index prices.[199] Therefore, we will require each EQR filer to report in the ID Data section the particular index publisher to which they report transactions, if applicable, and specify the types of transactions reported to the index publisher(s), if applicable. To the extent an EQR filer identifies only the name of an index publisher(s) in the ID data section of the EQR, the Commission expects the index publisher(s) reported in the EQR to reflect the entity or entities to which the market participant is reporting all of its trades.

130. To eliminate redundancy between the EQR filings and the notification required under 18 CFR 35.41(c) from market-based rate sellers,[200] we will amend that provision to no longer require notifications from these sellers to the Commission stating whether they are reporting transactions to electricity or natural gas index publishers, or updates of such notifications. The Commission has attached a list of index price publishers in Appendix G that filers can choose from in a restricted data field. We acknowledge that the index price publisher list may change from time to time. Therefore, consistent with notification of changes to the list of entries for other restricted fields in the EQR, Commission staff will email all EQR filers any future changes to the list of entries contained in the index publisher fields and post these changes on the EQR page of the Commission's Web site.[201] In addition, to assist the Commission in keeping the list of index publishers current, we expect filers to notify Commission staff by emailing *eqr@ferc.gov* if they begin reporting to an index publisher that is not listed in the EQR.

131. Since the requirement to identify index publishers is intended to reveal transactions that affect other index-based market instruments (e.g., transactions that settle using a published index price), the Commission will clarify, as requested by Financial Institutions Energy Group, that it will not apply to broker-published indices that are provided to the broker's clients. Finally, we clarify at Financial Institutions Energy Group's request, that the Commission is not requiring EQR filers to track, and report on, how brokers or trading facilities are using data from their transactions. However, we will require EQR filers to report which transactions were consummated using an exchange or broker service, as discussed below.[202]

b. Identify the Exchange/Broker Used to Consummate a Transaction

i. NOPR

132. The Commission proposed to require market participants to report in the EQR whether a market participant used an exchange or a brokerage service to consummate a transaction.

ii. Comments

133. DC Energy, Joint Market Monitors, and Pennsylvania Commission support the Commission's proposal to require all EQR filers to report information regarding whether exchanges or brokers were used to consummate a transaction.[203] In particular, Joint Market Monitors state that information about the involvement of brokers will assist in understanding the complicated relationship between Commission-jurisdictional markets and closely-related financial markets.[204] As with the proposal above to obtain information about index publishers, Pennsylvania Commission states that information about brokers and exchanges is critical to better enable the Commission to understand how index prices are established and how market forces affect index prices.[205]

134. EEI and EPSA state that broker and exchange information is not currently collected by most trade capture systems, so modification of the systems in order to meet the proposed requirement would add a significant burden.[206] However, Financial Institutions Energy Group states that its members generally capture broker and trading platform information for each trade in their trade capture systems.[207]

135. Several commenters assert that publicly reporting the name of the broker[208] or exchange[209] used to conduct a transaction may raise confidentiality concerns. EEI, EPSA and Financial Institutions Energy Group state that, depending on contractual terms, market participants may not have the ability to publicly disclose the name of a broker that was used or which transactions used a broker.[210] EEI states that revealing a broker's identity could lead to unwelcome solicitations by other brokers seeking new business.[211] To address confidentiality concerns, EEI and Financial Institutions Energy Group suggest that the Commission allow market participants to file their EQRs with a request for confidential treatment

[195] *See* NOPR, FERC Stats. & Regs. ¶ 32,676 at P 111.

[196] *Id.* P 112.

[197] For example, a market participant with fixed price financial-swap contracts could manipulate the physical index price by transacting power at a loss for transactions that contribute to the index. The market participant could profit from such activity because any loss from selling power that contributes to the index price could be more than offset by financial-swap gains resulting from moving the index price. *See id.*

[198] *See id.*

[199] *Id.* P 113.

[200] Section 35.41(c) of the Commission's regulations, 18 CFR 35.41(c), requires market-based rate power sellers to submit a notification to the Commission if they report transactions to electric or natural gas price index publishers. Section 35.41(c) of the Commission's regulations, 18 CFR 35.41(c), requires market-based rate power sellers to submit a notification to the Commission if they report transactions to electric or natural gas price index publishers. *See Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218, at PP 116–119 (2003).

[201] *See* Order No. 2001–G, 120 FERC ¶ 61,270 at P 5 (*citing Revised Public Utility Filing Requirements,* 106 FERC ¶ 61,281 (2004)).

[202] *See* discussion *infra* at § II.B.2.b.

[203] *See, e.g.,* DC Energy at 4–5; North American Market Monitors at 4–5; Pennsylvania Commission at 5.

[204] North American Market Monitors at 5.

[205] Pennsylvania Commission at 5.

[206] EEI at 17; EPSA at 10.

[207] Financial Institutions Energy Group at 11.

[208] *See, e.g.,* EEI at 17; EPSA at 9–10; Financial Institutions Energy Group at 11.

[209] Financial Institutions Energy Group at 11.

[210] EPSA at 9; Financial Institutions Energy Group at 11.

[211] EEI at 17–18.

when needed to avoid breaching confidentiality obligations.[212]

136. Finally, several commenters suggest clarifications to the Commission's proposal. EEI suggests that if the Commission does decide to collect information on broker and exchange use in the EQR, having a standardized list of codes for the exchange and brokers would help simplify reporting and analysis.[213] EPSA states that the Commission should clarify what specifically constitutes ''use.'' [214] Financial Institutions Energy Group notes that it assumes the NOPR's reference to ''exchanges'' refers to trading platforms like ICE.[215]

iii. Commission Determination

137. The Commission adopts, with modification, the NOPR proposal to require EQR filers to report whether an exchange or broker was used to consummate a transaction. As stated in the NOPR, exchanges and brokers routinely publish index prices composed of wholesale sale transactions that were consummated on their exchange or through their brokerage services.[216] Indices published by exchanges and brokers are used by market participants in contracting for sales in the physical electricity market and as a settlement price associated with financial products. By adding transparency as to how these indices are created, the Commission and the public will be able to better understand how these indices arrive at their published prices, thereby increasing public confidence in the indices, improving the Commission's ability to monitor price formation in wholesale markets and potential exercises of market power and manipulation, and helping to ensure robust indices.

138. For purposes of this rulemaking, we clarify that the term ''use'' of an exchange or broker encompasses instances where the exchange's or broker's services were used to consummate or effectuate a transaction. The term ''use'' does not cover instances where an index developed by an exchange or broker is used to identify or set the price for a transaction. We also clarify that ''exchanges'' refer to trading platforms like ICE or NYMEX. In addition, the Commission will provide a standardized list of codes for exchanges for EQR filers to use, as suggested by EEI. This list is included in Appendix H of the EQR Data Dictionary.

139. Certain commenters argue that publicly reporting the name of the broker or exchange may raise confidentiality concerns and suggest that the Commission allow requests for confidential treatment when market participants file EQRs. The transparency provisions of FPA section 220 require the Commission to balance the need to disseminate information to the public with concerns about confidentiality. The Commission must comply with Congress' directive that the rules to facilitate price transparency ''provide for the dissemination, on a timely basis, of information about the availability and prices of wholesale electric energy and transmission service to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public.'' [217] However, the Commission must also ''seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.'' [218] Requiring filers to identify whether an exchange or broker was used to consummate a transaction provides for public dissemination of data that facilitates price transparency. We determine that the 30-day time delay after each calendar quarter in filing EQRs should prevent collusion or other anticompetitive behaviors that can result from untimely public disclosure of transaction-specific information. This finding is consistent with the Commission's determination in Order No. 2001 that the 30-day time delay in the filing of transaction-specific information in the EQR ''will greatly reduce the usefulness of the data as a tool for collusion.'' [219] Therefore, we find that the Commission has appropriately balanced the need for transparency with confidentiality concerns and, thus, we will not allow market participants to request confidential treatment for their EQR filings.

140. Given the use of exchanges in contracting for sales of electricity in physical markets and as a settlement price associated with financial products, we will require EQR filers to identify in the EQR the exchange used to consummate a transaction on a transactional basis. However, because broker-produced indices appear to be used less prevalently at this time by market participants and in light of commenter concerns that revealing the identity of a broker may encourage unwanted solicitation by brokers, the Commission will not require the names of the brokers to be disclosed. Instead, if a broker is utilized to consummate a transaction, the term ''BROKER'' shall be selected from the Commission-provided list in Appendix H of the EQR Data Dictionary.

141. Although EEI and EPSA indicate that broker and exchange information is not currently collected by most trade capture systems, we note that Financial Institutions Energy Group comments that its members generally collect this information. We expect that, on balance, the benefit of transparent pricing should outweigh the burden associated with developing automated systems to capture this data.

142. We acknowledge that the list of exchanges may change from time to time. Therefore, consistent with the notification of changes to the list of entries for other restricted fields in the EQR, Commission staff will email all EQR filers any future changes to the list of entries to the exchange fields and post these changes on the EQR page of the Commission's Web site.[220] In addition, to assist the Commission in keeping the list of exchanges current, we expect filers to notify Commission staff by emailing *eqr@ferc.gov* if they begin reporting to an exchange that is not listed in the EQR.

c. Collection of e-Tag ID Data

i. NOPR

143. The Commission proposed to require market participants to submit e-Tag IDs for each transaction reported in the EQR in the event an e-Tag is used to schedule the transaction.

ii. Comments

144. DC Energy, Joint Market Monitors, and Pennsylvania Commission support the Commission's proposal to require EQR filers to submit e-Tag IDs for each transaction reported in the EQR if an e-Tag is used to schedule the transaction.[221] However, as

[212] EEI at 17–18; Financial Institutions Energy Group at 11.

[213] EEI at 8.

[214] EPSA further states that in the NOPR, ''use'' of a broker could be construed as specifically using a broker's index to set the price of a transaction. Conversely, entities can also use a broker, EPSA states, without necessarily basing the price of the transaction on a broker index. EPSA at 10–11.

[215] Financial Institutions Energy Group at n.28.

[216] NOPR, FERC Stats. & Regs. ¶ 32,676 at P 114.

[217] 16 U.S.C. 824t(a)(2).

[218] *Id.* 824t(b)(2).

[219] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at PP 17, 122; *see also* Order No. 2001–A, 100 FERC ¶ 61,074 at PP 19–21.

[220] *See* Order No. 2001–G, 120 FERC ¶ 61,270 at P 5 (citing *Revised Public Utility Filing Requirements,* 106 FERC ¶ 61,281 (2004)).

[221] *See, e.g.,* DC Energy at 4–5; Joint Market Monitors at 4–5; Pennsylvania Commission at 5.

detailed below, some other commenters oppose the proposal.

(a) Burdens

145. Some commenters oppose the proposal based on anticipated burdens associated with inclusion of e-Tag IDs in the EQR.[222] EDF Trading anticipates that this new requirement could add as much as eight hours of additional work each day, or a full-time equivalent employee, and would require additional technology investments.[223] EPSA states that the proposal would require significant, if not exorbitant, system modifications; their members have reported that, at a minimum, two or more full-time employees may need to be hired to properly compile e-Tag data.[224] Financial Institutions Energy Group notes that e-Tag IDs are not included in their trade capture systems; therefore, matching e-Tag IDs and individual transactions would raise significant information technology, manual intervention and reconciliation concerns. Financial Institutions Energy Group's members conservatively estimate that complying with the NOPR proposals, with e-Tags accounting for the greatest expenditures, would cost between $55,000 and $400,000 per company to implement and between $2,500 and $10,000 per company each quarter.[225] Commenters also state that one utility has estimated that the proposed e-Tag ID data could require that company to hire two to three or more new full-time personnel to extract, review, and report the data, ultimately, at ratepayer expense.[226] Joint Commenters and LPPC also note that they are unaware of any available off-the-shelf software that could perform this function and that contracting with a software developer would likely be a multi-million dollar proposition.[227]

(b) Implementation Issues

146. Some commenters assert that e-Tag IDs would not be easy to match with individual transactions.[228] EDF Trading argues that e-Tags do not reflect transactions; they reflect the culmination of transactions.[229] Westar states that there can be multiple e-Tags for any given trade and, if the Commission imposes this requirement, what is now a single line of data in the EQR will become multiple lines of data, substantially increasing the volume and burden of the reporting requirement for market participants. Similarly, Financial Institutions Energy Group states that transactions and schedules may not always align because a particular trade may be associated with more multiple e-Tags.[230]

147. Powerex contends that compliance with the EQR proposal with respect to e-Tags would constitute a dramatic change in industry practice for many market participants because each trade would be required to be represented with one e-Tag. Powerex adds that such a major change would have significant consequences, including a dramatic reduction in market efficiency.[231]

148. TAPS states that joint action agencies' and G&T cooperatives' use of network transmission service or secondary network transmission service to deliver resources to dispersed network loads may produce confusing results when filed with an e-Tag ID in EQR. For instance, TAPS asserts that if a joint action agency's resource is supplying multiple members' loads located in a different Balancing Authority, one e-Tag may be used to transfer power between Balancing Authority Areas and would not identify the particular loads being served or the quantities of power being served to those loads.[232]

149. Some commenters state that the Commission's proposal to require EQR filers to submit e-Tag IDs in the EQR would result in an incomplete picture because not all transactions are scheduled using e-Tags.[233] TAPS states that the resulting reporting of e-Tag ID information for only a subset of sales will cause confusion rather than enhance transparency. According to TAPS, the absence of e-Tag data for transactions within a Balancing Authority Area severely limits the utility of requiring and reporting of e-Tag data for interchange transactions.[234]

150. Some commenters mentioned that e-Tag and transaction information is captured by different systems and by separate personnel, complicating compliance with the Commission's proposal.[235] For example, Financial Institutions Energy Group states that the functions of scheduling and trading are performed at different times and by different personnel, so that the path used to schedule and tag a specific flow does not always indicate what may have motivated the trader to execute the trade.[236]

151. Joint Commenters and LPPC are concerned that the burdens of reporting e-Tag IDs will outweigh the value of such information. They note that power sales contracts typically specify a point of delivery, which already is reported in the EQR. Further, they state that most power sales contracts do not specify source or sink information (thus, such information is not typically collected in trade capture systems) because that information is not needed for market participants to negotiate a transaction and agree on its terms.[237]

152. Some commenters also mentioned that certain parties may not be privy to e-Tag data.[238] As EDF Trading states, a market participant in the middle of the path would report the transaction on its EQR, but may not have recorded the e-Tag information and, as such, would not be able to report it. Also, EDF Trading states, if a counterparty is inadvertently omitted from a multiple party transaction e-Tag, the market participant may be unable to view the e-Tag.[239] EPSA similarly states that in many cases, the seller does not have direct access to e-Tag data because the seller is not involved in scheduling.[240]

153. EPSA also states that e-Tag data may be commercially sensitive. Specifically, EPSA contends that if e-Tag information is made public it would allow a competitor to trace the supply sources used for specific customers and use that information to lure the customer away from the supplier. EPSA also argues that e-Tag data typically includes multiple counterparties and, as such, e-Tag data is not only commercially sensitive but most contracts do not allow the release of data regarding counterparties.[241]

[222] *See, e.g.,* EDF Trading at 6; EPSA at 17; Entergy at 3; Financial Institutions Energy Group at 16; Joint Commenters at 4; LPPC at 12–13; Pacific Northwest IOUs at 2–3; Shell Energy at 5.

[223] EDF Trading at 6.

[224] EPSA at 17.

[225] Financial Institutions Energy Group at 16.

[226] EPSA at 17; Joint Commenters at 4; LPPC at 12–13.

[227] Joint Commenters at 4; LPPC at 13.

[228] *See, e.g.,* EDF Trading at 3–4; EPSA at 16; Financial Institutions Energy Group at 12; Joint Commenters at 3–5; LPPC at 12–13; Pacific Northwest IOUs at 2; Powerex at 5–10; Shell Energy at 6–7; TAPS at 16–17; Ronald Rattey at 11–13; Westar at 4–5.

[229] EDF Trading at 3.

[230] Westar at 4.

[231] Powerex at 10.

[232] TAPS at 16–17.

[233] *See, e.g.,* EDF Trading at 3; Entergy at 3–4; Financial Institutions Energy Group at 13 (''e-Tags are not created for movements within Balancing Authorities, but rather for movements between them.''); LPPC at 12; NRECA at 19; TAPS at 15–17.

[234] TAPS at 15–16.

[235] *See, e.g.,* Entergy at 3; EPSA at 14–15; Financial Institutions Energy Group at 12–14; Joint Commenters at 5; LPPC at 14; Ronald Rattey at 11–13; Shell Energy at 5.

[236] Financial Institutions Energy Group at 12.

[237] Joint Commenters at 3; LPPC at 11–12.

[238] *See, e.g.,* EDF Trading at 3–5; EPSA at 13–14; Westar at 5.

[239] EDF Trading at 5.

[240] EPSA at 13.

[241] *Id.* at 17.

154. Several commenters propose modifications to or clarifications of the NOPR proposal. Shell Energy suggests that, if the Commission ultimately decides to adopt the proposal to include e-Tag IDs in the EQR, it should limit this requirement to real-time transactions. According to Shell Energy, excluding long-term transactions for which numerous e-Tag IDs could be generated without a substantive difference in the transaction itself would reduce the reporting burden.[242] MISO seeks clarification from the Commission that the requirement to provide e-Tag data as part of the EQR is in fact limited to market participants and is inapplicable to RTOs and ISOs.[243] MISO comments that a potential inaccuracy in reporting e-Tag data could arise if it is required to report this information. Although MISO provides its market participants with transaction files containing the net position of import and export schedules at a given node, MISO states that a market participant may have several import and export schedules at a given node with each schedule having its own e-Tag, which is reported as only one net transaction in the EQR file. Therefore, according to MISO, if it were required to provide e-Tag IDs as required transaction data, MISO would report each schedule as a separate transaction in the EQR file, rather than a net position, thereby overstating the market participant's net position.

155. Finally, Shell Energy states that the proposal to include e-Tag ID data in the EQR is unnecessary because the Commission is proposing to receive that data from the North American Electric Reliability Corporation (NERC) in the rulemaking proceeding in Docket No. RM11–12–000.[244]

iii. Commission Determination

156. As stated in the NOPR, e-Tags are used to schedule physical interchange transactions and contain information about where the power is sourced and delivered; the responsible parties in the receipt, delivery and movement of the power; the timing; and the volumes and specified details regarding which transmission paths are used.[245] The e-Tag ID is a subset of information associated with a full e-Tag that consists of four components: (1) Source Balancing Authority Entity Code;[246] (2) Purchasing-Selling Entity Code;[247] (3) e-Tag Code or Unique Transaction Identifier;[248] and (4) Sink Balancing Authority Entity Code.[249] The Commission will adopt its NOPR proposal to require EQR filers to submit e-Tag IDs for each transaction reported in the EQR if an e-Tag was used to schedule the transaction. Filers should report in the EQR the e-Tag ID matched up to the Transaction Unique Identifier, Field No. 50 along with the start and end dates for the tags, as noted in Attachment A, EQR Data Dictionary.

157. The Commission is cognizant of an increased burden associated with a requirement to match transactions with associated e-Tag IDs in the EQR. We find that, on balance, this burden is justified given the importance of this information for facilitating price transparency in jurisdictional markets. Requiring e-Tags as part of the EQR will allow the Commission to fill a significant gap in the existing EQR information by enabling the identification of linked transactions and the source location of wholesale sales transactions. Using the current EQR information, it is difficult to identify linked re-sales or chains of transactions between filers. By identifying separate transactions that share e-Tag IDs and delivery timeframes, the Commission and the public will be able to better understand the links and chains between transactions.[250] Therefore, accessing e-Tag IDs through the EQR will facilitate price transparency by enabling all market participants and the Commission to ''follow'' transactions across markets.

158. Furthermore, the mark-ups observed for linked transactions are a valuable indicator of competitiveness in the wholesale market. Specifically, one would expect the arbitrage value to be closely associated with the cost to secure transmission between the linked transaction delivery points. Persistent price differences that are not consistent with transmission costs could indicate an opportunity for market participants to participate economically in that market or it could indicate a market inefficiency that needs to be addressed. Without knowing where power is being generated, it is difficult to determine whether an interchange transaction is the result of competitively arbitraging price separations between markets or anti-competitive or manipulative behavior.

159. In addition, since there is currently no way to connect wholesale sales in the bilateral markets to their source generation through public data or data available to the Commission, it is difficult to identify the economic value of transmission usage, particularly outside of RTO and ISO markets. For example, when transmission is curtailed, there is no way for the Commission or the public to understand the economic impact of curtailment to the customer. Production cost studies estimate the effect of transmission curtailments through an idealized representation of economic dispatch, which is not reflective of the actual value of the curtailed transactions. Knowledge of the actual market value of transmission service between two regions would reveal more precisely the true value of increasing transmission capacity. This increased market transparency would both signal the need for new transmission investment and aid regional transmission planning. For example, revealing differences in relative value would help stakeholders prioritize the selection of competing transmission projects within regional planning debates. Having the tools to reveal the actual market value of transmission service also could be used by stakeholders to justify, and the Commission to evaluate, transmission cost allocation proposals. Where the difference in wholesale energy prices at source and sink exceeds the cost of delivery through transmission service, net economic gains can be directly tied to the availability and use of transmission deliveries.

160. Requiring e-Tag IDs could further aid in the identification of loop flows (unscheduled flows). To the extent that energy is delivered using complex contract paths, one would expect some degree of unscheduled flows. However, Balancing Authorities typically only have access to e-Tags that source, sink or wheel through their Balancing Authority Areas. As such, a Balancing

[242] Shell Energy at 7.

[243] MISO at 4.

[244] Shell Energy at 6 (citing *Availability of E-Tag Information to Commission Staff,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,675 (2011) (E-Tag Availability Rulemaking)).

[245] NOPR, FERC Stats. & Regs. ¶ 32,676 at P 115.

[246] The Source Balancing Authority is the Balancing Authority in which the generation is located.

[247] The Purchasing-Selling Entity is the entity creating and submitting the e-Tag request to the authority service, which authorizes implementation of interchange schedules between balancing authority areas. The Purchasing-Selling Entity also is the entity that purchases or sells, and takes title to, energy, capacity, and interconnected operation services.

[248] The e-Tag Code is a unique seven-character transaction identifier for each bilateral energy transaction scheduled on the transmission network. It is assigned by the e-Tag system when transmission service to accommodate the transaction is reserved.

[249] The Sink Balancing Authority is the Balancing Authority in which load is located.

[250] For example, the Commission and the public would be able to identify that an energy trade from Company A to Company B and an energy trade reported by Company B to Company C are, in fact, a re-sale of power from Company A to Company C because both sales would reflect the same e-Tag ID.

Authority may not see unscheduled flows through their Balancing Authority Area from interchange schedules that do not source, sink or wheel through their Balancing Authority Area (and thus are invisible to them). Requiring e-Tag IDs in the EQR would allow entities to identify interchange schedules that are affecting their system. Balancing Authorities and others could then use EQR data after the fact to help identify if some of these schedules corresponded to instances of unscheduled flows through their Balancing Authority Area. This knowledge could help them address instances of unscheduled flows in the future and allow staff to evaluate more fully the merits of related proposals.

161. Given the range of productive uses for this information, the Commission concludes that requiring EQR filers to submit e-Tag IDs in the EQR is necessary and appropriate for the dissemination of information about the availability and prices of wholesale electric energy and transmission service.[251] The Commission acknowledges commenters' concerns that requiring EQR filers to submit e-Tag IDs in the EQR could result in an incomplete picture for a particular transaction because not all transactions are scheduled using e-Tags. However, it does not follow that the Commission should not require the submission of e-Tag IDs for those transactions that are scheduled using e-Tags. Moreover, the Commission finds that the absence of an e-Tag ID itself provides valuable information to the Commission and the public regarding the nature of the transaction. For instance, e-Tags are not generally used for energy schedules that are contained within one Balancing Authority Area. If a transaction is not scheduled using e-Tags, the filer would leave those fields blank. The EQR currently has several fields that may be left blank because they do not apply. If the e-Tag ID fields are left blank, then we would assume that they there is no e-Tag associated with the sale to report.

162. In response to concerns about the difficulty of aligning e-Tag IDs to a particular transaction given the one-line per transaction format in the current EQR database, the Commission is making technical changes to the existing EQR database to accommodate the relationships between a transaction(s) and associated e-Tag ID(s). The Commission recognizes that there may not be a one-to-one relationship between a transaction reported in the EQR and the e-Tag ID(s) associated with that particular transaction. Therefore, the Commission will design, as seen in Attachment A, a separate EQR database table to accommodate the possibility of a one-to-many, many-to-one, or many-to-many relationship between a transaction(s) and associated e-Tag ID(s). The Commission will incorporate these technical changes to the EQR database before this requirement is implemented. In addition, the Commission may provide guidance on how to match e-Tag IDs to specific transactions in the EQR, to the extent filers seek such guidance.

163. Regarding Shell Energy's request for clarification that long-term transactions should be excluded from an e-Tag ID requirement, we find that requiring e-Tag IDs for only short-term transactions would not achieve the Commission's transparency goals in this proceeding. Specifically, long-term contracts commonly do not include source location details. Instead, the transaction source location may be determined every day based on economics and operating conditions of the system. Accordingly, we find that including e-Tag ID details for all applicable transactions, regardless of duration, would benefit the Commission and other users of the EQR. In response to MISO, we clarify that the requirement to provide e-Tag IDs associated with transactions is imposed on market participants rather than RTOs and ISOs. However, as noted in Order No. 2001, RTOs and ISOs may file power sales transaction information on behalf of their members or market participants as an agent, if authorized to do so by the member or market participant.[252] MISO expresses concern about compiling reports for market participants with transactions and associated e-Tag IDs because market participants may have several import and export schedules at a given node, with each schedule having its own associated e-Tag ID, being reported as only one net import/export transaction in the EQR. As discussed above, the Commission will make design changes to the existing EQR database structure that can accommodate multiple schedules with multiple associated e-Tag IDs. We believe this will enable MISO to continue to compile reports for market participants with multiple transactions and associated e-Tag IDs, if requested by market participants to do so.

164. Certain commenters state that they may not be privy to e-Tag data, they may be omitted from a multiple party transaction if they are in the middle of the path, or they may be sellers that did not schedule a transactions and thus lack access to the e-Tag. We note that the NAESB Electronic Tagging Functional Specifications,[253] governing the implementation of the e-Tag process, specify that the e-Tag must contain the entities along the path associated with the tracking of title and responsibility. In particular, Section 2.6.1.1 (Submitting a New e-Tag Request) of the Functional Specifications provides that the ''e-Tag Author must write a complete representation of the transaction as defined in NERC/NAESB Standards and supported in Section 6, Data Model Overview.'' Section 6.1.2.2 (Title Transfers) of the Functional Specifications specifies that the market segments of an e-Tag ''represent those portions of the path that are associated with the tracking of title and responsibility.'' Therefore, the Commission expects that market participants would be able to access e-Tags associated with their transactions even if the market participant is in the middle of the path or does not necessarily schedule a transaction.

165. Contrary to EPSA's comments, we do not find that the e-Tag IDs required to be reported under this Final Rule contain confidential information. As described above, the e-Tag ID information required to be provided under this Final Rule is only a subset of the information contained in a complete e-Tag. In particular, e-Tag IDs capture the following information: The source Balancing Authority in which generation is located; a unique transaction identifier assigned by the e-Tag system when transmission service to accommodate the transaction is reserved; and the sink Balancing Authority in which load is located. By revealing the Balancing Authority from where the power originated, the e-Tag ID is not revealing information about specific supply sources or generators, as suggested by EPSA. Furthermore, we note that the e-Tag ID information required to be filed under this Final Rule identifies only one party, i.e., the author of the tag, or Purchasing-Selling Entity. The e-Tag ID does not, as suggested by EPSA, reveal multiple

[251] 16 U.S.C. 824t(a)(2).

[252] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 336.

[253] E-Tags are implemented through the requirements set forth in the *NAESB Electronic Tagging Functional Specifications,* Version 1.8.1 (Oct. 27, 2009). The NAESB Wholesale Electric Quadrant (WEQ) Business Practice Requirement 004–2 states that the ''primary method of submitting the Request for Interchange (RFI) to the Interchange Authority shall be an e-Tag using protocols in compliance with the Electronic Tagging Functional Specification, Version 1.8.'' *See NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards* (Version 002.1), published March 11, 2009.

counterparties. For these reasons, the Commission believes that the information contained in e-Tag IDs is not confidential.

166. Shell Energy asserts that requiring e-Tag IDs under this Final Rule is unnecessary because the Commission proposes to receive e-Tag information in the E-Tag Availability Rulemaking. However, there are key differences between the requirement under this Final Rule for EQR filers to provide e-Tag ID information and the proposal for Commission staff to obtain complete e-Tags in the E-Tag Availability Rulemaking. Under this Final Rule, EQR filers must match up a specific transaction with a particular e-Tag ID, if applicable. By matching up the e-Tag ID with specific pricing information captured by the EQR, market participants would be able to identify the source location of a transaction because one component of the e-Tag ID is the source Balancing Authority where the power originated. EQRs currently capture only the delivery location of transactions. By revealing the source and sink locations of transactions, the EQR will allow the Commission and the public to see the path that the transaction took. This knowledge of the transaction path will help improve the ability of market participants and the Commission to determine the actual market value of transmission service and to identify scheduled paths that appear inconsistent with physical flows.

167. In contrast to this Final Rule's requirement for filers to provide e-Tag IDs in the EQR, the Commission proposes in the E-Tag Availability Rulemaking to obtain market participants' complete e-Tags. A complete e-Tag contains not only e-Tag IDs, but also information about transmission reservations, firmness, and transmission curtailments. The complete e-Tags would be made available to Commission staff, not the public, because they may contain commercially sensitive information.

d. Eliminating the DUNS Number Requirement

i. NOPR

168. The Commission proposed to eliminate the DUNS number requirement from EQR filings.

ii. Comments

169. Some commenters support the Commission's proposal to eliminate DUNS identification from the EQR.[254] EEI strongly supports the Commission's proposal to eliminate DUNS numbers from EQR because DUNS numbers have not proven to be a unique method to identify market participants.[255] Financial Institutions Energy Group states that its members have expended tremendous resources trying to determine the correct DUNS numbers to use. Financial Institutions Energy Group also suggests that future attempts to rely on counterparty identifiers should not be pursued unless the Commission is certain that only one such identifier will apply to each entity and that such an identifier is readily available to any entity with an EQR reporting obligation.[256]

170. Certain commenters suggest that the Commission replace DUNS with another system that allows for the unique identification of companies. DC Energy states that without either a DUNS number or some other mandatory uniform unique identifier, inconsistent reporting of company names in EQR would make it difficult to cross-reference across separate filers and/or periods.[257] Entergy proposes to report the name of the entity exactly as it appears on the reported contract in both the contract and transaction reports.[258] Joint Market Monitors consider it very important that the EQR permit ready and exact identification of the transacting parties and propose that filing parties report the precise legal name under which the participant is organized.[259]

iii. Commission Determination

171. The Commission adopts the NOPR's proposal to eliminate the DUNS requirement. The Commission required DUNS numbers in an effort to help ensure more precise identification of sellers and counterparties. However, DUNS numbers have proven to be an imprecise identification system, as entities may have multiple DUNS numbers, only one DUNS number, or no DUNS number at all. The Commission has considered various alternatives to the use of DUNS numbers, but finds none of the suggested approaches would provide a viable replacement. Accordingly, the Commission will continue to rely on the insertion of customer company names in the free-form fields, Field Numbers 16 and 48. In this regard, however, the Commission finds reasonable Entergy's suggestion to require reporting of the name of the entity exactly as it appears on the reported contract,[260] in both the contract and transaction sections. Therefore, we will revise the EQR Data Dictionary to reflect this change, as reflected in Attachment A. The Commission will also consider the possibility of requiring other types of unique identifiers in future and recognizes that there is, for example, an effort currently led by the International Standards Organization to promote standard legal entity identifiers.

e. Other Issues

i. Comments

172. Ronald Rattey states that the data the Commission proposes to obtain in this proceeding and the E-Tag Availability Rulemaking, are unlikely to give Commission staff the capability to prevent, monitor or stop abuses. According to Ronald Rattey, the major flaws in EQR reporting requirements are that the data is three or more months old before the Commission collects it and the EQR does not require purchase transactions to be reported.[261] Ronald Rattey suggests that the Commission should attempt to establish links between EQR, transmission contracts and reservations, and e-Tag scheduling data.[262] In addition, he recommends that the Commission access and use real-time generation and transmission supply and demand data.[263] Ronald Rattey also states that the Commission should access and analyze bid and offer data in RTOs and ISOs and develop the expertise to monitor financial markets.[264]

ii. Commission Determination

173. As discussed above, the Commission believes the information to be provided in this proceeding will improve the transparency of wholesale power and transmission markets in interstate commerce and strengthen the Commission's ability to identify potential exercises of market power or manipulation. This information, along with the e-Tag information proposed to be provided through the rulemaking proceeding on E-Tag Availability Rulemaking, and other resources and information, will also help the Commission staff to identify and address potential exercises of market power or manipulation.

[254] *See, e.g.,* EEI; Entergy; Financial Institutions Energy Group; North American Market Monitors; Powerex; Shell Energy.

[255] EEI at 9.

[256] Financial Institutions Energy Group at 4–5.

[257] DC Energy at 6.

[258] Entergy at 4.

[259] Joint Market Monitors at 5.

[260] The reported contract would exclude multi-lateral master agreements, such as the WSPP Agreement, consistent with the Commission's determination in Order No. 2001–G, 120 FERC ¶ 61,270 at P 14.

[261] Ronald Rattey at 3–7.

[262] *Id.* at 13.

[263] *Id.* at 16–17.

[264] *Id.* at 17.

174. The Commission disagrees that EQR data is flawed because there is a reporting lag. In Order No. 2001, the Commission determined that the lag of 30 to 120 days in reporting EQR data appropriately balances the Commission's and public's need for data transparency while preventing possible harm to competitors and misuse of the data.[265] The Commission continues to find that the existing reporting timelines are appropriate. Moreover, we find that the 30 to 120 day lag in EQR data helps to protect consumers and competitive markets from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information, consistent with FPA section 220(b)(2).

175. In addition, the Commission will not require the reporting of purchase transactions in the EQR. The Commission established the EQR in Order No. 2001 using its authority under FPA section 205(c) to require public utility sellers to file information showing their rates, terms and conditions of service. The Commission is extending EQR reporting requirements to non-public utilities above the *de minimis* threshold as part of this rulemaking, pursuant to its authority under FPA section 220, to require information that will facilitate price transparency in jurisdictional markets for the sale and transmission of electricity. Requiring purchase transactions to be reported in the EQR would go beyond the scope of this proceeding. Finally, the Commission notes that it already accesses and uses information about financial markets for energy to investigate possible manipulation of physical energy markets.

III. Information Collection Statement

A. Comments

176. Certain commenters argue that the NOPR's burden estimates are too low.[266] EEI contends that the estimates dismiss the burden on filers who are required to file every quarter even if they have no transactions to report. EEI also states that the estimates lump together filers within a corporate family even though each company that must file an EQR bears its own burden and different staff is often involved in filing information on behalf of each company. EEI further notes that, if any of the proposed additions to data are adopted, companies will have to undertake software re-programming and staff training, which would involve significant costs that do not appear reflected in the burden estimates. According to EEI, one company has estimated that computer programming changes alone will cost nearly 900 hours of staff time and more than $66,000 to design, develop and test necessary software. EEI states that another company has estimated the cost of changes to its software to be between $200,000 and $500,000, depending on the nature of the application changes and time frame for implementing them.

177. Financial Institutions Energy Group asserts that the Commission should take into account the true technological costs and challenges associated with coming into and maintaining compliance with the proposed reporting requirements. Financial Institutions Energy Group states that the NOPR significantly underestimates the changes that reporting entities would need to make to their information technology systems and procedures to comply with certain aspects of the proposed rules. Financial Institutions Energy Group states that its members conservatively estimate their own implementation costs to run between $55,000 to $400,000 per company, with e-Tags accounting for the greatest expenditures. In addition, Financial Institutions Energy Group estimates that the ongoing costs would range from $2,500 to $10,000 per company for each quarterly report. With respect to the time involved in implementing the proposed changes for current filers, Financial Institutions Energy Group states its members estimate their own implementation timelines range from 190 to 1350 man hours per company and an ongoing 48 hours per company for each quarterly report.

B. Commission Determination

178. In response to EEI, we note that most of the revisions to the EQR required by this Final Rule are transaction-related. The revisions that are not transaction-related, including the elimination of the DUNS number requirement and requirement to report the time zone for contracts, will reduce the burden of filing an EQR. Although the Commission is allowing a seller to indicate information related to index publishers in the ID Data section, companies without transactions would have no transactions to report and would simply enter ''no.'' Because contracts tend to remain consistent from quarter to quarter, the EQR allows filers to copy this information forward from one filing to the next. The EQR software will provide the capability to do this without copying forward the deleted fields in the contracts section (customer DUNS number and time zone), thereby minimizing additional burden.

179. In developing the burden estimates, the Commission took into account the fact that filers within a corporate family should be able to benefit from cost-sharing efficiencies (such as sharing staff and EQR filing software) unavailable to independent filers. For purposes of calculating the number of respondents, we are counting each individual respondent, even though many companies submit a single filing for a number of subsidiary entities or submit several filings through a single Agent. As a rudimentary example, there are 31 filings from companies with names that begin with ''FPL Energy,'' 23 with ''NRG,'' 19 with ''PPL,'' 16 with ''Calpine,'' 14 with ''GenOn,'' 13 with ''Covanta,'' 11 with ''Dynegy,'' and 11 with ''Georgia-Pacific'' and each identify the same person ''as the Agent, usually the person who prepares the filing.''[267] The Commission recognizes that not all corporate families take advantage of possible efficiencies through using common personnel to file the EQR, but it would appear that certain efficiencies are possible and should be accounted for in estimating the reporting burden.

180. In response to comments that the Commission did not account for the information technology changes required to implement these new requirements, Commission staff has increased the estimate of the additional one-time implementation burden to be 400 hours for each non-public utility, 240 hours for each current filer with transactions, and 1 hour for each current filer with no transactions. Commission staff has estimated the additional recurring burden for each quarterly filing to be 19 hours for each non-public utility, 16 hours for each current filer with transactions, and no change for current filers with no transactions. The Commission's estimates of the additional average reporting burden and cost[268] due to the Final Rule in Docket RM10–12–000 follow.

[265] *See* Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at PP 17, 122, *order on reh'g,* Order No. 2001–A, 100 FERC ¶ 61,074 at PP 19–21.

[266] *See, e.g.,* EDF Trading; EEI; Financial Institutions Energy Group.

[267] EQR Data Dictionary. Company Data.

[268] The burden and cost estimates provided are in addition to the estimates for the current EQR reporting requirements for current filers.

In the pending EQR Refresh rule in Docket No. RM12–3–000, for current EQR filers and current filing requirements, the staff estimates the average burden per respondent per quarterly filing to be: 32 hours for Companies within non-California RTO, and large companies within the California RTO; 80 hours for medium/small Companies within the California RTO; 3 hours for Companies not within

Continued

FERC–920, in the Final Rule in Docket RM10–12–000	Number of respondents	Number of responses per respondent per year	Estimated additional implementing (one-time) burden per respondent		Estimated additional recurring burden per respondent per response		Estimated additional average annual burden per respondent (implementation averaged over years 1–3)	
			Burden hours	Cost ($)	Burden hours	Cost ($)	Burden hours	Cost ($)
Current Public Utility Filers								
Companies within non-California RTO, and large cos. within Cal. RTO	405	4	240.00	17,214.00	16.00	829.28	144.00	9,055.12
Medium/small companies within Cal. RTO	20	4	240.00	17,214.00	16.00	829.28	144.00	9,055.12
Companies not within RTO	663	4	240.00	17,214.00	16.00	829.28	144.00	9,055.12
Companies with no transactions	695	4	1.00	71.73	0.00	0.00	0.33	23.91
New Non-Public Utility Filers								
Non-Public Utility, with >4 million MWH wholesale sales per yr	53	4	400.00	28,690.00	19.00	984.77	209.33	13,502.41

181. When averaging the one-time implementation burden and cost over Years 1–3, the total additional annual burden and cost for all filers (due to the Final Rule in RM10–12) are 167,998.33 burden hours and $10,584,214.76.

182. The Commission recognizes that there will be an initial implementation burden for the new non-public utility filers, and an initial implementation burden related to the new data for existing filers. To help with this implementation, the Commission intends to convene a staff-led technical conference, to be announced at a future date, to assist non-public utilities in collecting and filing EQR data. In addition, non-public utility filers are required to file EQRs beginning with the third quarter (Q3) of 2013, covering the period July through September 2013. Current filers also are required to file EQRs consistent with this Final Rule beginning with Q3 of 2013.

183. The Commission directs staff to assist filers with compliance. The technical conference and staff assistance should minimize the implementation burden.

Information Collection Costs: The estimates of the additional one-time implementation cost and recurring cost are provided in the previous table. The Commission staff has estimated the implementation cost using the following professionals, hourly costs, and the estimated percent of implementation time: [269]

- Legal staff (at $250/hour), 10 percent of the implementation time
- Senior accountant (at $51.38/hr.), financial analyst (at $68.12/hr.), and/or support staff (at $35.99/hr.), averaged at $51.83/hr., 10 percent of the implementation time, and 100 percent of the recurring burden
- Information technology analyst (at $57.24/hour), 60 percent of the implementation time
- Support staff (at $35.99/hr), 20 percent of the implementation time.

Title: FERC–920, Electric Quarterly Report (EQR) [OMB No.: 1902–0255] [270] *Action:* Proposed new EQR filers and additional reporting requirements for all filers.

Respondents: Electric utilities

Frequency of Responses: Initial implementation and quarterly filings (beginning Q3 of 2013).

Need for Information: The Commission is revising the EQR to facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce. The Commission is requiring market participants that are excluded from the Commission's jurisdiction under FPA section 205 and have more than a *de minimis* market presence to file EQRs with the Commission. In addition, the Commission is making revisions to the existing filing requirements to reflect the evolving nature of interstate wholesale electric markets, to increase market transparency for the Commission and the public, and to allow market participants to file the information in the most efficient manner possible.

Internal Review: The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

184. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov*, Phone: (202) 502–8663, fax: (202) 273–0873]. Comments on the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk

an RTO; and 0.083 hours [5 minutes] for Companies with no transactions. Comments on the estimates for current burden and cost should be submitted in Docket No. RM12–3–000.

[269] Hourly average wage is an average and was calculated using Bureau of Labor Statistics (BLS), Occupational Employment Statistics data for May 2011 (for NAICS 221100—Electric Power Generation, Transmission and Distribution, at *http://bls.gov/oes/current/naics4_221100.htm#00–0000*) for the senior accountant, financial analyst, information technology analyst, and support staff. The average hourly figure for legal staff is a composite from BLS and other resources, taking into account the hourly cost for both in-house and contractor organizations.

[270] The Commission is establishing the FERC–920 (OMB Control No. 1902–0255) for the EQR reporting requirements and separating the EQR requirements from the remaining reporting requirements under FERC–516 (OMB Control No. 1902–0096). Upon approval by OMB of the FERC–920, FERC plans to remove the EQR and corresponding burden hours for the recurring filings under the current EQR system from the FERC–516.

Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at *oira_submission@omb.eop.gov.* Please reference OMB Control No. 1902–0255, FERC–920, and Docket No. RM10–12 in your submission.

IV. Environmental Analysis

185. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[271] The actions taken here fall within categorical exclusions in the Commission's regulations for information gathering, analysis, and dissemination.[272] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act

186. The RFA [273] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The SBA's Office of Size Standards develops the numerical definition of a small business.[274] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed 4,000,000 MWh.[275]

187. As discussed in Order No. 2000,[276] in making this determination, the Commission is required to examine only the direct compliance costs that a rulemaking imposes upon small businesses. It is not required to consider indirect economic consequences, nor is it required to consider costs that an entity incurs voluntarily.

188. For non-public utilities, the Commission will exempt under the *de minimis* market presence threshold non-public utilities that make 4,000,000 MWh or less of annual wholesale sales (based on an average of the wholesale sales it made in the preceding three years). This *de minimis* threshold will exclude small non-public utilities. Therefore, this Final Rule will not have a significant economic impact on any small non-public utility.

189. This Final Rule also adopts revisions to the existing EQR filing requirements, and thus will affect current EQR filers. Based on analysis of the EQR filings made in the four quarters of 2011, there are 1,783 entities that currently file an EQR, but given clearly identifiable affiliate relationships, that number is reduced to 1,215 entities. Of those, 97 reported more than 4,000,000 million MWh of wholesale sales in the EQR. Of the remaining 1,118 entities that reported less than 4,000,000 MWh of wholesales sales in the EQR, 641 filed transactions in the EQR. The rest that would be subject to this Final Rule, 477 entities, did not file transactions in any quarter of 2011; we conclude that this Final Rule will minimally affect them.

190. As for the remaining 641 entities, we note that there are two types of companies among those currently filing EQRs that merit additional consideration. First, there are investor-owned utilities that make both wholesale and retail sales. The SBA's definition of a small utility is based on a utility's total electric output for the preceding twelve months, which includes a utility's retail sales. However, our estimate in this section is based on information available in the EQR, which includes annual wholesale sales but not retail sales. If we were able to include retail sales, we believe that most investor-owned utilities that currently file EQRs make more than 4,000,000 annual wholesale and retail sales, and thus, would not be classified as small. Second, there are power marketers that often do not own or control generation or transmission, and may be affiliated with companies that are not primarily engaged in the sale of electric energy (such as financial institutions or hedge funds).[277] However, information regarding whether a power marketer is affiliated with a larger company is generally not included in an EQR filing, making it difficult to determine the number of small entities that are affiliated with a larger company, thereby leading to an inflated estimate of the number of companies affected by this Final Rule that are truly small.

191. Moreover, while the Final Rule adopts revisions to the existing EQR filing requirements, it does not create an entirely new reporting requirement for current EQR filers. Since 2001, the Commission has used the EQR filing requirement to meet its statutory obligation to have a public utility's rates on file.[278] The Commission also requires a company that has been granted market-based rate authority to file an EQR.[279] Thus, current EQR filers already have in place a system to capture and report EQR data, and will need to modify their systems rather than create an entirely new system. Any alternative means for meeting that obligation likely will entail greater burden than the electronic collection of transaction data that has been occurring in the EQR since 2002. In addition, we believe that the burden of complying decreases the smaller the filer is because it will have less information to report. Furthermore, we note that companies may request, on an individual basis, waiver from the EQR reporting requirements.[280] Thus, the Commission certifies that this Final Rule will not have a significant impact on a substantial number of small entities.

VI. Document Availability

192. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington DC 20426.

193. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document

[271] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 486 FR 1750 (Jan. 22, 1988), FERC Stats. & Regs. ¶ 30,783 (1987).

[272] 18 CFR 380.4(a)(5).

[273] 5 U.S.C. 601–612.

[274] 13 CFR 121.101.

[275] 13 CFR 121.201, Sector 22, Utilities & n.1.

[276] *See Regional Transmission Organizations,* Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089, at 31,237 & n.754 (1999), *order on reh'g,* Order No. 2000–A, 65 FR 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish, County Washington v. FERC,* 272 F.3d 607, 348 U.S. App. DC 205 (D.C. Cir. 2001) (citing *Mid-Tex Elec. Coop.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (Commission need only consider small entities ''that would be directly regulated''); *Colorado State Banking Bd.* v. *RTC,* 926 F.2d 931 (10th Cir. 1991) (Regulatory Flexibility Act not implicated where regulation simply added an option for affected entities and did not impose any costs)).

[277] Some of these such as Google, Occidental Chemical and ONEOK may not qualify as small in their primary area of business and are participating in the electric market as part of an overall corporate strategy.

[278] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31.

[279] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 334.

[280] As stated in the NOPR, the Commission has granted requests for waiver of the EQR filing requirements. *See* NOPR, FERC Stats. & Regs. ¶ 32,676 at P 135, n.147 (citing *Bridger Valley Elect. Assoc., Inc.,* 101 FERC ¶ 61,146). Entities with a waiver will continue to have a waiver and will not need to file a new request for waiver.

is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

194. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

VII. Effective Date and Congressional Notification

195. These regulations are effective December 10, 2012. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 3

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends 18 CFR part 35, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 35.10b is revised to read as follows:

§ 35.10b Electric Quarterly Reports.

Each public utility as well as each non-public utility with more than a *de minimis* market presence shall file an updated Electric Quarterly Report with the Commission covering all services it provides pursuant to this part, for each of the four calendar quarters of each year, in accordance with the following schedule: for the period from January 1 through March 31, file by April 30; for the period from April 1 through June 30, file by July 31; for the period July 1 through September 30, file by October 31; and for the period October 1 through December 31, file by January 31. Electric Quarterly Reports must be prepared in conformance with the Commission's software and guidance posted and available for downloading from the FERC Web site (*http://www.ferc.gov*).

(a) For purposes of this section, the term ''non-public utility'' means any market participant that is exempted from the Commission's jurisdiction under 16 U.S.C. 824(f).

The term does not include an entity that engages in purchases or sales of wholesale electric energy or transmission services within the Electric Reliability Council of Texas or any entity that engages solely in sales of wholesale electric energy or transmission services in the states of Alaska or Hawaii.

(b) For purposes of this section, the term ''*de minimis* market presence'' means any non-public utility that makes 4,000,000 megawatt hours or less of annual wholesale sales, based on the average annual sales for resale over the preceding three years as published by the Energy Information Administration's Form 861.

(c) For purposes of this section, the following wholesale sales made by a non-public utility with more than a *de minimis* market presence are excluded from the EQR filing requirement:

(1) Sales by a non-public utility, such as a cooperative or joint action agency, to its members; and

(2) Sales by a non-public utility under a long-term, cost-based agreement required to be made to certain customers under Federal or state statute.

■ 3. In § 35.41, paragraph (c) is revised to read as follows:

§ 35.41 Market behavior rules.

* * * * *

(c) *Price reporting.* To the extent a Seller engages in reporting of transactions to publishers of electric or natural gas price indices, Seller must provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices,* issued by the Commission in Docket No. PL03–3–000, and any clarifications thereto. Seller must identify as part of its Electric Quarterly Report filing requirement in § 35.10b of this chapter the publishers of electricity and natural gas indices to which it reports its transactions. In addition, Seller must adhere to any other standards and requirements for price reporting as the Commission may order.

Note: Attachment A will not be published in the *Code of Federal Regulations.*

Attachment A: Revisions to the Data Dictionary Clean Version

Electric Quarterly Report Data Dictionary

Version 2.0 (issued July 19, 2012)

EQR DATA DICTIONARY—ID DATA

Field No.		Field	Required	Value	Definiiton
Old	New				
1	1	Filer Unique Identifier	✓	FR1	(Respondent)—An identifier (i.e., ''FR1'') used to designate a record containing Respondent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FR1 identifier may be imported into an EQR for a given quarter.
1	1	Filer Unique Identifier	✓	FS# (where ''#'' is an integer).	(Seller)—An identifier (e.g., ''FS1'', ''FS2'') used to designate a record containing Seller identification information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each seller company may be imported into an EQR for a given quarter.
1	1	Filer Unique Identifier	✓	FA1	(Agent)—An identifier (i.e., ''FA1'') used to designate a record containing Agent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FA1 identifier may be imported into an EQR for a given quarter.

EQR DATA DICTIONARY—ID DATA—Continued

Field No.		Field	Required	Value	Definiiton
Old	New				
2	2	Company Name	✓	Unrestricted text (100 characters).	(Respondent)—The name of the company taking responsibility for complying with the Commission's regulations related to the EQR.
2	2	Company Name	✓	Unrestricted text (100 characters).	(Seller)—The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Company Name of the Respondent.
2	2	Company Name	✓	Unrestricted text (100 characters).	(Agent)—The name of the entity completing the EQR filing. The Agent's Company Name need not be the name of the company under Commission jurisdiction.
3	X				
4	3	Contact Name	✓	Unrestricted text (50 characters).	(Respondent)—Name of the person at the Respondent's company taking responsibility for compliance with the Commission's EQR regulations.
4	3	Contact Name	✓	Unrestricted text (50 characters).	(Seller)—The name of the contact for the company authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Contact Name of the Respondent.
4	3	Contact Name	✓	Unrestricted text (50 characters).	(Agent)—Name of the contact for the Agent, usually the person who prepares the filing.
5	4	Contact Title	✓	Unrestricted text (50 characters).	Title of contact identified in Field Number 3.
6	5	Contact Address	✓	Unrestricted text	Street address for contact identified in Field Number 3.
7	6	Contact City	✓	Unrestricted text (30 characters).	City for the contact identified in Field Number 3.
8	7	Contact State	✓	Unrestricted text (2 characters).	Two character state or province abbreviations for the contact identified in Field Number 3.
9	8	Contact Zip	✓	Unrestricted text (10 characters).	Zip code for the contact identified in Field Number 3.
10	9	Contact Country Name.	✓	CA—Canada ..... MX—Mexico US—United States UK—United Kingdom	Country (USA, Canada, Mexico, or United Kingdom) for contact address identified in Field Number 3.
11	10	Contact Phone	✓	Unrestricted text (20 characters).	Phone number of contact identified in Field Number 3.
12	11	Contact E-Mail	✓	Unrestricted text	Email address of contact identified in Field Number 3.
	12	Transactions Reported to Index Price Publisher(s).	✓	Y (Yes) ..... N (No)	Filers should indicate whether they have reported their sales transactions to index price publisher(s). If they have, filers should indicate specifically which index publisher(s) in Field Number 72.
13	13	Filing Quarter	✓	YYYYMM	A six digit reference number used by the EQR software to indicate the quarter and year of the filing for the purpose of importing data from csv files. The first 4 numbers represent the year (e.g., 2007). The last 2 numbers represent the last month of the quarter (e.g., 03 = 1st quarter; 06 = 2nd quarter, 09 = 3rd quarter, 12 = 4th quarter).

EQR DATA DICTIONARY—CONTRACT DATA

Field No.		Field	Required	Value	Definition
Old	New				
14	14	Contract Unique ID	✓	An integer proceeded by the letter "C" (only used when importing contract data).	An identifier beginning with the letter "C" and followed by a number (e.g., "C1", "C2") used to designate a record containing contract information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each contract product may be imported into an EQR for a given quarter.
15	15	Seller Company Name.	✓	Unrestricted text (100 characters).	The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's "Company Name" in Field Number 2 of the ID Data (Seller Data).
16	16	Customer Company Name.	✓	Unrestricted text (70 characters).	The name of the counterparty.
17	X				

EQR DATA DICTIONARY—CONTRACT DATA—Continued

Field No.		Field	Required	Value	Definition
Old	New				
18	17	Contract Affiliate	✓	Y (Yes) N (No)	The customer is an affiliate if it controls, is controlled by or is under common control with the seller. This includes a division that operates as a functional unit. A customer of a seller who is an Exempt Wholesale Generator may be defined as an affiliate under the Public Utility Holding Company Act and the FPA.
19	18	FERC Tariff Reference.	✓	Unrestricted text (60 characters).	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales, power sales or sales of related jurisdictional services at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.
20	19	Contract Service Agreement ID.	✓	Unrestricted text (30 characters).	Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed with and accepted by the Commission, or it may be generated as part of an internal identification system.
21	20	Contract Execution Date.	✓	YYYYMMDD	The date the contract was signed. If the parties signed on different dates, use the most recent date signed.
22	21	Commencement Date of Contract Terms.	✓	YYYYMMDD	The date the terms of the contract reported in fields 18, 23 and 25 through 45 (as defined in the data dictionary) became effective. If those terms became effective on multiple dates (i.e.: due to one or more amendments), the date to be reported in this field is the date the most recent amendment became effective. If the contract or the most recent reported amendment does not have an effective date, the date when service began pursuant to the contract or most recent reported amendment may be used. If the terms reported in fields 18, 23 and 25 through 45 have not been amended since January 1, 2009, the initial date the contract became effective (or absent an effective date the initial date when service began) may be used.
23	22	Contract Termination Date.	If specified in the contract.	YYYYMMDD	The date that the contract expires.
24	23	Actual Termination Date.	If contract terminated.	YYYYMMDD	The date the contract actually terminates.
25	24	Extension Provision Description.	✓	Unrestricted text	Description of terms that provide for the continuation of the contract.
26	25	Class Name	✓		See definitions of each class name below.
26	25	Class Name	✓	F—Firm	For transmission sales, a service or product that always has priority over non-firm service. For power sales, a service or product that is not interruptible for economic reasons.
26	25	Class Name	✓	NF—Non-firm	For transmission sales, a service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to Firm service. For an energy sale, a service or product for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
26	25	Class Name	✓	UP—Unit Power Sale.	Designates a dedicated sale of energy and capacity from one or more than one specified generation unit(s).
26	25	Class Name	✓	N/A—Not Applicable.	To be used only when the other available Class Names do not apply.
27	26	Term Name	✓	LT—Long Term ST—Short Term N/A—Not Applicable.	Contracts with durations of one year or greater are long-term. Contracts with shorter durations are short-term.
28	27	Increment Name	✓		See definitions for each increment below.
28	27	Increment Name	✓	H—Hourly	Terms of the contract (if specifically noted in the contract) set for up to 6 consecutive hours (≤ 6 consecutive hours).
28	27	Increment Name	✓	D—Daily	Terms of the contract (if specifically noted in the contract) set for more than 6 and up to 60 consecutive hours (>6 and ≤ 60 consecutive hours).
28	27	Increment Name	✓	W—Weekly	Terms of the contract (if specifically noted in the contract) set for over 60 consecutive hours and up to 168 consecutive hours (>60 and ≤ 168 consecutive hours).

EQR DATA DICTIONARY—CONTRACT DATA—Continued

Field No.		Field	Required	Value	Definition
Old	New				
28	27	Increment Name	✓	M—Monthly	Terms of the contract (if specifically noted in the contract) set for more than 168 consecutive hours up to, but not including, one year (>168 consecutive hours and < 1 year).
28	27	Increment Name	✓	Y—Yearly	Terms of the contract (if specifically noted in the contract) set for one year or more (≥ 1 year).
28	27	Increment Name	✓	N/A—Not Applicable.	Terms of the contract do not specify an increment.
29	28	Increment Peaking Name.	✓		See definitions for each increment peaking name below.
29	28	Increment Peaking Name.	✓	FP—Full Period	The product described may be sold during those hours designated as on-peak and off-peak in the NERC region of the point of delivery.
29	28	Increment Peaking Name.	✓	OP—Off-Peak	The product described may be sold only during those hours designated as off-peak in the NERC region of the point of delivery.
29	28	Increment Peaking Name.	✓	P—Peak	The product described may be sold only during those hours designated as on-peak in the NERC region of the point of delivery.
29	28	Increment Peaking Name.	✓	N/A—Not Applicable.	To be used only when the increment peaking name is not specified in the contract.
30	29	Product Type Name	✓		See definitions for each product type below.
30	29	Product Type Name	✓	CB—Cost Based	Energy or capacity sold under a FERC-approved cost-based rate tariff.
30	29	Product Type Name	✓	CR—Capacity Reassignment.	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer.
30	29	Product Type Name	✓	MB—Market Based	Energy or capacity sold under the seller's FERC-approved market-based rate tariff.
30	29	Product Type Name	✓	T—Transmission	The product is sold under a FERC-approved transmission tariff.
30	29	Product Type Name	✓	Other	The product cannot be characterized by the other product type names.
31	30	Product Name	✓	See Product Name Table, Appendix A.	Description of product being offered.
32	31	Quantity	If specified in the contract.	Number with up to 4 decimals.	Quantity for the contract product identified.
33	32	Units	If specified in the contract.	See Units Table, Appendix E.	Measure stated in the contract for the product sold.
34	33	Rate	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	The charge for the product per unit as stated in the contract.
35	34	Rate Minimum	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	Minimum rate to be charged per the contract, if a range is specified.
36	35	Rate Maximum	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	Maximum rate to be charged per the contract, if a range is specified.
37	36	Rate Description	One of four rate fields (34, 35, 36, or 37) must be included.	Unrestricted text	Text description of rate. If the rate is currently available on the FERC website, a citation of the FERC Accession Number and the relevant FERC tariff including page number or section may be included instead of providing the entire rate algorithm. If the rate is not available on the FERC website, include the rate algorithm, if rate is calculated. If the algorithm would exceed the 150 character field limit, it may be provided in a descriptive summary (including bases and methods of calculations) with a detailed citation of the relevant FERC tariff including page number and section. If more than 150 characters are required, the contract product may be repeated in a subsequent line of data until the rate is adequately described.
38	37	Rate Units	If specified in the contract.	See Rate Units Table, Appendix F.	Measure stated in the contract for the product sold.

EQR DATA DICTIONARY—CONTRACT DATA—Continued

Field No.		Field	Required	Value	Definition
Old	New				
39	38	Point of Receipt Balancing Authority (PORBA).	If specified in the contract.	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) where service begins for a transmission or transmission-related jurisdictional sale. The Balancing Authority will be identified with the abbreviation used in OASIS applications. If receipt occurs at a trading hub specified in the EQR software, the term ''Hub'' should be used.
40	39	Point of Receipt Specific Location (PORSL).	If specified in the contract.	Unrestricted text (50 characters). If ''HUB'' is selected for PORCA, see Hub Table, Appendix C.	The specific location at which the product is received if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used. If more points of receipt are listed in the contract than can fit into the 50 character space, a description of the collection of points may be used. 'Various,' alone, is unacceptable unless the contract itself uses that terminology.
41	40	Point of Delivery Balancing Authority (PODBA).	If specified in the contract.	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) where a jurisdictional product is delivered and/or service ends for a transmission or transmission-related jurisdictional sale. The Balancing Authority will be identified with the abbreviation used in OASIS applications. If delivery occurs at the interconnection of two control areas, the control area that the product is entering should be used. If delivery occurs at a trading hub specified in the EQR software, the term ''Hub'' should be used.
42	41	Point of Delivery Specific Location (PODSL).	If specified in the contract.	Unrestricted text (50 characters). If ''HUB'' is selected for PODCA, see Hub Table, Appendix C.	The specific location at which the product is delivered if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used.
43	42	Begin Date	If specified in the contract.	YYYYMMDDHHMM	First date for the sale of the product at the rate specified.
44	43	End Date	If specified in the contract.	YYYYMMDDHHMM	Last date for the sale of the product at the rate specified.
45	X				

EQR DATA DICTIONARY—TRANSACTION DATA

Field No.		Field	Required	Value	Definition
Old	New				
46	44	Transaction Unique ID	✓	An integer proceeded by the letter ''T'' (only used when importing transaction data).	An identifier beginning with the letter ''T'' and followed by a number (e.g., ''T1'', ''T2'') used to designate a record containing transaction information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each transaction record may be imported into an EQR for a given quarter. A new transaction record must be used every time a price changes in a sale.
47	45	Seller Company Name.	✓	Unrestricted text (100 Characters).	The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's ''Company Name'' in Field 2 of the ID Data (Seller Data).
48	46	Customer Company Name.	✓	Unrestricted text (70 Characters).	The name of the counterparty.
49	X				
50	47	FERC Tariff Reference.	✓	Unrestricted text (60 Characters).	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales, power sales or sales of related jurisdictional services at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.

EQR DATA DICTIONARY—TRANSACTION DATA—Continued

Field No.		Field	Required	Value	Definition
Old	New				
51	48	Contract Service Agreement ID.	✓	Unrestricted text (30 Characters).	Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed and approved by the Commission, or it may be generated as part of an internal identification system.
52	49	Transaction Unique Identifier.	✓	Unrestricted text (24 Characters).	Unique reference number assigned by the seller for each transaction.
53	50	Transaction Begin Date.	✓	YYYYMMDDHHMM (csv import). MMDDYYYYHHMM (manual entry).	First date and time the product is sold during the quarter.
54	51	Transaction End Date	✓	YYYYMMDDHHMM (csv import). MMDDYYYYHHMM (manual entry).	Last date and time the product is sold during the quarter.
	52	Trade Date	✓	YYYYMMDD (csv import). MMDDYYYY (manual entry).	The date upon which the parties made the legally binding agreement on the price of a transaction.
	53	Exchange/Brokerage Service.	.....	See Exchange/Brokerage Service Table, Appendix H.	If a broker service is used to consummate or effectuate a transaction, the term ''Broker'' shall be selected from the Commission-provided list. If an exchange is used, the specific exchange that is used shall be selected from the Commission-provided list.
	54	Type of Rate	✓	.....	See type of rate definitions below.
	54	Type of Rate	✓	Fixed	A fixed charge per unit of consumption.
	54	Type of Rate	✓	Formula	A calculation of a rate based upon a formula that does not contain an index component.
	54	Type of Rate	✓	Electric Index	A calculation of a rate based upon an index or a formula that contains an index component.
	54	Type of Rate	✓	RTO/ISO	A rate that is based on an RTO/ISO published price or formula that contains an RTO/ISO price component.
55	55	Time Zone	✓	See Time Zone Table, Appendix D.	The time zone in which the sales will be made under the contract.
56	56	Point of Delivery Balancing Authority (PODBA).	✓	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications.
57	57	Point of Delivery Specific Location (PODSL).	✓	Unrestricted text (50 characters). If ''HUB'' is selected for PODBA, see Hub Table, Appendix C.	The specific location at which the product is delivered. If receipt occurs at a trading hub, a standardized hub name must be used.
58	58	Class Name	✓	.....	See class name definitions below.
58	58	Class Name	✓	F—Firm	A sale, service or product that is not interruptible for economic reasons.
58	58	Class Name	✓	NF—Non-firm	A sale for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
58	58	Class Name	✓	UP—Unit Power Sale	Designates a dedicated sale of energy and capacity from one or more than one specified generation unit(s).
58	58	Class Name	✓	BA—Billing Adjustment.	Designates an incremental material change to one or more transactions due to a change in settlement results. ''BA'' may be used in a refiling after the next quarter's filing is due to reflect the receipt of new information. It may not be used to correct an inaccurate filing.
58	58	Class Name	✓	N/A—Not Applicable ..	To be used only when the other available class names do not apply.
59	59	Term Name	✓	LT—Long Term ..... ST—Short Term N/A—. Not Applicable	Power sales transactions with durations of one year or greater are long-term. Transactions with shorter durations are short-term.
60	60	Increment Name	✓	.....	See increment name definitions below.
60	60	Increment Name	✓	H—Hourly	Terms of the particular sale set for up to 6 consecutive hours (≤ 6 consecutive hours) Includes LMP based sales in ISO/RTO markets.
60	60	Increment Name	✓	D—Daily	Terms of the particular sale set for more than 6 and up to 60 consecutive hours (> 6 and ≤ 60 consecutive hours). Includes sales over a peak or off-peak block during a single day.

EQR DATA DICTIONARY—TRANSACTION DATA—Continued

Field No.		Field	Required	Value	Definition
Old	New				
60	60	Increment Name	✓	W—Weekly	Terms of the particular sale set for over 60 consecutive hours and up to 168 consecutive hours (> 60 and ≤ 168 consecutive hours). Includes sales for a full week and sales for peak and off-peak blocks over a particular week.
60	60	Increment Name	✓	M—Monthly	Terms of the particular sale set for set for more than 168 consecutive hours up to, but not including, one year (> 168 consecutive hours and < 1 year). Includes sales for full month or multi-week sales during a given month.
60	60	Increment Name	✓	Y—Yearly	Terms of the particular sale set for one year or more (≥ 1 year). Includes all long-term contracts with defined pricing terms (fixed-price, formula, or index).
60	60	Increment Name	✓	N/A—Not Applicable ..	To be used only when other available increment names do not apply.
61	61	Increment Peaking Name.	✓	.....	See definitions for increment peaking below.
61	61	Increment Peaking Name.	✓	FP—Full Period	The product described was sold during Peak and Off-Peak hours.
61	61	Increment Peaking Name.	✓	OP—Off-Peak	The product described was sold only during those hours designated as off-peak in the NERC region of the point of delivery.
61	61	Increment Peaking Name.	✓	P—Peak	The product described was sold only during those hours designated as on-peak in the NERC region of the point of delivery.
61	61	Increment Peaking Name.	✓	N/A—Not Applicable ..	To be used only when the other available increment peaking names do not apply.
62	62	Product Name	✓	See Product Names Table, Appendix A.	Description of product being offered.
63	63	Transaction Quantity	✓	Number with up to 4 decimals.	The quantity of the product in this transaction.
64	64	Price	✓	Number with up to 6 decimals.	Actual price charged for the product per unit. The price reported cannot be averaged or otherwise aggregated
65	65	Rate Units	✓	See Rate Units Table, Appendix F.	Measure appropriate to the price of the product sold.
	66	Standardized Quantity	✓	Number with up to 4 decimals.	For product names energy, capacity, and booked out power only. Specify the quantity in MWh if the product is energy or booked out power and specify the quantity in MW if the product is capacity.
	67	Standardized Price	✓	Number with up to 6 decimals.	For product names energy, capacity, and booked out power only. Specify the price in $/MWh if the product is energy or booked out power and specify the price in $/MW-month if the product is capacity.
66	68	Total Transmission Charge.	✓	Number with up to 2 decimals.	Payments received for transmission services when explicitly identified.
67	69	Total Transaction Charge.	✓	Number with up to 2 decimals.	Transaction Quantity (Field 63) times Price (Field 64) plus Total Transmission Charge (Field 66).

EQR DATA DICTIONARY—INDEX REPORTING DATA

Field No.		Field	Required	Value	Definition
Old	New				
	70	Filer Unique Identifier	✓	FS# (where "#" is an integer).	The "FS" seller number from the ID Data table corresponding to the index reporting company.
	71	Seller Company Name.	✓	Unrestricted text (100 characters).	The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's "Company Name" in Field Number 2 of the ID Data (Seller Data).
	72	Index Price Publisher(s) To Which Sales Transactions Have Been Reported.	✓	If "Yes" is selected for Field 12, see Index Price Publisher, Appendix G.	The index price publisher(s) to which sales transactions have been reported.
	73	Transactions Reported.	✓	Unrestricted text (100 characters).	Description of the types of transactions reported to the index publisher identified in this record.

EQR DATA DICTIONARY—E-TAG DATA

Field No.		Field	Required	Value	Definition
Old	New				
	74	e-Tag ID	If an e-Tag ID was used to schedule the EQR transaction.	Unrestricted text (30 Characters).	The e-Tag ID contains: The Source Balancing Authority where the generation is located; The Purchasing-Selling Balancing Authority Entity Code; the e-Tag Code; and the Sink Balancing Authority.
	75	e-Tag Begin Date ..	If an e-Tag ID was used to schedule the EQR transaction.	YYYYMMDD (csv import). MMDDYYYY (manual entry).	The first date the transaction is scheduled using the e-Tag ID reported in Field Number 71. Begin Date must not be before the Transaction Begin Date specified in Field Number 51 and must be reported in the same time zone specified in Field Number 56.
	76	e-Tag End Date	If an e-Tag ID was used to schedule the EQR transaction.	YYYYMMDD (csv import). MMDDYYYY (manual entry).	The last date the transaction is scheduled using the e-Tag ID reported in Field Number 71. End Date must not be after the Transaction End Date specified in Field Number 52 and must be reported in the same time zone specified in Field Number 56.
	77	Transaction Unique Identifier.	If an e-Tag ID was used to schedule the EQR transaction.	Unrestricted text (24 Characters).	Unique reference number assigned by the seller for each transaction that must be the same as reported in Field Number 50.

EQR DATA DICTIONARY—APPENDIX A. PRODUCT NAMES

Product name	Contract product	Transaction product	Definition
BLACK START SERVICE	✓	✓	Service available after a system-wide blackout where a generator participates in system restoration activities without the availability of an outside electric supply (Ancillary Service).
BOOKED OUT POWER ...	.....	✓	Energy or capacity contractually committed bilaterally for delivery but not actually delivered due to some offsetting or countervailing trade (Transaction only).
CAPACITY	✓	✓	A quantity of demand that is charged on a $/KW or $/MW basis.
CUSTOMER CHARGE	✓	✓	Fixed contractual charges assessed on a per customer basis that could include billing service.
DIRECT ASSIGNMENT FACILITIES CHARGE.	✓	.....	Charges for facilities or portions of facilities that are constructed or used for the sole use/benefit of a particular customer.
EMERGENCY ENERGY ...	✓	.....	Contractual provisions to supply energy or capacity to another entity during critical situations.
ENERGY	✓	✓	A quantity of electricity that is sold or transmitted over a period of time.
ENERGY IMBALANCE	✓	✓	Service provided when a difference occurs between the scheduled and the actual delivery of energy to a load obligation (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.
EXCHANGE	✓	✓	Transaction whereby the receiver accepts delivery of energy for a supplier's account and returns energy at times, rates, and in amounts as mutually agreed if the receiver is not an RTO/ISO.
FUEL CHARGE	✓	✓	Charge based on the cost or amount of fuel used for generation.
GENERATOR IMBALANCE.	✓	✓	Service provided when a difference occurs between the output of a generator located in the Transmission Provider's Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.
GRANDFATHERED BUNDLED.	✓	✓	Services provided for bundled transmission, ancillary services and energy under contracts effective prior to Order No. 888's OATTs.
INTERCONNECTION AGREEMENT.	✓	.....	Contract that provides the terms and conditions for a generator, distribution system owner, transmission owner, transmission provider, or transmission system to physically connect to a transmission system or distribution system.
MEMBERSHIP AGREEMENT.	✓	.....	Agreement to participate and be subject to rules of a system operator.
MUST RUN AGREEMENT	✓	.....	An agreement that requires a unit to run.
NEGOTIATED–RATE TRANSMISSION.	✓	✓	Transmission performed under a negotiated rate contract (applies only to merchant transmission companies).
NETWORK	✓	.....	Transmission service under contract providing network service.
NETWORK OPERATING AGREEMENT.	✓	.....	An executed agreement that contains the terms and conditions under which a network customer operates its facilities and the technical and operational matters associated with the implementation of network integration transmission service.
OTHER	✓	✓	Product name not otherwise included.

EQR DATA DICTIONARY—APPENDIX A. PRODUCT NAMES—Continued

Product name	Contract product	Transaction product	Definition
POINT–TO–POINT AGREEMENT.	✓	.....	Transmission service under contract between specified Points of Receipt and Delivery.
REACTIVE SUPPLY & VOLTAGE CONTROL.	✓	✓	Production or absorption of reactive power to maintain voltage levels on transmission systems (Ancillary Service).
REAL POWER TRANSMISSION LOSS.	✓	✓	The loss of energy, resulting from transporting power over a transmission system.
REASSIGNMENT AGREEMENT.	✓	.....	Transmission capacity reassignment agreement.
REGULATION & FREQUENCY RESPONSE.	✓	✓	Service providing for continuous balancing of resources (generation and interchange) with load, and for maintaining scheduled interconnection frequency by committing on-line generation where output is raised or lowered and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.
REQUIREMENTS SERVICE.	✓	✓	Firm, load-following power supply necessary to serve a specified share of customer's aggregate load during the term of the agreement. Requirements service may include some or all of the energy, capacity and ancillary service products. (If the components of the requirements service are priced separately, they should be reported separately in the transactions tab.)
SCHEDULE SYSTEM CONTROL & DISPATCH.	✓	✓	Scheduling, confirming and implementing an interchange schedule with other Balancing Authorities, including intermediary Balancing Authorities providing transmission service, and ensuring operational security during the interchange transaction (Ancillary Service).
SPINNING RESERVE	✓	✓	Unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in a short time period or non-generation resources capable of providing this service (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.
SUPPLEMENTAL RESERVE.	✓	✓	Service needed to serve load in the event of a system contingency, available with greater delay than SPINNING RESERVE. This service may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load or other non-generation resources capable of providing this service (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.
SYSTEM OPERATING AGREEMENTS.	✓	.....	An executed agreement that contains the terms and conditions under which a system or network customer shall operate its facilities and the technical and operational matters associated with the implementation of network.
TOLLING ENERGY	✓	✓	Energy sold from a plant whereby the buyer provides fuel to a generator (seller) and receives power in return for pre-established fees.
TRANSMISSION OWNERS AGREEMENT.	✓	.....	The agreement that establishes the terms and conditions under which a transmission owner transfers operational control over designated transmission facilities.
UPLIFT	✓	✓	A make-whole payment by an RTO/ISO to a utility.

EQR DATA DICTIONARY—APPENDIX B. BALANCING AUTHORITY

Balancing authority	Abbreviation	Outside US*
AESC, LLC—Wheatland CIN	AEWC	.....
Alabama Electric Cooperative, Inc	AEC	.....
Alberta Electric System Operator	AESO	✓
Alliant Energy Corporate Services, LLC—East	ALTE	.....
Alliant Energy Corporate Services, LLC—West	ALTW	.....
Ameren Transmission. Illinois	AMIL	.....
Ameren Transmission. Missouri	AMMO	.....
American Transmission Systems, Inc	FE	.....
Aquila Networks—Kansas	WPEK	.....
Aquila Networks—Missouri Public Service	MPS	.....
Aquila Networks—West Plains Dispatch	WPEC	.....
Arizona Public Service Company	AZPS	.....
Associated Electric Cooperative, Inc	AECI	.....
Avista Corp	AVA	.....
Batesville Balancing Authority	BBA	.....
BC Hydro T & D—Grid Operations	BCHA	✓
Big Rivers Electric Corp	BREC	.....
Board of Public Utilities	KACY	.....
Bonneville Power Administration Transmission	BPAT	.....

EQR DATA DICTIONARY—APPENDIX B. BALANCING AUTHORITY—Continued

Balancing authority	Abbreviation	Outside US*
British Columbia Transmission Corporation	BCTC	✓
California Independent System Operator	CISO	
Carolina Power & Light Company—CPLW	CPLW	
Carolina Power and Light Company—East	CPLE	
Central and Southwest	CSWS	
Chelan County PUD	CHPD	
Cinergy Corporation	CIN	
City of Homestead	HST	
City of Independence P&L Dept.	INDN	
City of Tallahassee	TAL	
City Water Light & Power	CWLP	
City Utilities of Springfield	SPRM	
Cleco Power LLC	CLEC	
Columbia Water & Light	CWLD	
Comision Federal de Electricidad	CFE	✓
Comision Federal de Electricidad	CFEN	✓
Constellation Energy Control and Dispatch	GRIF	
Constellation Energy Control and Dispatch—Arkansas	PUPP	
Constellation Energy Control and Dispatch—City of Benton, AR	BUBA	
Constellation Energy Control and Dispatch—City of Ruston, LA	DERS	
Constellation Energy Control and Dispatch—Conway, Arkansas	CNWY	
Constellation Energy Control and Dispatch—Gila River	GRMA	
Constellation Energy Control and Dispatch—Glacier Wind Energy	GWA	
Constellation Energy Control and Dispatch—Harquehala	HGMA	
Constellation Energy Control and Dispatch—North Little Rock, AK	DENL	
Constellation Energy Control and Dispatch—Osceola Municipal Light	OMLP	
Constellation Energy Control and Dispatch—Plum Point	PLUM	
Constellation Energy Control and Dispatch—Red Mesa	REDM	
Constellation Energy Control and Dispatch—West Memphis, Arkansas	WMUC	
Dairyland Power Cooperative	DPC	
DECA, LLC—Arlington Valley	DEAA	
Duke Energy Corporation	DUK	
East Kentucky Power Cooperative, Inc	EKPC	
El Paso Electric	EPE	
Electric Energy, Inc.	EEI	
Empire District Electric Co., The	EDE	
Entergy	EES	
ERCOT ISO	ERCO	
Florida Municipal Power Pool	FMPP	
Florida Power & Light	FPL	
Florida Power Corporation	FPC	
Gainesville Regional Utilities	GVL	
Grand River Dam Authority	GRDA	
Grant County PUD No. 2	GCPD	
Great River Energy	GRE	
Great River Energy	GREC	
Great River Energy	GREN	
Great River Energy	GRES	
GridAmerica	GA	
Hoosier Energy	HE	
Hydro-Quebec, TransEnergie	HQT	✓
Idaho Power Company	IPCO	
Imperial Irrigation District	IID	
Indianapolis Power & Light Company	IPL	
ISO New England Inc	ISNE	
JEA	JEA	
Kansas City Power & Light, Co	KCPL	
Lafayette Utilities System	LAFA	
LG&E Energy Transmission Services	LGEE	
Lincoln Electric System	LES	
Los Angeles Department of Water and Power	LDWP	
Louisiana Energy & Power Authority	LEPA	
Louisiana Generating, LLC	LAGN	
Louisiana Generating, LLC—City of Conway	CWAY	
Louisiana Generating, LLC—City of West Memphis	WMU	
Louisiana Generating, LLC—North Little Rock	NLR	
Madison Gas and Electric Company	MGE	
Manitoba Hydro Electric Board, Transmission Services	MHEB	✓
Michigan Electric Coordinated System	MECS	
Michigan Electric Coordinated System—CONS	CONS	
Michigan Electric Coordinated System—DECO	DECO	
MidAmerican Energy Company	MEC	

EQR DATA DICTIONARY—APPENDIX B. BALANCING AUTHORITY—Continued

Balancing authority	Abbreviation	Outside US*
Midwest ISO	MISO	
Minnesota Power, Inc	MP	
Montana-Dakota Utilities Co	MDU	
Muscatine Power and Water	MPW	
Nebraska Public Power District	NPPD	
Nevada Power Company	NEVP	
New Brunswick System Operator	NBSO	✓
New Horizons Electric Cooperative	NHC1	
New York Independent System Operator	NYIS	
Northern Indiana Public Service Company	NIPS	
Northern States Power Company	NSP	
NorthWestern Energy	NWMT	
Ohio Valley Electric Corporation	OVEC	
Oklahoma Gas and Electric	OKGE	
Ontario—Independent Electricity System Operator	ONT	✓
OPPDCA/TP	OPPD	
Otter Tail Power Company	OTP	
P.U.D. No. 1 of Douglas County	DOPD	
PacifiCorp-East	PACE	
PacifiCorp-West	PACW	
PJM Interconnection	PJM	
Portland General Electric	PGE	
Public Service Company of Colorado	PSCO	
Public Service Company of New Mexico	PNM	
Puget Sound Energy Transmission	PSEI	
Reedy Creek Improvement District	RC	
Sacramento Municipal Utility District	SMUD	
Salt River Project	SRP	
Santee Cooper	SC	
SaskPower Grid Control Centre	SPC	✓
Seattle City Light	SCL	
Seminole Electric Cooperative	SEC	
Sierra Pacific Power Co.—Transmission	SPPC	
South Carolina Electric & Gas Company	SCEG	
South Mississippi Electric Power Association	SME	
South Mississippi Electric Power Association	SMEE	
Southeastern Power Administration—Hartwell	SEHA	
Southeastern Power Administration—Russell	SERU	
Southeastern Power Administration—Thurmond	SETH	
Southern Company Services, Inc	SOCO	
Southern Illinois Power Cooperative	SIPC	
Southern Indiana Gas & Electric Co	SIGE	
Southern Minnesota Municipal Power Agency	SMP	
Southwest Power Pool	SWPP	
Southwestern Power Administration	SPA	
Southwestern Public Service Company	SPS	
Sunflower Electric Power Corporation	SECI	
Tacoma Power	TPWR	
Tampa Electric Company	TEC	
Tennessee Valley Authority ESO	TVA	
Trading Hub	HUB	
TRANSLink Management Company	TLKN	
Tucson Electric Power Company	TEPC	
Turlock Irrigation District	TIDC	
Upper Peninsula Power Co	UPPC	
Utilities Commission, City of New Smyrna Beach	NSB	
Westar Energy—MoPEP Cities	MOWR	
Western Area Power Administration—Colorado-Missouri	WACM	
Western Area Power Administration—Lower Colorado	WALC	
Western Area Power Administration—Upper Great Plains East	WAUE	
Western Area Power Administration—Upper Great Plains West	WAUW	
Western Farmers Electric Cooperative	WFEC	
Western Resources dba Westar Energy	WR	
Wisconsin Energy Corporation	WEC	
Wisconsin Public Service Corporation	WPS	
Yadkin, Inc	YAD	

*Balancing authorities outside the United States may only be used in the Contract Data section to identify specified receipt/delivery points in jurisdictional transmission contracts.

EQR Data Dictionary—Appendix C. Hub

HUB	Definition
ADHUB	The aggregated Locational Marginal Price (“LMP”) nodes defined by PJM Interconnection, LLC as the AEP/Dayton Hub.
AEPGenHub	The aggregated Locational Marginal Price (“LMP”) nodes defined by PJM Interconnection, LLC as the AEPGenHub.
COB	The set of delivery points along the California-Oregon commonly identified as and agreed to by the counterparties to constitute the COB Hub.
Cinergy (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Cinergy balancing authority.
Cinergy Hub (MISO)	The aggregated Elemental Pricing nodes (“Epnodes”) defined by the Midwest Independent Transmission System Operator, Inc., as Cinergy Hub (MISO).
Entergy (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Entergy balancing authority.
FE Hub	The aggregated Elemental Pricing nodes (“Epnodes”) defined by the Midwest Independent Transmission System Operator, Inc., as FE Hub (MISO).
Four Corners	The set of delivery points at the Four Corners power plant commonly identified as and agreed to by the counterparties to constitute the Four Corners Hub.
Illinois Hub (MISO)	The aggregated Elemental Pricing nodes (“Epnodes”) defined by the Midwest Independent Transmission System Operator, Inc., as Illinois Hub (MISO).
Mead	The set of delivery points at or near Hoover Dam commonly identified as and agreed to by the counterparties to constitute the Mead Hub.
Michigan Hub (MISO)	The aggregated Elemental Pricing nodes (“Epnodes”) defined by the Midwest Independent Transmission System Operator, Inc., as Michigan Hub (MISO).
Mid-Columbia (Mid-C)	The set of delivery points along the Columbia River commonly identified as and agreed to by the counterparties to constitute the Mid-Columbia Hub.
Minnesota Hub (MISO)	The aggregated Elemental Pricing nodes (“Epnodes”) defined by the Midwest Independent Transmission System Operator, Inc., as Minnesota Hub (MISO).
NEPOOL (Mass Hub)	The aggregated Locational Marginal Price (“LMP”) nodes defined by ISO New England Inc., as Mass Hub.
NIHUB	The aggregated Locational Marginal Price (“LMP”) nodes defined by PJM Interconnection, LLC as the Northern Illinois Hub.
NOB	The set of delivery points along the Nevada-Oregon border commonly identified as and agreed to by the counterparties to constitute the NOB Hub.
NP15	The set of delivery points north of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the NP15 Hub.
NWMT	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Northwestern Energy Montana balancing authority.
PJM East Hub	The aggregated Locational Marginal Price nodes (“LMP”) defined by PJM Interconnection, LLC as the PJM East Hub.
PJM South Hub	The aggregated Locational Marginal Price (“LMP”) nodes defined by PJM Interconnection, LLC as the PJM South Hub.
PJM West Hub	The aggregated Locational Marginal Price (“LMP”) nodes defined by PJM Interconnection, LLC as the PJM Western Hub.
Palo Verde	The switch yard at the Palo Verde nuclear power station west of Phoenix in Arizona. Palo Verde Hub includes the Hassayampa switchyard 2 miles south of Palo Verde.
SOCO (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Southern Company balancing authority.
SP15	The set of delivery points south of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the SP15 Hub.
TVA (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Tennessee Valley Authority balancing authority.
ZP26	The set of delivery points associated with Path 26 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the ZP26 Hub.

EQR Data Dictionary—Appendix D. Time Zone

Time zone	Definition
AD	*Atlantic Daylight.*
AP	*Atlantic Prevailing.*
AS	*Atlantic Standard.*
CD	*Central Daylight.*
CP	*Central Prevailing.*
CS	*Central Standard.*
ED	*Eastern Daylight.*
EP	*Eastern Prevailing.*
ES	*Eastern Standard.*
MD	*Mountain Daylight.*
MP	*Mountain Prevailing.*
MS	*Mountain Standard.*
NA	*Not Applicable.*

EQR Data Dictionary—Appendix D. Time Zone—Continued

Time zone	Definition
PD	*Pacific Daylight.*
PP	*Pacific Prevailing.*
PS	*Pacific Standard.*
UT	*Universal Time.*

EQR Data Dictionary—Appendix E. Units

Units	Definition
KV	*Kilovolt.*
KVA	*Kilovolt Amperes.*

EQR Data Dictionary—Appendix E. Units—Continued

Units	Definition
KVR	*Kilovar.*
KW	*Kilowatt.*
KWH	*Kilowatt Hour.*
KW–DAY	*Kilowatt Day.*
KW–MO	*Kilowatt Month.*
KW–WK	*Kilowatt Week.*
KW–YR	*Kilowatt Year.*
MVAR–YR	*Megavar Year.*
MW	*Megawatt.*
MWH	*Megawatt Hour.*
MW–DAY	*Megawatt Day.*
MW–MO	*Megawatt Month.*
MW–WK	*Megawatt Week.*

EQR Data Dictionary—Appendix E. Units—Continued

Units	Definition
MW–YR	*Megawatt Year.*
RKVA	*Reactive Kilovolt Amperes.*
FLAT RATE	*Flat Rate.*

EQR Data Dictionary—Appendix F. Rate Units

Rate units	Definition
$/KV	*dollars per kilovolt.*
$/KVA	*dollars per kilovolt amperes.*
$/KVR	*dollars per kilovar.*
$/KW	*dollars per kilowatt.*
$/KWH	*dollars per kilowatt hour.*
$/KW–DAY	*dollars per kilowatt day.*
$/KW–MO	*dollars per kilowatt month.*
$/KW–WK	*dollars per kilowatt week.*
$/KW–YR	*dollars per kilowatt year.*
$/MW	*dollars per megawatt.*
$/MWH	*dollars per megawatt hour.*
$/MW–DAY	*dollars per megawatt day.*
$/MW–MO	*dollars per megawatt month.*
$/MW–WK	*dollars per megawatt week.*

EQR Data Dictionary—Appendix F. Rate Units—Continued

Rate units	Definition
$/MW–YR	*dollars per megawatt year.*
$/MVAR–YR	*dollars per megavar year.*
$/RKVA	*dollars per reactive kilovar amperes.*
CENTS	*cents.*
CENTS/KVR	*cents per kilovolt amperes.*
CENTS/KWH	*cents per kilowatt hour.*
FLAT RATE	*rate not specified in any other units.*

EQR Data Dictionary—Appendix G. Index Price Publisher

Index price publisher abbreviation	Index price publisher
AM	*Argus Media.*
EIG	*Energy Intelligence Group, Inc.*
IP	*Intelligence Press.*
P	*Platts.*
B	*Bloomberg.*
DJ	*Dow Jones.*

EQR Data Dictionary—Appendix G. Index Price Publisher—Continued

Index price publisher abbreviation	Index price publisher
Pdx	*Powerdex.*
SNL	*SNL Energy.*

EQR Data Dictionary—Appendix H. Exchange/Broker Services

Exchange/brokerage service	Definition
BROKER	*A broker was used to consummate or effectuate the transaction.*
ICE	*Intercontinental Exchange .*
NYMEX	*New York Mercantile Exchange .*

Note: Attachment B will not be published in the *Code of Federal Regulations.*

Attachment B: List of Commenters on the NOPR

Short name or acronym	Commenter
Allegheny	Allegheny Electric Cooperative.
APPA	American Public Power Association.
Associated Electric Cooperative	Associated Electric Cooperative, Inc.
California DWR	California Department of Water Resources State Water Project.
Cities/M–S–R	City of Redding, California, City of Santa Clara, California, and M–S–R Public Power Agency.
DC Energy	DC Energy, LLC.
EDF Trading	EDF Trading North America, LLC.
EEI	Edison Electric Institute.
EPSA	Electric Power Supply Association.
Entergy	Entergy Services, Inc.
Financial Institutions Energy Group	Financial Institutions Energy Group.
Joint Commenters	American Public Power Associated; Edison Electric Institute; Large Public Power Council; and National Rural Electric Cooperative Association.
Joint Market Monitors	North American Market Monitors Joint Comments.
LPPC	Large Public Power Council.
MISO	Midwest Independent Transmission System Operator, Inc.
Northern California Power Agency	Northern California Power Agency.
NRECA	National Rural Electric Cooperative Association.
NYMPA/MEUA	New York Municipal Power Agency and Municipal Electric Utilities Association of New York.
Pacific Northwest IOUs	Avista Corporation; Portland General Electric Company; and Puget Sound Energy Company.
Pennsylvania Commission	Pennsylvania Public Utility Commission.
Powerex	Powerex Corporation.
PSEG Companies	PSEG Companies[281].
Public Systems	Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative, Inc.
Shell Energy	Shell Energy North America, L.P.
South Mississippi Electric	South Mississippi Electric Power Association.
Southwestern Power Association	Southwestern Power Administration.
TAPS	Transmission Access Policy Study Group.
Transmission Dependent Utility Systems.	Transmission Dependent Utility Systems.
Westar	Westar Energy, Inc.

[FR Doc. 2012–23746 Filed 10–10–12; 8:45 am]

BILLING CODE 6717–01–P

[281] Filed only a motion to intervene.

FEDERAL REGISTER

Vol. 77 Thursday,

No. 197 October 11, 2012

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing Taylor's Checkerspot Butterfly and Streaked Horned Lark and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2012–0080; 4500030113]

RIN 1018–AY18

Endangered and Threatened Wildlife and Plants; Listing Taylor's Checkerspot Butterfly and Streaked Horned Lark and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list the Taylor's checkerspot butterfly as an endangered species, and to list the streaked horned lark as a threatened species under the Endangered Species Act of 1973, as amended (Act). We additionally propose to designate critical habitat for these species. These determinations fulfill our obligations under a settlement agreement. These are proposed regulations, and if finalized, the effect of these regulations will be to add these species to the List of Endangered and Threatened Wildlife and to designate critical habitat under the Endangered Species Act.

DATES: We will accept comments received or postmarked on or before December 10, 2012. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 26, 2012.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter Docket No. FWS–R1–ES–2012–0080, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2012–0080; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.fws.gov/wafwo/, www.regulations.gov* at Docket No. [FWS–R1–ES–2012–0080], and at the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken S. Berg, Manager, Washington Fish and Wildlife Office, 510 Desmond Drive, Lacey, WA 98503, by telephone (360) 753–9440, or by facsimile (360) 534–9331. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), a species may warrant protection through listing if it is an endangered or threatened species throughout all or a significant portion of its range. The species addressed in these proposed rules are candidates for listing and, by virtue of a settlement agreement, we must make a determination as to their present status under the Act. These status changes can only be done by issuing a rulemaking. The table below summarizes our determination for each of these candidate species:

Species	Present range	Status
Taylor's checkerspot butterfly, *Euphydryas editha taylori.*	British Columbia, Canada; Clallam, Pierce, and Thurston Counties, WA; and Benton County, OR.	Proposed Endangered.
Streaked horned lark, *Eremophila alpestris strigata.*	Grays Harbor, Mason, Pacific, Pierce, Thurston, Cowlitz, and Wahkiakum Counties, WA; Benton, Clackamas, Clatsop, Columbia, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill Counties, OR.	Proposed Threatened.

The basis for our action. Under the Endangered Species Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

For those species for which we are proposing listing, we have determined that these species are impacted by one or more of the following factors to the extent that the species meets the definition of an endangered or threatened species under the Act:

- Habitat loss through conversion and degradation of habitat, particularly from agricultural and urban development, successional changes to grassland habitat, military training, and the spread of invasive plants;
- Predation;
- Inadequate existing regulatory mechanisms that allow significant threats such as habitat loss;
- Other natural or manmade factors, including low genetic diversity, small or isolated populations, low reproductive success, and declining population sizes;
- Aircraft strikes and training at airports; and
- Pesticide use or control as a pest species.

In this rule we propose to designate critical habitat for these species. We are proposing to designate critical habitat for the Taylor's checkerspot butterfly and streaked horned lark in Washington and Oregon as follows:

- Approximately 6,875 acres (ac) (2,782 hectares (ha)) are proposed for designation as critical habitat for the Taylor's checkerspot butterfly.
- Approximately 12,159 ac (4,920 ha) are proposed for designation as critical habitat for the streaked horned lark.

The basis for our action. Under the Endangered Species Act, we are required to designate critical habitat for any species that is determined to be endangered or threatened. We are required to base the designation on the best available scientific data after taking into consideration economic, national security, and other relevant impacts. An area may be excluded from the final designation of critical habitat if the

benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

We are proposing to promulgate special rules. We are considering whether to exempt from the Act's take prohibitions (at section 9), existing maintenance activities and agricultural practices located on private and Tribal lands where the streaked horned lark occurs. The intent of this special rule would be to increase support for the conservation of the streaked horned lark and provide an incentive for continued management activities that benefit this species and its habitat.

We are preparing an economic analysis. To ensure that we fully consider the economic impacts, we are preparing a draft economic analysis of the proposed designations of critical habitat. We will publish an announcement and seek public comments on the draft economic analysis when it is completed.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our technical assumptions, analysis of the best available science, and application of that science or to provide any additional scientific information to improve these proposed rules. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

We are seeking public comment on this proposed rule. Anyone is welcome to comment on our proposal or provide additional information on the proposal that we can use in making a final determination on the status of this species. Please submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. Within 1 year following the publication of this proposal, we will publish in the **Federal Register** a final determination concerning the listing of the species and the designation of its critical habitat or withdraw the proposal if new information is provided that supports that decision.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats;

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species;

(5) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat;

(6) The reasons why we should or should not designate areas as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to any of these species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(7) Specific information on:

(a) The amount and distribution of habitat for the Taylor's checkerspot butterfly and streaked horned lark;

(b) What areas that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(8) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(9) Information on the projected and reasonably likely impacts of climate change on the Taylor's checkerspot butterfly and streaked horned lark, and on proposed critical habitat.

(10) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(12) Additional information pertaining to the promulgation of a special rule to exempt take of the streaked horned lark on civilian airports, agricultural fields, and tribal lands under section 4(d) of the Act.

(13) Whether any populations of the streaked horned lark should be considered separately for listing as a distinct population segment (DPS), and if so, the justification for how that population meets the criteria for a DPS under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (61 FR 4722, February 7, 1996).

(14) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you

send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

Candidate History

We first identified the Taylor's checkerspot butterfly and the streaked horned lark as candidates for listing in the 2001 Notice of Review of Native Species that are Candidates for Listing as Endangered or Threatened (CNOR) (USFWS 2001). All candidate species are assigned listing priority numbers (LPN) that are based on the immediacy and magnitude of threats and taxonomic status. In 2001, both of these species were assigned an LPN of 6, which reflects threats of a high magnitude that are not considered imminent.

In 2004, based on new information, we determined that the Taylor's checkerspot butterfly faced imminent threats of a high magnitude and reassigned it an LPN of 3 (69 FR 24876; May 4, 2004). In 2006, the streaked horned lark was also reassigned an LPN of 3. During our review we determined that the continued loss of suitable lark habitat, risks to the wintering populations; and plans for development, hazing, and military training activities (71 FR 53755; September 12, 2006) were imminent threats to the subspecies. The candidate status for Taylor's checkerspot butterfly and streaked horned lark was most recently reaffirmed in the October 26, 2011, CNOR (USFWS 2011). The U.S. Fish and Wildlife Service (Service) completed action plans for Taylor's checkerspot butterfly and streaked horned lark and set conservation targets and identified actions to achieve those targets over the next 5 years. These plans can be found on the Service's Web site at: *http://ecos.fws.gov/docs/action_plans/doc3089.pdf* (Taylor's checkerspot butterfly) and *http://www.fws.gov/wafwo/pdf/STHL_Action%20Plan_Sept2009.pdf* (streaked horned lark).

Petition History

In 2001, we developed internal, discretionary candidate assessment documents for the Taylor's checkerspot butterfly and streaked horned lark. These candidate assessments were published in the **Federal Register** on October 30, 2001 (USFWS 2001). On December 10, 2002, we received two separate petitions for these species. The first was from the Xerces Society, Center for Biological Diversity, Oregon Natural Resources Council, Friends of the San Juans, and Northwest Ecosystem Alliance to list the Taylor's checkerspot butterfly (also known as ''whulge checkerspot'') *(Euphydryas editha taylori)* as endangered. The petitioners requested that critical habitat be designated. We also received a petition from the Center for Biological Diversity, Friends of the San Juans, Oregon Natural Resources Council, and Northwest Ecosystem Alliance requesting that we list the streaked horned lark (*Eremophila alpestris strigata*) as endangered and designate critical habitat concurrent with the listing. Because the Service had already determined that these species warranted listing and placed them on the candidate list in 2001, we have been evaluating these species as resubmitted petition findings on an annual basis. On July 12, 2011, the Service filed a multiyear work plan as part of a proposed settlement agreement with the Center for Biological Diversity and others, in a consolidated case in the U.S. District Court for the District of Columbia. The settlement agreement was approved by the court on September 9, 2011, and will enable the Service to systematically review and address the conservation needs of more than 250 candidate species, over a period of 6 years, including the Taylor's checkerspot butterfly and streaked horned lark. These proposed rules fulfill, in part, the terms of that settlement agreement.

Background

We discuss below only those topics directly relevant to the proposed listing of the Taylor's checkerspot butterfly and the streaked horned lark in this section of the proposed rule.

Species Information—Taylor's Checkerspot Butterfly

Taylor's checkerspot butterflies are medium-sized, colorfully marked butterflies with a checkerboard pattern on the upper (dorsal) side of the wings (Pyle 2002, p. 310). They are orange with black and yellowish (or white) spot bands, giving a checkered appearance (Pyle 1981, p. 607; Pyle 2002, p. 310). Taylor's checkerspot butterflies were historically known to occur in British Columbia, Washington, and Oregon, and current distribution has been reduced from over 80 locations rangewide to 14. Taylor's checkerspot butterflies produce one brood per year. They overwinter (diapause) in the fourth or fifth larval instar (developmental) phase and have a flight period as adults of 10 to 14 days, usually in May, although depending on local site and climatic conditions, the flight period begins in late April and extends into early July, as in Oregon, where the flight season may last for up to 45 days (Ross 2008, p. 2).

Taxonomy

Taylor's checkerspot butterfly is a subspecies of Edith's checkerspot butterfly (*Euphydryas editha*). The Taylor's checkerspot butterfly was originally described by W.H. Edwards (1888) from specimens collected from Beacon Hill Park in Victoria, British Columbia (BC). *Euphydryas editha taylori* is recognized as a valid subspecies by the Integrated Taxonomic Information System (ITIS 2012a). It is one of several rare and threatened subspecies, including the Bay checkerspot (*E. e. bayensis*) from the San Francisco Bay area and the Quino checkerspot (*E. e. quino*) from the San Diego, California, region; both are federally listed as endangered species. Several other subspecies of *Euphydryas editha* are known to occur in Washington and Oregon, including Bean's checkerspot (*E. e. beani*) known from the north Cascades of Washington; Strand's checkerspot (*E. e. edithana*) in the foothills of the Columbia Basin, including the low hills of the Blue Mountains in Washington and the Wallowa Mountains in Oregon, primarily east of where other subspecies are known; and Colonia checkerspot (*E. e. colonia*) known from high-elevation sites of the Olympic Peninsula and the Cascades of Washington and Oregon from the Wenatchee Mountains in Washington to the Siskiyou Mountains in Oregon.

Habitat and Life History

Taylor's checkerspot butterflies occupy open habitat dominated by

grassland vegetation throughout their range. In Washington, Taylor's checkerspot butterflies inhabit glacial outwash prairies in the south Puget Sound region; shallow-soil balds (a bald is a small opening on slopes in a treeless area, dominated by herbaceous vegetation) (Chappell 2006 p. 1) and grasses, within a forested landscape, roadsides, and former clear-cut areas within a forested matrix on the northeast Olympic Peninsula, and a coastal stabilized dune site near the Straits of Juan de Fuca (Stinson 2005, pp. 93–96). The two Oregon sites are found in the vicinity of Corvallis, Benton County, on grassland hills in the Willamette Valley (Vaughan and Black 2002, p. 7; Ross 2008, p. 1; Benton County 2010, Appendix N, p. 5). The recently discovered population on Denman Island in Canada (for details, see Current Range and Distribution, below), discovered in May 2005, occupies an area that had been clear-cut harvested, and is now dominated by, and maintained as, grass and forb vegetation. This is the first record for the species in British Columbia since 1998 (Heron 2008, pers. comm.; Page *et al.* 2009, p. 1). In British Columbia, Canada, Taylor's checkerspot butterflies were historically known to occupy coastal grassland habitat, not forests that were converted to early successional conditions by clear-cutting, on Vancouver Island and nearby islands.

Female Taylor's checkerspot butterflies and their larvae utilize plants that contain defensive chemicals known as iridoid glycosides, which have been recognized to influence the selection of oviposition sites by adult nymphalid butterflies (butterflies in the family Nymphalidae) (Murphy *et al.* 2004, p. 22; Page *et al.* 2009, p. 2), and function as a feeding stimulant for some checkerspot larvae (Kuussaari *et al.* 2004, p. 147). As maturing larvae feed, they accumulate these defensive chemical compounds from their larval host plants into their bodies. According to the work of Bowers (1981, pp. 373–374), this accumulation appears to deter predation. These larval host plants include members of the Broomrape family (Orobanchaceae), such as *Castilleja* (paintbrushes) and *Orthocarpus* = *Tryphysaria* (owl's clover), and native and nonnative *Plantago* species, which are members of the Plantain family (Plantaginaceae) (Pyle 2002, p. 311; Vaughan and Black 2002, p. 8). The recent rediscovery in 2005 of Taylor's checkerspot butterflies in Canada indicated that additional food plants (*Veronica serpyllifolia* (thymeleaf speedwell) and *V. beccabunga* ssp. *Americana* (American speedwell)) were being utilized by Taylor's checkerspot butterfly larvae (Heron 2008, pers. comm.; Page *et al.* 2009, p. 2). Taylor's checkerspot butterfly larvae had previously been confirmed feeding on *Plantago lanceolata* (narrow-leaf plantain) and *P. maritime* (sea plantain) in British Columbia (Guppy and Shepard 2001, p. 311), narrow-leaf plantain and *Castilleja hispida* (harsh paintbrush) in Washington (Char and Boersma 1995, p. 29; Pyle 2002, p. 311; Severns and Grosboll 2011, p. 4), and feed exclusively on narrow-leaf plantain in Oregon (Dornfeld 1980, p. 73; Ross 2008, pers. comm.; Severns and Warren 2008, p. 476). Dr. Robert Michael Pyle has speculated that Taylor's checkerspot butterfly larvae likely fed upon the threatened *Castilleja levisecta* (golden paintbrush) in historical times when both species were more widespread and sympatric (overlapped) in their distribution (Pyle 2002, p. 311; Pyle 2007, pers. comm.).

Historical Range and Distribution

Historically, Taylor's checkerspot butterfly was likely distributed throughout grassland habitat found on prairies, shallow-soil balds, grassland bluffs, and grassland openings within a forested matrix in south Vancouver Island, northern Olympic Peninsula, the Puget Sound, and the Willamette Valley. The historical range and abundance of the species are not precisely known because extensive searches for Taylor's checkerspot butterfly did not occur until recently. Northwest prairies were formerly more common, larger, and interconnected, and would likely have supported a greater distribution and abundance of Taylor's checkerspot butterflies than prairie habitat does today. According to Pyle (2012, *in litt.*):

> ''*Euphydryas editha taylori* was previously more widely distributed and much denser in occurrence than is presently the case on the Puget Prairies. The checkerspot was abundant on the Mima Mounds National Area Preserve (NAP) and surrounding prairies in 1970. In the mid-eighties, the butterflies flew by the thousands on Rock Prairie, a private farm property west of Tenino. All of these sites have since been rendered unsuitable for *E. e. taylori* through management changes, and the butterfly has dropped out of them; meanwhile, many other colonies have disappeared in their vicinity through outright development or conversion of the habitat. The same is true for bluff-top colonies I knew in the early '70s at Dungeness. The ongoing loss and alteration of habitat in the western Washington grasslands has without question led to the shrinkage of Taylor's checkerspot occurrences from a regional constellation to a few small clusters.''

Before recent declines over roughly the last 10 or 15 years the Taylor's checkerspot butterfly was known from an estimated 80 locations: 24 in British Columbia, 43 in Washington, and 13 in Oregon (Hinchliff 1996, p. 115; Shepard 2000, pp. 25–26; Vaughan and Black 2002, p. 6; Stinson 2005, pp. 93–96, 123–124). These sites included coastal and inland prairies on southern Vancouver Island and surrounding islands in the Straits of Georgia, British Columbia and the San Juan Island archipelago (Hinchliff 1996, p. 115; Pyle 2002, p. 311), as well as open prairies on post-glacial gravelly outwash and shallow-soil balds in Washington's Puget Trough (Potter 2010, p. 1), the north Olympic Peninsula (Holtrop 2010, p. 1), and grassland habitat within a forested matrix in Oregon's Willamette Valley (Benton County 2010, Appendix N, p. 5).

The 1949 field season summary for North American lepidoptera (Hopfinger 1949, p. 89) states that an abundant distribution of Taylor's checkerspot butterfly was known from the south Puget Sound prairies: ''*Euphydryas editha* (*taylori*), as usual, appeared by the thousands on Tenino Prairie.'' By 1989, Pyle (p. 170) had reported that there were fewer than 15 populations remaining rangewide. Surveys in 2001 and 2002 of the three historical locations on Hornby Island, British Columbia, failed to detect any Taylor's checkerspot butterflies; the last observation of the Taylor's checkerspot butterfly from this location was 1995 (Committee on the Status of Endangered Wildlife in Canada (COSEWIC) 2011, p. 15). By fall 2002, only six populations were known to occur rangewide, four from the south Puget Sound region in Washington, one from San Juan County, Washington, and one from the Willamette Valley of Oregon (USFWS 2002a).

Current Range and Distribution

Based on historical and current data, the distribution and abundance of Taylor's checkerspot butterflies have declined significantly rangewide with the majority of local extirpations occurring from approximately the mid-1990s in Canada (COSEWIC 2011, p. 15), 1999–2004 in south Puget Sound, and around 2006 at the Bald Hills location. Several new locations harboring Taylor's checkerspot butterflies have been rediscovered on historical sites on Washington Department of Natural Resources (WDNR) lands (USFWS 2004, pp. 3–4; USFWS 2007, p. 5) and have also been found at new locations on natural and manipulated balds within the upper

Dungeness River watershed in Washington. Currently 13 individual populations of Taylor's checkerspot butterflies are known to occur; these populations are distributed in British Columbia, Canada (1), Washington (10), and Oregon (2).

Nearly all localities for Taylor's checkerspot butterflies in British Columbia have been lost; the only location currently known from British Columbia was discovered in 2005 (COSEWIC 2011, p. iv). In Oregon, although many surveys have been conducted at a variety of historical and potential locations within the Willamette Valley, many of those have failed to detect the species; the number of locations occupied by Taylor's checkerspot butterflies has declined from 13 to 2 (Ross 2011, *in litt.,* p. 1). In Washington State, more than 43 historical locales were documented for Taylor's. In 2012, we have 11 documented locations for Taylor's checkerspot butterflies with only 1 of the localities harboring more than 1,000 individuals, and the majority of known sites have daily counts of fewer than 100 individual butterflies.

Due to the limited distribution and few populations of Taylor's checkerspot butterfly, surveys for this species are quite thorough, generally consisting of a minimum of 3 days of visits during the flight period, and occasionally numbering up to 10 or 12 days of counts. Multiple days of counts during the annual flight period greatly increases the reliability of abundance data for butterflies, thus we believe the data on numbers of Taylor's checkerspot butterflies to be highly reliable.

Canada

After years of surveys (2001 through 2004) at historical population sites in British Columbia that failed to detect Taylor's checkerspot butterflies (COSEWIC 2011, pp. 15–16), a population was discovered on Denman Island in 2005. Denman Island is located approximately 106 miles (170 km) north of Victoria, British Columbia, along the eastern shores of Vancouver Island in the Straits of Georgia. Taylor's checkerspot butterfly records from British Columbia date from 1888 through 2011, when the last survey was conducted. Surveys are regularly conducted on Vancouver Island and other historical locations (Page *et al.* 2009, p. iv). In 2008, a single Taylor's checkerspot butterfly was detected on Vancouver Island in the Courtney-Comox area, where they had not been observed since 1931 (COSEWIC 2011, pp. 15–16). Additional surveys were conducted at this location and only the single butterfly was observed. It is likely that this single adult had dispersed from the Denman Island population located approximately 0.3 mi (0.5 km) away. As of 2012, the only existing known population for Taylor's checkerspot butterflies in Canada is on Denman Island (Page *et al.* 2009, p. 2; COSEWIC 2011, p. iv).

Washington

In Washington, surveys have been conducted annually for Taylor's checkerspot butterflies in currently and historically occupied sites. Surveys on south Puget Sound prairies have been conducted from 1997 through 2011 by the Washington Department of Fish and Wildlife (WDFW), WDNR, The Nature Conservancy of Washington (now the Center for Natural Lands Management), and personnel from the Wildlife Branch of Joint Base Lewis-McChord (JBLM; formerly known as Fort Lewis). In 1994, a report from Char and Boersma (1995) indicated the presence of Taylor's checkerspot butterflies on the 13th Division Prairie on JBLM; no additional locations have been reported since 1999, when a handful of Taylor's checkerspot butterflies were observed by WDFW (Hays *et al.* 2000, p. 13). Surveys have been conducted annually in this area since 2000; however, no Taylor's checkerspot butterflies have been detected during the spring flight period (Ressa 2003, pp. 7, 14; Gilbert 2004, p. 5; Linders 2012c, *in litt.*). Taylor's checkerspot butterflies are believed to be extirpated from the 13th Division Prairie at JBLM (Linders 2012c, *in litt.*).

Four other populations in Thurston County (Glacial Heritage, Scatter Creek north and south units, and Rocky Prairie NAP) had Taylor's checkerspot butterflies present in 1997. No adult Taylor's checkerspot butterflies were observed during surveys conducted in 1998 and 1999 at these locations (Hays *et al.* 2000, p. 13; Stinson 2005, p. 95). Subsequent annual surveys at these four sites have not detected Taylor's checkerspot butterflies (with the exception of two sites where the butterfly has recently been translocated (Linders and Olson 2011, p. 17; Bidwell 2012, pers. comm.)).

Four historical locales for Taylor's checkerspot butterflies were permanently lost in the south Puget Sound region to development (Dupont, JBLM Training Area 7S, Spanaway, and Lakewood in Pierce County) or conversion to agriculture (Rock Prairie in Thurston County) (Stinson 2005, pp. 93–96). In addition, several older Washington specimens are labeled with general or imprecise locality names on their collection labels (e.g., Olympia 1893; Tenino 1929; Shelton 1971, Dungeness 1999) (Stinson 2005, pp. 94–95). Some of these site names may refer to unknown or currently occupied locales but due to their imprecise nature, the true location of these potential populations has not been determined.

Surveys of 15 prairies within the south Puget Sound landscape in 2001 and 2002 located Taylor's checkerspot butterflies on only 4 sites in Thurston and Pierce Counties (Stinson 2005, pp. 93–96). Three of the four sites were found in the Bald Hill landscape in Southeast Thurston County. Taylor's checkerspot butterflies were documented at the Bald Hills through 2007, but there have been no detections since, despite regular and thorough surveying from 2001 through 2011 (Potter 2011, p. 3). This number has declined substantially in recent years as habitat has become increasingly shaded and modified by encroaching trees, nonnative grasses, and the invasive, nonnative shrub Scot's broom (*Cytisus scoparius*). Potter (2010, p. 1) reported multiple site visits to conduct redundant surveys in formerly occupied bald habitats during the 2008–2010 flight period with no Taylor's checkerspot butterflies observed. The species is presumed to be extirpated from this location.

The 91st Division Prairie is located on JBLM on the eastern edge of the approximately 6,000 acre (2,400 ha) prairie. The largest current populations of Taylor's checkerspot butterfly within the south Puget Sound have been observed here, and have served as the source populations for the collection of larvae for captive breeding to support translocation efforts. Several small, discrete patches of habitat are occupied by Taylor's checkerspot butterflies. The close proximity of these patches indicates that a relatively robust population (more than 1,000 butterflies surveyed in a single day in 2006) is likely present at JBLM.

In the course of conducting surveys for another rare grassland-associated butterfly found in Washington, the island marble (*Euchloe ausonides insulanus*), over 150 potential grassland locations were surveyed for Taylor's checkerspot butterfly in the north Puget Sound region during spring of 2005 through the spring of 2011 (Miskelly 2005; Potter *et al.* 2011) where historical locales for Taylor's checkerspot butterflies exist (Pyle 1989, p. 170). Although the flight periods and habitat of both butterflies overlap, no Taylor's checkerspot butterflies were found during these surveys.

Several historical sites with potentially suitable habitat were surveyed on the north Olympic Peninsula (Clallam County) during spring 2003. Taylor's checkerspot butterfly was found to occupy five locations in this geographic area in 2003. At one historical site near the mouth of the Dungeness River, only a few individuals were detected. However, no Taylor's checkerspot butterflies were detected at this location during surveys from 2005 through 2009 (McMillan 2007, pers. comm.; Potter 2012, pers. comm.). The other four populations were found on grassy openings on shallow-soiled bald habitat west of the Elwha River. Two of these sites were estimated to support at least 50 to 100 adult Taylor's checkerspot butterflies (Dan Kelly Ridge and Eden Valley), and just a few individuals were found at the two other bald sites (Striped Peak and Highway 112) (Hays 2011, p. 1). Subsequent surveys at the latter two sites, Striped Peak and Highway 112, from 2004–2011, have failed to relocate or detect any Taylor's checkerspot butterflies.

In 2006 a population was discovered near the town of Sequim. Taylor's checkerspot butterflies have since been detected annually at this location from 2006–2011 (Hays 2009, pers. comm.; Hays 2011, p. 29). At this site, Taylor's checkerspot butterflies inhabit approximately 5 ac (2 ha) of estuarine, deflation plain (or back beach), a road with restricted use, and farm-edge habitat. In 2010, a maximum count of 568 Taylor's checkerspot butterflies was recorded on a single day (April 3, 2010); normally peak daily counts from this location range from 50 to 240 individuals (Hays 2011, p. 29).

Since 2007, three new Taylor's checkerspot butterfly populations have been found in Clallam County on Olympic National Forest lands. All three sites are located in the Dungeness River watershed: Bear Mountain, Three O'Clock Ridge, and Upper Dungeness (Holtrop 2009, p. 2). The Forest Service and WDFW are currently monitoring butterfly numbers at these sites annually. As of 2012, a total of six occupied sites are known from Clallam County: Sequim, Eden Valley, Bear Mountain, Three O'Clock Ridge, and Upper Dungeness.

Oregon

All of the 13 historical locales within the Willamette Valley of western Oregon have been surveyed regularly by local lepidopterists (McCorkle 2008, pers. comm.; Ross 2005: Stinson 2005, p. 124; Benton County 2010, p. 13; Potter 2012, pers. comm.). Taylor's checkerspot butterflies were formerly reported to exist in large numbers (''swarms on the meadows beside Oak Creek'') on the upland prairies of the Willamette Valley in Lane, Benton, and Polk Counties (Dornfeld 1980, p. 73). Now only remnant populations exist in Oregon. In 1999, Taylor's checkerspot butterflies were discovered along the Bonneville Power Administration (BPA) right-of-way corridor in an area known as Fitton Green in Benton County. In 2004 surveys for Taylor's checkerspot butterfly were expanded in the Willamette Valley where a second population was discovered on grassland openings within the Beazell Memorial Forest in Benton County. These two locations for Taylor's checkerspot butterfly are currently the only occupied patches known from Oregon.

Population Estimates/Status

There is little historical information on population estimates for Taylor's checkerspot butterflies and the survey techniques used for monitoring have differed over time. Early surveys at most locations were done using Pollard transect sampling methodology. Prior to implementing distance sampling as the accepted survey method for Taylor's checkerspot butterflies, population sizes were determined by tallying the number of all butterflies observed in a day and this was expressed as the maximum day count for a population at a specific site. During the survey season from 2007 through 2011, WDFW implemented distance sampling methods to estimate abundance at the site in Washington on JBLM. Distance sampling involves establishing permanent transects over a proportion of the survey area to determine the probability of detecting the butterfly. This number is used to calculate abundance (Marques 2009). Because Taylor's checkerspot butterfly population numbers change daily due to emergence and mortality of individuals, density estimates were computed by survey date (Linders and Olson 2011, p. 11). Although the sampling methods have changed over the years, we believe they are useful in providing a general estimate of population trend information. Additionally, since 2007, a consistent survey method for distance sampling has been implemented throughout most of the range, providing reliable annual information.

Canada

The recently discovered population in British Columbia (BC) was confirmed by the invertebrate specialist for the BC Ministry of the Environment (Heron 2008, pers. comm.). A total of 12 adults were observed on Denman Island during 2005 (Table 1) (Page *et. al.* 2009, p. 1). We have no reports regarding counts for 2006 surveys. However, in 2007, more than 600 butterflies were detected and tallied from this location during the entire survey effort (Heron 2008, p. 5). Surveys at this location in 2008 detected 324 Taylor's checkerspot butterflies (Page *et al.* 2009, p. 17). In 2009, a mark-recapture study of Taylor's was conducted on Denman Island. Over 1,200 butterflies were marked and 45 were recaptured. Based on this study the population was estimated at 13,000 individual butterflies; however, this estimate is likely exaggerated and inaccurate since the survey efforts were not consistent over the course of the study (COSEWIC 2011, p. 38). During the same flight period in 2009, an additional 950 individuals were observed on Denman Island (COSEWIC 2011, p. 38). Only 12 butterflies were observed in 2011 by the same surveyors using identical methods at the same location.

Washington

In Washington State, more than 43 historical locales were documented as having Taylor's checkerspot butterfly populations. In 2012, there are only 11 documented populations, with only 1 of the sites harboring more than 1,000 individuals at any time and the majority of known sites yielding daily counts of fewer than 100 individual butterflies. These locations are as follows: Striped Peak, Highway 112, Sequim, Eden Valley, Dan Kelly Ridge, Bear Mountain, Three O'Clock Ridge, Upper Dungeness, 91st Division Prairie on JBLM, Scatter Creek Wildlife Area, and the Bald Hills.

Taylor's checkerspot butterflies have been surveyed annually on the northeastern Olympic peninsula since 2003. Striped Peak, located on WNDR lands, supported Taylor's checkerspot butterflies as early as 1985. Between 2003 and 2005, only a few adult butterflies were observed by WDFW personnel at Striped Peak and a second site known as Highway 112. No butterflies have been observed at the Striped Peak or Highway 112 locations since that time (McMillan 2009, pers. comm.; Hays 2011, p. 1). Both sites are being encroached by *Pseudotsuga menziesii* (Douglas-fir) native shrubs, and the invasive shrub Scot's broom (Thomas 2011, pers. obs.).

In 2006, at the Sequim population, as many as 100 butterflies were detected on a single day; however, on many days fewer butterflies were observed (McMillan 2007, pers. comm.). In spring 2007, researchers detected 100 to 200 butterflies on peak days. Both larvae and adults were present at this site in

2007 and 2008 (Potter 2012b, *in litt.*). At Eden Valley, up to 60 butterflies had been detected on a single day survey prior to surveys in 2006, but fewer than 30 were detected during the 2006 surveys. During surveys conducted between 2007 and 2011, maximum daily counts ranged between 50 and 538 individuals (Potter 2012b, *in litt.*).

On Dan Kelly Ridge, as many as 50 butterflies were detected during surveys on a single day in 2006. This is a large, linear site with a ridgeline road greater than 2 miles (3.2 km) long; grassland habitat with larval food plants are found along the road margins and in forest openings on steep south facing slopes where shallow-soil balds support Taylor's checkerspot butterflies. Between 2007 and 2010, maximum daily counts ranged from 60 to 100 butterflies. Surveys were not conducted at this site in 2011.

In 2007, on Three O'Clock Ridge in the upper Dungeness watershed of Olympic National Forest, a small number (two) of Taylor's checkerspot butterflies were first detected (Holtrop 2010, p. 1). This site was surveyed in 2008 by Forest Service and WDFW personnel who detected 12 adult butterflies (Holtrop 2010, p. 1). In 2009, approximately 300 ac (121 ha) of suitable habitat were surveyed (Holtrop 2010, p. 5) and two new populations were discovered, at Upper Dungeness and Bear Mountain. Maximum single day counts ranged from 40 to 69 butterflies at the Three O'Clock Ridge, Upper Dungeness, and Bear Mountain. These sites have supported Taylor's checkerspot butterflies consistently since their discovery (Holtrop 2010, p. 13).

The largest known population of Taylor's checkerspot butterfly is located on the 91st Division Prairie at JBLM where a high complement of larval and nectar host plants exist. During the 2005 and 2006 flight seasons (Combs 2005, p. 8; Wolford 2006, pp. 18–20), more than 1,000 individuals were detected on maximum single day counts and hundreds of individuals were observed throughout the flight season (Combs 2005, p. 8; Wolford 2006, pp. 18 and 20). Surveys in spring 2007 detected slightly lower numbers despite the high survey effort. In 2007, the single-day maximum count for Taylor's checkerspot butterflies was 637 (Wolford *et al.* 2007, p. 8). This decrease in butterfly numbers was observed elsewhere for Taylor's checkerspot butterfly in Thurston County during 2007, and is likely related to weather conditions that year. In 2008, detections at 91st Division Prairie indicated a further decline to 187 butterflies, a 37 percent decline from the 2007 surveys (Linders 2012, *in litt.*).

During 10 surveys conducted in the spring of 2009 at 91st Division Prairie, 77 individual butterflies were counted as a maximum daily count (Linders 2009a, entire; Thomas 2009b, pers. obs.). Spring counts in 2009, 2010, and in 2011 showed a general trend of increasing observations at this site, apparently because of a rebound in larval food plants along the roads margins used by military training vehicles, and from repeated and frequent fires caused by military training exercises. Oviposition on larval host plants (narrow-leaf plantain) near road margins was observed at all known Taylor's checkerspot butterfly locations in Washington State (Severns and Grosboll 2011, p. 66).

Experimental introductions of Taylor's checkerspot butterflies have been attempted in the south Puget Sound region. In 2006, Taylor's checkerspot butterfly larvae were placed out at four locations in Thurston and Pierce County: (1) In March 2006, larvae were released at Glacial Heritage Preserve, a Thurston County park; (2) in June 2006, larvae were placed at two locations on JBLM (Training Area 7 South (TA 7S) and 13th Division Prairie); and (3) at the Scatter Creek Wildlife area in Thurston County. None of these initial test releases resulted in observations of adult butterflies at these locations during the subsequent flight season (Linders 2007, p. vi). A subsequent release of 199 larvae in March 2007 at Scatter Creek Wildlife Area resulted in 11 Taylor's checkerspot butterfly observations there in May 2007 (Linders 2007, p. 18).

Based on this early success with captive rearing of larvae, an additional 340 larvae were placed at Scatter Creek Wildlife Area in March 2008. A peak daily count of 16 adult Taylor's checkerspot butterflies were documented at this location in 2008 (Linders 2011c). In 2009, Linders released approximately 2,250 post-diapause larvae onto suitable habitat at Scatter Creek Wildlife Areas and 13th Division Prairie on JBLM, which resulted in 48 observations of adult butterflies and a peak day count of 36 adults at Scatter Creek South, two adults at Scatter Creek North and 1 individual at 13th Division Prairie on JBLM (Linders 2010, *in litt.,* entire). In 2010, 155 adult butterflies were detected at Scatter Creek Wildlife Area, and 207 adults were detected (counted) at Range 50 on JBLM (Linders and Olson 2011, p. 23). During late winter of 2010, a total of 2,036 post-diapause larvae were released onto restored prairie habitat at Scatter Creek Wildlife Area and Range 50 on the 91st Division Prairie on JBLM in the south Puget Sound region (Linders and Olson 2011, p. 17. During distance survey counts in 2011, 84 adult butterflies were counted at Scatter Creek Wildlife Area, and 903 adults were counted at Range 50 on the 91st Division Prairie on JBLM (Linders and Olson 2011, p. 23).

Surveys of private property and WDNR-managed land in the Bald Hill area in 2006 detected only a few individual Taylor's checkerspot butterflies during any given survey day on each of the primary balds. Reports and personal observation indicate that the density and composition of larval host plants have declined at the Bald Hills area and portions of some of the balds have been invaded by Douglas-fir and other shrub species, including Scot's broom, thus reducing the area and suitability of habitat (Potter 2011, p. 1). Taylor's checkerspot butterflies have not been detected in the Bald Hills area since 2007, despite intensive survey efforts in 2008 and 2011 (Potter 2011, p. 1). This population of Taylor's checkerspot butterfly is presumed to be extirpated.

Oregon

In Oregon, Taylor's checkerspot butterflies are known from two locations in the Willamette Valley of Benton County, Beazell Memorial Park (BMP) and Fitton Green Natural Area. Annually, population estimates at these two sites have varied from greater than 1,200 butterflies at Fitton Green in 2005 to as few as 150 butterflies in 2006 at BMP (Ross, 2010, pp. 4, 6; Ross 2011, *in litt.*). During spring of 2010, the flight period began later than normally, due to cool, wet weather that persisted over much of the Pacific Northwest. In 2011, the flight season for Taylor's checkerspot butterfly in Oregon began later than any year since surveys commenced (Ross 2012, p. 3). In 2010 and 2011, total population counts were 991 and 516 for Fitton Green (Ross 2012, p. 4), and 849 and 223 for the BMP location (Ross 2012, p. 6), respectively.

Species Information—Streaked Horned Lark

The streaked horned lark is endemic to the Pacific Northwest (British Columbia, Washington, and Oregon; Altman 2011, p. 196) and is a subspecies of the wide-ranging horned lark (*Eremophila alpestris*). Horned larks are small, ground-dwelling birds, approximately 16–20 centimeters (6–8 inches) in length (Beason 1995, p. 2). Adults are pale brown, but shades of

brown vary geographically among the subspecies. The male's face has a yellow wash in most subspecies. Adults have a black bib, black whisker marks, black ''horns'' (feather tufts that can be raised or lowered), and black tail feathers with white margins (Beason 1995, p. 2). Juveniles lack the black face pattern and are varying shades of gray, from almost white to almost black with a silver-speckled back (Beason 1995, p. 2). The streaked horned lark has a dark brown back, yellowish underparts, a walnut brown nape and yellow eyebrow stripe and throat (Beason 1995, p. 4). This subspecies is conspicuously more yellow beneath and darker on the back than almost all other subspecies of horned lark. The combination of small size, dark brown back, and yellow underparts distinguishes this subspecies from all adjacent forms.

Taxonomy

The horned lark is found throughout the northern hemisphere (Beason 1995, p. 1); it is the only true lark (Family Alaudidae, Order Passeriformes) native to North America (Beason 1995, p. 1). There are 42 subspecies of horned lark worldwide (Clements *et al.* 2011, entire). Twenty-one subspecies of horned larks are found in North America; 15 subspecies occur in western North America (Beason 1995, p. 4). Subspecies of horned larks are based primarily on differences in color, body size, and wing length. Molecular analysis has further borne out these morphological distinctions (Drovetski *et al.* 2005, p. 875). Western populations of horned larks are generally paler and smaller than eastern and northern populations (Beason 1995, p. 3). The streaked horned lark was first described as *Otocorys alpestris strigata* by Henshaw (1884, pp. 261–264, 267–268); the type locality was Fort Steilacoom, Washington (Henshaw 1884, p. 267). There are four other breeding subspecies of horned larks in Washington and Oregon: Pallid horned lark (*E. a. alpina*), dusky horned lark (*E. a. merrilli*), Warner horned lark (*E. a. lamprochroma*), and arctic horned lark (*E. a. articola*) (Marshall *et al.* 2003, p. 426; Wahl *et al.* 2005, p. 268). None of these other subspecies breed within the range of the streaked horned lark, but all four subspecies frequently overwinter in mixed species flocks in the Willamette Valley (Marshall *et al.* 2003, pp. 425–427).

Drovetski *et al.* (2005, p. 877) evaluated the genetic distinctiveness, conservation status, and level of genetic diversity of the streaked horned lark using the complete mitochondrial ND2 gene. Samples from 32 streaked horned larks in western Washington and 66 horned larks from Alaska, alpine Washington, eastern Washington, eastern Oregon, and California were analyzed. The 30 haplotypes identified from the 98 horned larks formed three clades: Pacific Northwest (alpine and eastern Washington, Alaska), Pacific Coast (Puget Sound and Washington coast) and coastal California), and Great Basin (Oregon) (Drovetski *et al.* 2005, p. 880)).

Streaked horned larks were closely related to the California samples and only distantly related to the three closest localities (alpine Washington, eastern Washington, and Oregon); only one of the eastern Washington individuals shared the streaked horned lark haplotype, indicating a single example of gene flow from western Washington to eastern Washington (Drovetski *et al.* 2005, p. 880). There was no evidence of immigration into the streaked horned lark range from any of the sampled localities. Analyses indicate that the streaked horned lark population is well-differentiated and isolated from all other sampled localities, including coastal California, and has ''remarkably low genetic diversity'' (Drovetski *et al.* 2005, p. 875). All 32 streaked horned lark individuals shared the same haplotype with no variation between sequences compared. All other localities had multiple haplotypes despite smaller sample sizes (Drovetski *et al.* 2005, pp. 879–880).

The lack of mitochondrial DNA (mtDNA) diversity exhibited by streaked horned larks is consistent with a population bottleneck (Drovetski *et al.* 2005, p. 881). The streaked horned lark is differentiated and isolated from all other sampled localities, and although it was ''* * * historically a part of a larger Pacific Coast lineage of horned larks, it has been evolving independently for some time and can be considered a distinct evolutionary unit'' (Drovetski *et al.* 2005, p. 880). Thus, genetic analyses support the subspecies designation for the streaked horned lark (Drovetski *et al.* 2005, p. 880), which has been considered a relatively well-defined subspecies based on physical (phenotypic) characteristics (Beason 1995, p. 4). The streaked horned lark is recognized as a valid subspecies by the Integrated Taxonomic Information System (ITIS 2012c).

Life History and Habitat

Horned larks forage on the ground in low vegetation or on bare ground (Beason 1995, p. 6); adults feed mainly on grass and weed seeds, but feed insects to their young (Beason 1995, p. 6). A study of winter diet selection found that streaked horned larks in the Willamette Valley eat seeds of introduced weedy grasses and forbs, focusing on the seed source that is most abundant (Moore 2008b, p. 9). In this Willamette Valley study, a variety of grasses (*Digitaria sanguinalis* (large crabgrass), *Panicum capillare* (witchgrass), *Sporobulum* sp. (dropseed)), and unidentified grasses (Poaceae) and forbs (*Chenopodium album* (common lambsquarters), *Amaranthus retroflexus* (redroot pigweed), *Trifolium arvense* (rabbitfoot clover) and *Kickxia* sp. (cancerweed)) were common in the winter diet of the streaked horned lark (Moore 2008b, p. 16).

Horned larks form pairs in the spring (Beason 1995, p. 11). Altman (1999, p. 11) used a small sample (n=3) of streaked horned lark territories in the Willamette Valley to give a mean territory size of 1.9 acres (0.77 ha) with a range of 1.5 to 2.5 acres (0.61 to 1.0 ha). Horned larks create nests in shallow depressions in the ground and line them with soft vegetation (Beason 1995, p. 12). Female horned larks select the nest site and construct the nest without help from the male (Beason 1995, p. 12). Streaked horned larks establish their nests in areas of extensive bare ground, and nests are placed adjacent to clumps of bunchgrass (Pearson and Hopey 2004, pp. 1–2). In the Willamette Valley, nests are almost always placed on the north side of a clump of vegetation or another object such as root balls or soil clumps (Moore and Kotaich 2010, p. 18). Studies from Washington sites (the open coast, Puget lowlands and the Columbia River islands) have found strong natal fidelity to nesting sites—that is, streaked horned larks return each year to the place they were born (Pearson *et al.* 2008, p. 11).

The nesting season for streaked horned larks begins in mid-April and ends in the early part of August (Pearson and Hopey 2004, p. 11; Moore 2011, p. 32). Clutches range from 1 to 5 eggs, with a mean of 3 eggs (Pearson and Hopey 2004, p. 12). After the first nesting attempt in April, streaked horned larks will often re-nest in late June or early July (Pearson and Hopey 2004, p. 11). Young streaked horned larks leave the nest by the end of the first week after hatching, and are cared for by the parents until they are about 4 weeks old when they become independent (Beason 1995, p. 15).

Nest success studies (i.e., the proportion of nests that result in at least one fledged chick) in streaked horned larks report highly variable results. Nest success on the Puget lowlands of Washington is low, with only 28 percent

of nests successfully fledging young (Pearson and Hopey 2004, p. 14, Pearson and Hopey 2005, p. 16). According to reports from sites in the Willamette Valley, Oregon, nest success has varied from 23 to 60 percent depending on the site (Altman 1999, p. 1; Moore and Kotaich 2010, p. 23). At one site in Portland, Oregon, Moore (2011, p. 11) found 100 percent nest success.

Historically, nesting habitat was found on grasslands, estuaries, and sandy beaches in British Columbia, in dune habitats along the coast of Washington, in western Washington and western Oregon prairies, and on the sandy beaches and spits along the Columbia and Willamette Rivers. Today, the streaked horned lark nests in a broad range of habitats, including native prairies, coastal dunes, fallow and active agricultural fields, wetland mudflats, sparsely-vegetated edges of grass fields, recently planted Christmas tree farms with extensive bare ground, moderately- to heavily-grazed pastures, gravel roads or gravel shoulders of lightly-traveled roads, airports, and dredge deposition sites in the lower Columbia River (Altman 1999, p. 18; Pearson and Altman 2005, p. 5; Pearson and Hopey 2005, p. 15; Moore 2008, pp. 9–10, 12–14, 16). Wintering streaked horned larks use habitats that are very similar to breeding habitats (Pearson *et al.* 2005b, p. 8).

Habitat used by larks is generally flat with substantial areas of bare ground and sparse low-stature vegetation primarily comprised of grasses and forbs (Pearson and Hopey 2005, p. 27). Suitable habitat is generally 16–17 percent bare ground, and may be even more open at sites selected for nesting (Altman 1999, p.18; Pearson and Hopey 2005, p. 27). Vegetation height is generally less than 13 in (33 cm) (Altman 1999, p.18; Pearson and Hopey 2005, p. 27). Larks eat a wide variety of seeds and insects (Beason 1995, p. 6), and appear to select habitats based on the structure of the vegetation rather than the presence of any specific food plants (Moore 2008, p. 19). A key attribute of habitat used by larks is open landscape context. Our data indicate that sites used by larks are generally found in open (i.e., flat, treeless) landscapes of 300 acres (120 ha) or more (Converse *et al.* 2010, p. 21). Some patches with the appropriate characteristics (i.e., bare ground, low stature vegetation) may be smaller in size if the adjacent areas provide the required open landscape context; this situation is common in agricultural habitats and on sites next to water. For example, many of the sites used by larks on the islands in the Columbia River are small (less than 100 ac (40 ha)), but are adjacent to open water, which provides the open landscape context needed. Streaked horned lark populations are found at nearly every airport within the range of the subspecies, because airport maintenance requirements provide the desired open landscape context and short vegetation structure.

Although streaked horned larks use a wide variety of habitats, populations are vulnerable because the habitats used are often ephemeral or subject to frequent human disturbance. Ephemeral habitats include bare ground in agricultural fields and wetland mudflats; habitats subject to frequent human disturbance include mowed fields at airports, managed road margins, agricultural crop fields, and disposal sites for dredge material (Altman 1999, p. 19).

Historical Range and Distribution

The streaked horned lark's breeding range historically extended from southern British Columbia, Canada, south through the Puget lowlands and outer coast of Washington, along the lower Columbia River, through the Willamette Valley, the Oregon coast and into the Umpqua and Rogue River Valleys of southwestern Oregon.

British Columbia. The streaked horned lark was never considered common in British Columbia, but local breeding populations were known on Vancouver Island, in the Fraser River Valley, and near Vancouver International Airport (Campbell *et al.* 1997, p. 120; COSEWIC 2003, p. 5). The population declined throughout the 20th century (COSEWIC 2003, pp. 13–14); breeding has not been confirmed since 1978, and the subspecies is considered to be extirpated in British Columbia (COSEWIC 2003, p. 15). A single streaked horned lark was sighted on Vancouver Island in 2002 (COSEWIC 2003, p. 16).

Washington. The first report of streaked horned lark in the San Juan Islands, Washington, was in 1948 from Cattle Point (Goodge 1950, p. 28). There are breeding season records of streaked horned larks from San Juan and Lopez Islands in the 1950s and early 1960s (Retfalvi 1963, p. 13; Lewis and Sharpe 1987, p. 148, 204), but the last record dates from 1962, when seven individuals were seen in July on San Juan Island at Cattle Point (Retfalvi 1963, p. 13). The WDFW conducted surveys in 1999 in the San Juan Islands (Rogers 1999, pp. 3–4). Suitable nesting habitat was visually searched and a tape recording of streaked horned lark calls was used to elicit responses and increase the chance of detections (Rogers 1999, p. 4). In 2000, MacLaren and Cummins (in Stinson 2005, p.63) surveyed several sites recommended by Rogers (1999) including Cattle Point and Lime Kiln Point on San Juan Island. No larks were detected in the San Juan Islands during either survey effort (Rogers 1999, p. 4; Stinson 2005, p. 63).

There are a few historical records of streaked horned larks on the outer coast of Washington near Lake Quinault, the Quinault River and the Humptulips River in the 1890s (Jewett *et al.* 1953, p. 438; Rogers 2000, p. 26). More recent records reported larks at Leadbetter Point and Graveyard Spit in Pacific County in the 1960s and 1970s (Rogers 2000, p. 26). But no larks were detected on the Outer Coast during surveys conducted there in 1999 and 2000 (Stinson 2005, p. 63).

There are scattered records of streaked horned larks in the northern Puget Trough, including sightings in Skagit and Whatcom Counties in the mid-20th century (Altman 2011, p. 201). The last recorded sighting of a streaked horned lark in the northern Puget Trough was at the Bellingham Airport in 1962 (Stinson 2005, p. 52).

Over a century ago, the streaked horned lark was described as a common summer resident in the prairies of the Puget Sound region in Washington (Bowles 1898, p. 53; Altman 2011, p. 201). Larks were considered common in the early 1950s ''in the prairie country south of Tacoma'' and had been observed on the tide flats south of Seattle (Jewett *et al.* 1953, p. 438). By the mid-1990s, only a few scattered breeding populations existed on the south Puget Sound on remnant prairies and near airports (Altman 2011, p. 201).

There are sporadic records of streaked horned larks along the Columbia River. Sightings on islands near Portland, Oregon, date back to the early 1900s (Rogers 2000, p. 27). A number of old reports of streaked horned larks from the Columbia River east of the Cascade Mountains have been re-examined, and have been recognized as the subspecies *Eremophila alpestris merrilli* (Rogers 2000, p. 27; Stinson 2005, p. 51). On the lower Columbia River, it is probable that streaked horned larks breed only as far east as Clark County, Washington, and Multnomah County, Oregon (Roger 2000, p. 27; Stinson 2005, p. 51).

Oregon. The streaked horned lark's range extends south through the Willamette Valley of Oregon where it was considered abundant and a common summer resident over a hundred years ago (Johnson 1880, p. 636; Anthony 1886, p. 166). In the 1940s, the subspecies was described as a common permanent resident in the

southern Willamette Valley (Gullion 1951, p. 141). By the 1990s, the streaked horned lark was called uncommon in the Willamette Valley, nesting locally in small numbers in large open fields (Gilligan *et al.* 1994, p. 205; Altman 1999, p. 18). In the early 2000s, a population of more than 75 breeding pairs was found at the Corvallis Municipal Airport, making this the largest population of streaked horned larks known (Moore 2008, p. 15).

The streaked horned lark, while occasionally present, was never reported to be more than uncommon on the Oregon coast. The subspecies was described as an uncommon and local summer resident all along the coast on sand spits (Gilligan *et al.* 1994, p. 205); a few nonbreeding season records exist for the coastal counties of Clatsop, Tillamook, Coos, and Curry (Gabrielson and Jewett 1940, p. 403). Small numbers of larks were known to breed at the South Jetty of the Columbia River in Clatsop County, but the site was abandoned in the 1980s (Gilligan *et al.*1994, p. 205). There are no recent occurrence records from the Oregon coast.

In the early 1900s, the streaked horned lark was considered a common permanent resident of the Umpqua and Rogue River Valleys (Gabrielson and Jewett 1940, p. 402). The last confirmed breeding record in the Rogue Valley was in 1976 (Marshall *et al.* 2003, p. 425). There are no recent reports of streaked horned larks in the Umpqua Valley (Gilligan *et al.* 1994, p. 205; Marshall *et al.* 2003, p. 425).

Current Range and Distribution

Breeding Range. The streaked horned lark has been extirpated as a breeding species throughout much of its range, including all of its former range in British Columbia, the San Juan Islands, the northern Puget Trough, the Washington coast north of Grays Harbor, the Oregon coast, and the Rogue and Umpqua Valleys in southwestern Oregon (Pearson & Altman 2005, pp. 4–5).

The current range of the streaked horned lark can be divided into three regions: (1) The south Puget Sound in Washington; (2) the Washington coast and lower Columbia River islands (including dredge spoil deposition sites near the Columbia River in Portland, Oregon); and (3) the Willamette Valley in Oregon.

In the south Puget Sound, the streaked horned lark is found in Mason, Pierce, and Thurston Counties, Washington (Rogers 2000, p. 37; Pearson and Altman 2005, p. 23; Pearson *et al.* 2005a, p. 2; Anderson 2009, p. 4). Recent studies have found that streaked horned larks currently breed on six sites in the south Puget Sound. Four of these sites (13th Division Prairie, Gray Army Airfield, McChord Field, and 91st Division Prairie) are on JBLM. Small populations of larks also breed at the Olympia Regional Airport and the Port of Shelton's Sanderson Field (airport) (Pearson and Altman 2005, p. 23; Pearson *et al.* 2008, p. 3).

On the Washington coast, there are four known breeding sites: (1) Damon Point; (2) Midway Beach; (3) Graveyard Spit; and (4) Leadbetter Point in Grays Harbor and Pacific Counties. On the lower Columbia River, streaked horned larks breed on several of the sandy islands downstream of Portland, Oregon. Recent surveys have documented breeding streaked horned larks on Rice, Miller Sands Spit, Pillar Rock, Welch, Tenasillahe, Coffeepot, Whites/Browns, Wallace, Crims, and Sandy Islands in Wahkiakum and Cowlitz Counties in Washington, and Columbia and Clatsop Counties in Oregon (Pearson and Altman 2005, p. 23; Anderson 2009, p. 4; Lassen 2011, *in litt.*). The Columbia River forms the border between Washington and Oregon; some of the islands occur wholly in Oregon or Washington, and some are bisected by the State line. Larks also breed in Portland (Multnomah County, Oregon) at suitable sites near the Columbia River. These include an open field at the Rivergate Industrial Complex and the Southwest Quad at Portland International Airport; both sites are owned by the Port of Portland, and are former dredge spoil deposition fields (Moore 2011, pp. 9–12).

In the Willamette Valley, streaked horned larks breed in Benton, Clackamas, Lane, Linn, Marion, Polk, Washington, and Yamhill Counties. Larks are most abundant in the southern part of the Willamette Valley. The largest known population of larks is resident at Corvallis Municipal Airport in Benton County (Moore 2008. p. 15); other resident populations occur at the Baskett Slough, William L. Finley, and Ankeny units of the Service's Willamette Valley National Wildlife Refuge Complex (Moore 2008, pp. 8–9). Breeding populations also occur at municipal airports in the valley (including McMinnville, Salem, and Eugene) (Moore 2008, pp. 14–17). In 2008, a large population of streaked horned larks colonized a wetland and prairie restoration site on M–DAC Farms, a privately-owned parcel in Linn County; as the vegetation at the site matured in the following 2 years, the site became less suitable for larks, and the population declined (Moore and Kotaich 2010, pp. 11–13). This is likely a common pattern, as breeding streaked horned larks shift sites as habitat becomes available among private agricultural lands in the Willamette Valley (Moore 2008, pp. 9–11).

Wintering Range. Pearson *et al.* (2005b, p. 2) found that the majority of streaked horned larks winter in the Willamette Valley (72 percent) and on the islands in the lower Columbia River (20 percent); the rest winter on the Washington coast (8 percent) or in the south Puget Sound (1 percent). In the winter, most of the streaked horned larks that breed in the south Puget Sound migrate south to the Willamette Valley or west to the Washington coast; streaked horned larks that breed on the Washington coast either remain on the coast or migrate south to the Willamette Valley; birds that breed on the lower Columbia River islands remain on the islands or migrate to the Washington coast; and birds that breed in the Willamette Valley remain there over the winter (Pearson *et al.* 2005b, pp. 5–6). Streaked horned larks spend the winter in large groups of mixed subspecies of horned larks in the Willamette Valley, and in smaller flocks along the lower Columbia River and Washington Coast (Pearson *et al.* 2005b, p. 7; Pearson and Altman 2005, p. 7). During the winter of 2008, a mixed flock of over 300 horned larks was detected at the Corvallis Municipal Airport (Moore 2011a, pers. comm.).

Population Estimates and Current Status

Data from the North American Breeding Bird Survey (BBS) indicate that most grassland-associated birds, including the horned lark, have declined across their ranges in the past three decades (Sauer *et al.* 2011, pp. 3–5). The BBS can provide population trend data only for those species with sufficient sample sizes for analyses; there is insufficient data in the BBS for a rangewide analysis of the streaked horned lark's population trend (Altman 2011, p. 214). An analysis of recent data from a variety of sources concludes that the streaked horned lark has been extirpated from the Georgia Depression (British Columbia, Canada), the Oregon coast, and the Rogue and Umpqua Valleys (Altman 2011, p. 213); this analysis estimates the current rangewide population of streaked horned larks to be about 1,170–1,610 individuals (Altman 2011, p. 213).

In the south Puget Sound, approximately 150–170 streaked horned larks breed at six sites (Altman 2011, p. 213). Recent studies have found that larks have very low nest success in

Washington (Pearson *et al.* 2008, p. 8); comparisons with other ground-nesting birds in the same prairie habitats in the south Puget Sound showed that streaked horned larks had significantly lower values in all measures of reproductive success (Anderson 2010, p. 16). Estimates of population growth rate (λ, lambda) that include vital rates from nesting areas in the south Puget Sound, Washington coast, and Whites Island in the lower Columbia River indicate that the Washington population is declining precipitously; one study estimated that the population of streaked horned larks was declining by 40 percent per year ($\lambda = 0.61 \pm 0.10$ SD), apparently due to a combination of low survival and fecundity rates (Pearson *et al.,* 2008, p. 12). More recent analyses of territory mapping at 4 sites in the south Puget Sound found that the total number of breeding streaked horned lark territories decreased from 77 territories in 2004 to 42 territories in 2007—a decline of over 45 percent in 3 years (Camfield *et al.* 2011, p. 8). Pearson *et al.* (2008, p. 14) concluded that there is a high probability of south Puget Sound population loss in the future given the low estimates of fecundity and adult survival along with high emigration out of the Puget Sound.

On the Washington coast and Columbia River islands, there are about 120–140 breeding larks (Altman 2011, p. 213). Data from the Washington coast and Whites Islands were included in the population growth rate study discussed above; populations at these sites appear to be declining by 40 percent per year (Pearson *et al.* 2008, p. 12). Conversely, nest success is very high at the Portland industrial sites (Rivergate and the Southwest Quad). In 2010, nearly all nests successfully fledged young (Moore 2011, p. 13); only 1 of 10 monitored nests lost young to predation (Moore 2011, pp. 11–12).

There are about 900–1,300 breeding streaked horned larks in the Willamette Valley (Altman 2011, p. 213). The largest known population of streaked horned larks breeds at the Corvallis Municipal Airport; depending on the management conducted at the airport and the surrounding grass fields each year, the population has been as high as 100 breeding pairs (Moore and Kotaich 2010, pp. 13–15). In 2007, a large (580-acre (235-ha)) wetland and native prairie restoration project was initiated at M–DAC Farms on a former rye grass field in Linn County (Cascade Pacific RC&D 2012, p. 1). Large semipermanent wetlands were created at the site, and the prairie portions were burned and treated with herbicides (Moore and Kotaich 2010, pp. 11–13). These conditions created excellent quality ephemeral habitat for streaked horned larks and the site was used by about 75 breeding pairs in 2008 (Moore and Kotaich 2010, p. 12), making M–DAC the second-largest known breeding population of streaked horned larks that year. M–DAC had high use again in 2009, but as vegetation at the site matured, the number of breeding larks has declined, likely shifting to other agricultural habitats (Moore and Kotaich 2010, p. 13).

We do not have population trend data in Oregon that is comparable to the study in Washington by Pearson *et al.* (2008, entire); however, research on breeding streaked horned larks indicates that nest success in the southern Willamette Valley is higher than in Washington (Moore 2011b, pers. comm.). The best information on trends in the Willamette Valley comes from surveys by the Oregon Department of Fish and Wildlife (ODFW); the agency conducted surveys for grassland-associated birds, including the streaked horned lark, in 1996 and again in 2008 (Altman 1999, p. 2; Myers and Kreager 2010, p. 2). Point count surveys were conducted at 544 stations in the Willamette Valley (Myers and Kreager 2010, p. 2); over the 12-year period between the surveys, measures of relative abundance of streaked horned larks increased slightly from 1996 to 2008 (Myers and Kreager 2010, p. 11). Population numbers decreased slightly in the northern Willamette Valley and increased slightly in the middle and southern portions of the valley (Myers and Kreager 2010, p. 11).

We do not have conclusive data on population trends throughout the lark's range, but the rapidly declining population on the south Puget Sound suggests that the range of the streaked horned lark may still be contracting.

Range Contraction

The streaked horned lark has experienced a substantial contraction of its range; it has been extirpated from all formerly documented locations at the northern end of its range (British Columbia, and the San Juan Islands and northern Puget Trough of Washington), the Oregon coast, and the southern edge of its range (Rogue and Umpqua Valleys of Oregon). The lark's current range appears to have been reduced to less than half the size of its historical range in the last 100 years. The pattern of range contractions for other Pacific Northwest species (e.g., western meadowlark (*Sturnella neglecta)*) shows a loss of populations in the northern part of the range, with healthier populations persisting in the southern part of the range (Altman 2011, p. 214). The streaked horned lark is an exception to this pattern—its range has contracted from both the north and the south simultaneously (Altman 2011, p. 215).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

In making this finding, information pertaining to each of the species in question in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

We considered and evaluated the best available scientific and commercial information in evaluating the factors

affecting each of the species under consideration in this proposed rule.

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

Under this factor, the primary long term threats to Taylor's checkerspot butterfly and streaked horned lark are the loss, conversion, and degradation of habitat particularly to agricultural and urban development, successional changes to grassland habitat, and the spread of invasive plants.

The prairies of south Puget Sound and western Oregon are part of one of the rarest ecosystems in the United States (Noss *et al.* 1995, p. I–2; Dunn and Ewing 1997, p. v). Dramatic changes have occurred on the landscape over the last 150 years, including a 90 to 95 percent reduction in the prairie ecosystem. In the south Puget Sound region, where most of western Washington's prairies historically occurred, less than 10 percent of the original prairie persists, and only 3 percent remains dominated by native vegetation (Crawford and Hall 1997, pp. 13–14). In the remaining prairies, many of the native bunchgrass communities have been replaced by nonnative pasture grasses (Rogers 2000, p. 41), which larks avoid using for territories and nest sites (Pearson and Hopey 2005, p. 27). In the Willamette Valley, Oregon, native grassland has been reduced from the most common vegetation type to scattered parcels intermingled with rural residential development and farmland; it is estimated that less than one percent of the native grassland and savanna remains in Oregon (Altman *et al.* 2001, p. 261).

Development

Native prairies and grasslands have been severely reduced throughout the range of the Taylor's checkerspot butterfly and the streaked horned lark as a result of human activity due to conversion of habitat to residential and commercial development and agriculture. Prairie habitat continues to be lost, particularly to residential development (Stinson 2005, p. 70) by removal of native vegetation and the excavation and grading of surfaces and conversion to non-habitat (buildings, pavement, other infrastructure). Residential development is associated with increased infrastructure such as new road construction, which is one of the primary causes of landscape fragmentation (Watts *et al.* 2007, p. 736). Activities that accompany low-density development are correlated with decreased levels of biodiversity, mortality to wildlife, and facilitated introduction of nonnative invasive species (Trombulak and Frissell 2000, entire; Watts *et al.* 2007, p. 736). In the south Puget Sound lowlands, the glacial outwash soils and gravels underlying the prairies are deep and valuable for use in construction and road building, which leads to their degradation and destruction.

Since the 1850s, much of the Willamette Valley of Oregon has been altered by development (agricultural and urban). About 96 percent of the Willamette Valley is privately owned, and it is both the fastest growing area in Oregon and the most densely populated. The Willamette Valley provides about half of the state's agricultural sales, and 16 of top 17 private sector employers (manufacturing, high technology, forest products, agriculture, and services) are located there. The population projected for 2050 is approximately four million, or nearly double the current population (Oregon Department of Fish and Wildlife 2006, p. 237). The increase in population will result in increased building construction and road development, further impacting the remaining prairies and oak woodlands.

Taylor's Checkerspot Butterfly. The habitat of Taylor's checkerspot butterfly is highly fragmented across the region due to agricultural and low-density residential development. Fragmentation due to residential and associated road development has led to a reduction of native larval host plants and adult nectar plants as introduced invasive plant species, primarily Mediterranean grasses and shrubs such as Scot's broom, increasingly dominate the landscape and outcompete native plant species (see discussion below, under Invasives). Construction directly destroys habitat, as does conversion, and may kill any sessile or slow-moving organism in the construction footprint (Trombulak and Frissell 2000, p. 19). Unlike many other species of butterflies, Taylor's checkerspot butterflies spend approximately 50 weeks of their life cycle as eggs, larvae, or pupae with only a brief window of time (approximately 1–2 weeks) as winged adults (Stinson 2005, p. 78). Commercial and residential development, construction of related infrastructure including roads, and conversion of habitat to incompatible uses such as gravel mining directly affects Taylor's checkerspot butterfly larvae by killing individuals and destroying habitat.

When in flight, butterflies become subject to mortality from collision with vehicles on roads associated with residential development, which is commonly known to affect animals of all sizes, but especially insects (Trombulak and Frissell 2000, p. 20). Since the short flight season of Taylor's checkerspot butterflies directly corresponds with their reproductive period, death of gravid females could lead to population level consequences such as failure of entire populations. These sorts of traffic-collision related deaths may disproportionately affect Taylor's checkerspot butterflies in comparison with other butterflies, as many other kinds of butterflies are in flight for periods much longer than just their reproductive window.

Four historical locales for Taylor's checkerspot butterflies in the south Puget Sound region were lost to development or conversion. Dupont, Spanaway, and Lakewood were all converted to urban areas, and JBLM Training Area 7S became a gravel pit (Stinson 2005, pp. 93–96).

Streaked Horned Lark. Horned larks need expansive areas of flat, open ground to establish breeding territories. The large, flat, treeless areas that airports necessarily require have become attractive breeding sites for streaked horned larks as native prairies and scoured river banks in the Pacific Northwest have declined. Five of the six streaked horned lark nesting sites remaining in the Puget lowlands are located on or adjacent to airports and military airfields (Rogers 2000, p. 37; Pearson and Hopey 2005, p. 15). At least four breeding sites are found at airports in the Willamette Valley, including the largest known population at Corvallis Municipal Airport (Moore 2008, pp. 14–17). Stinson (2005, p. 70) concluded that if large areas of grass had not been maintained at airports, the streaked horned lark might have been extirpated from the south Puget Sound area. Although routine mowing to meet flight path regulations helps to maintain grassland habitat in suitable condition for nesting larks, the timing of mowing is critical.

Mowing during the active breeding season (mid-April to late July) can destroy nests or flush adults, which may result in nest failure (Pearson and Hopey 2005, p. 17; Stinson 2005, p. 72). Some of the airports in the range of the streaked horned lark have adjusted the frequency and timing of mowing in recent years to minimize impacts to larks (Pearson and Altman 2005, p. 10). In 2011, McChord Air Field at JBLM agreed to a mowing regime which would provide protections to the lark during their nesting period. Unfortunately, recent unseasonably wet weather hasn't allowed this strategy to be implemented. WDFW coordinates mowing schedules at the Olympia Airport to reduce impacts to larks.

In 2008, the Port of Olympia prepared an Interlocal Agreement with the WDFW that outlines management recommendations and mitigation for impacts to state-listed species from development at the airport. In December, 2010, a white paper and supplemental planning memorandum was developed as part of the Airport Master Plan Update (Port of Olympia 2010, entire). This document, which is outlined in Appendix 2 of the Master Plan Update, outlines management recommendations for the protection of critical areas and priority species, including the streaked horned lark. The recommendations include minimizing development, retaining open or bare ground, and avoiding mowing during the nesting season (March 15 through August 15) in known or potential lark nesting areas. Although the Port does not anticipate any development to occur in the streaked horned lark nesting areas within the next 20 years, the agreement is not a regulatory document that would preclude future development, which is a primary source of revenue for the Port.

Airport expansions could result in further losses of some populations. At the Olympia Airport, hangars were built in 2005 on habitat used by streaked horned larks for foraging, resulting in a loss of grass and forb-dominated habitat, which could result in a smaller local population due to reduced habitat availability for breeding and wintering larks (Pearson and Altman 2005, p. 12). Based on discussions with staff at Sanderson Field in Shelton, future development plans do not include impacts to streaked horned lark habitat at this time. The majority of the proposed development at Sanderson Field will occur in areas already impacted (between existing buildings). The West Ramp at Gray Army Air Field on JBLM was expanded in 2005 into areas previously used by breeding larks, resulting in a loss of available breeding habitat (Stinson 2005, p. 72).

At Portland International Airport, streaked horned larks nest in an area called the Southwest Quad; this is an old dredge material deposition site in a currently unused part of the airport. The Port of Portland, which owns the airport, may propose to develop the Southwest Quad to accommodate future expansion, though there is no current plan in place (Green 2012, *in litt.*). The future development of the Southwest Quad would result in the loss of at least 33 ac (13 ha) of habitat and three breeding territories (Moore 2011, p. 12).

The 13th Division Prairie at JBLM is used for helicopter operations (paratrooper practices, touch-and-go landings, and load drop and retrievals) and troop training activities. Foot traffic and training maneuvers that are conducted during the streaked horned lark breeding season likely are a contributing factor to nest failure and low nest success at 13th Division Prairie. Recently, a lark nest was destroyed at 13th Division Prairie by a porta-potty service vehicle (Linders 2012b, *in litt.*). Artillery training, off-road use of vehicles and troop maneuvers at the 91st Division Prairie are also conducted in areas used by larks during the nesting season. Because access into this training area is limited and streaked horned lark surveys are only conducted opportunistically, we do not know if or how many lark nests are lost due to military activities at 91st Division Prairie.

Industrial development has also reduced habitat available to breeding and wintering larks. The Rivergate Industrial Park, owned by the Port of Portland, is a large industrial site in north Portland near the Columbia River; the site is developed on a dredge spoil field, and still has some large areas of open space between the industrial buildings. Rivergate has been an important breeding site for streaked horned larks, and a wintering site for mixed flocks of up to five horned lark subspecies (including the streaked horned lark). In 1990, the field used by larks at Rivergate measured more than 260 ha (650 acres) of open sandy habitat (Dillon 2012, pers. comm.). In the years since, new industrial buildings have been constructed on the site; now only one patch of 32 ha (79 acres) of open dredge spoil field remains (Moore 2011, p. 9) and the breeding population has dropped from 20 pairs to 5 pairs in this time (Moore 2011, p. 10).

Loss of Ecological Disturbance Processes, Invasive Species, and Succession

The suppression and loss of ecological disturbance regimes, such as fire and flooding, across vast portions of the landscape has resulted in altered vegetation structure in the prairies and meadows and has facilitated invasion by nonnative grasses and woody vegetation, rendering habitat unusable for Taylor's checkerspot butterflies and streaked horned larks. The basic ecological processes that maintain prairies, meadows, and scoured river banks have disappeared from, or have been altered on, all but a few protected and managed sites.

Historically, the prairies and meadows of the south Puget Sound region of Washington and western Oregon are thought to have been actively maintained by the native peoples of the region, who lived here for at least 10,000 years before the arrival of Euro-American settlers (Boyd 1986, entire; Christy and Alverson 2011, p. 93). Frequent burning reduced the encroachment and spread of shrubs and trees (Boyd 1986, entire; Chappell and Kagan 2001, p. 42), favoring open grasslands with a rich variety of native plants and animals. Following Euro-American settlement of the region in the mid-19th century, fire was actively suppressed on grasslands, allowing encroachment by woody vegetation into the remaining prairie habitat and oak woodlands (Franklin and Dyrness 1973 p. 122; Boyd 1986, entire; Kruckeberg 1991, p. 287; Agee 1993, p. 360; Altman *et al.* 2001, p. 262).

Fires on the prairie create a mosaic of vegetation conditions, which serve to maintain native prairie forbs like *Camassia quamash* (common camas) *Achillea millefolium* (yarrow) and *Lomatium* spp. (desert parsley or biscuit root), which are adult nectar foods for Taylor's checkerspot butterfly. Stands of native perennial grasses (*Festuca idahoensis* ssp. *roemeri* (Roemer's fescue)) are also well adapted to regular fires and produce habitat favorable to the Taylor's checkerspot butterfly. In some prairie patches fires will reset succession back to bare ground, creating early successional vegetation conditions suitable for both Taylor's checkerspot butterflies and streaked horned larks (Pearson and Altman 2005, p. 13). The historical fire frequency on prairies has been estimated to be 3 to 5 years (Foster 2005, p. 8).

The result of fire suppression has been the invasion of the prairies and oak woodlands by native and nonnative plant species (Dunn and Ewing 1997, p. v; Tveten and Fonda 1999, p. 146), notably woody plants such as the native Douglas-fir and the nonnative Scot's broom, and nonnative grasses such as *Arrhenatherum elatus* (tall oatgrass) in Washington and *Brachypodium sylvaticum* (false brome) in the Willamette Valley of Oregon. This increase in woody vegetation and nonnative plant species has resulted in less available prairie habitat overall and habitat that is avoided by Taylor's checkerspot butterflies and streaked horned larks (Tveten and Fonda 1999, p. 155; Pearson and Hopey 2005, pp. 2, 27; Olson 2011a, pp. 12, 16).

Most butterflies avoid densely forested areas, as they are unable to generate enough heat from their own metabolism to provide them with the heat and energy they need to fly in shaded conditions. Streaked horned larks prefer areas that afford long sight lines and have low vegetation; both of

which are impeded by the presence of trees.

On tallgrass prairies in midwestern North America, fire suppression has led to degradation and the loss of native grasslands (Curtis 1959, pp. 296, 298; Panzer 2002, p. 1297). On northwestern prairies, fire suppression has allowed Douglas-fir to encroach on and outcompete native prairie vegetation for light, water, and nutrients (Stinson 2005, p. 7). On JBLM alone, over 16,000 acres (6,477 ha) of prairie has converted to Douglas-fir forest since the mid-19th century (Foster and Shaff 2003, p. 284). Where controlled burns or direct tree removal are not used as a management tool, this encroachment will continue to cause the loss of open grassland habitats for Taylor's checkerspot butterfly.

Restoration in some of the south Puget Sound grasslands in Washington has resulted in temporary control of Scot's broom and other invasive plants through the careful and judicious use of herbicides, mowing, grazing, and fire. Fire has been used as a management tool to maintain native prairie composition and structure and is generally acknowledged to improve the health and composition of grassland habitat by providing a short-term nitrogen addition, which results in a fertilizer effect to vegetation, thus aiding grasses and forbs as they resprout.

Unintentional fires ignited by military training burns patches of prairie grasses and forbs on JBLM on an annual basis. These light ground fires create a mosaic of conditions within the grassland, maintaining a low vegetative structure of native and nonnative plant composition, and patches of bare soil. Because of the topography of the landscape, fires create a patchy mosaic of areas that burn completely, some areas that do not burn, and areas where consumption of the vegetation is mixed in its effects to the habitat. One of the benefits to fire in grasslands is that it tends to kill regenerating conifers, and reduces the cover of nonnative shrubs such as Scot's broom, although Scot's broom seed stored in the soil can be stimulated by fire (Agee 1993, p. 367). Fire also improves conditions for many native bulb-forming plants, such as *Camassia* sp. (camas) (Agee and Dunwiddie 1984, p. 367). On sites where regular fires occur, such as on JBLM, there is a high complement of native plants and fewer invasive species. These types of fires promote the maintenance of the native short-statured vegetation communities (Severns and Warren 2008, p. 476) favored by Taylor's checkerspot butterflies for larval and nectar food resources. Fire management to maintain or restore native vegetation is essential to maintaining suitable habitat for Taylor's checkerspot butterfly, but the timing of the management activity is important, as improperly-timed actions can destroy larvae, eggs, or adult butterflies.

Management practices such as intentional burning and mowing require expertise in timing and technique to achieve desired results. If applied at the wrong season, frequency, or scale, fire and mowing can be detrimental to the restoration of native prairie species. For example, during a prescribed fire event that was implemented in an adjacent training area on JBLM in late summer 2011, fire occurred in an area containing Taylor's checkerspot butterfly habitat that was under a protection agreement. This burn was inconsistent with the prescribed burn plan and eliminated a large area of the Taylor's checkerspot butterfly larval host and nectaring plants on the 91st Division Prairie. Excessive and high intensity burning can result in a lack of vegetation or encourage regrowth to nonnative grasses. Where such burning has occurred over a period of more than 50 years on the artillery ranges of the JBLM, prairies are covered by nonnative forbs and grasses instead of native perennial bunchgrasses (Tveten and Fonda 1999, pp. 154–155).

Taylor's Checkerspot Butterfly. On JBLM, the 91st Division Prairie is frequently ignited through routine training exercises involving ordnance, which prevents invasive shrubs and nonnative grasses and native Douglas-fir from encroaching onto the prairie, and preserves the high quality of habitat (larval and nectar food plants) for Taylor's checkerspot butterflies and the generally good condition of the prairie. Vegetation at this site remains in an early successional stage that is dominated by native grasses and forbs, such as *Balsamorhiza deltoidea* (deltoid balsamroot), which is an important Taylor's checkerspot butterfly nectar plant. Fires on grassland (prairie) habitat generally have low fuel content and produce regular, short duration fires (Agee 1993, p. 354; Chappell and Kagan 2001, p. 43), which restricts the establishment of invasive plants and encroaching trees and helps to maintain native grasses and forbs. Swales and overall topographic heterogeneity prevent the entire grassland landscape from being consumed by fire, as grasslands fires tend to be patchy in their distribution creating a mosaic of conditions. Nonnative grasses have invaded many sites occupied by Taylor's checkerspot butterflies (Severns and Warren 2008, p. 476). Several hundred acres (more than 40 ha) of tall oatgrass is currently encroaching upon the largest Taylor's checkerspot butterfly population in Washington (JBLM's 91st Division Prairie).

Bald habitats at the Forest Service and WDNR sites where Taylor's checkerspot butterflies are found were formerly forested. These areas appear to have been colonized by Taylor's checkerspot butterfly shortly after they were cleared. At the time the trees were harvested from each of these balds they were reforested with conifers to comply with the Washington State Forest Practices rules. The establishment and growth of the conifers, and the establishment and expansion of *Acer macrophyllum* (bigleaf maple), *Holodiscus discolor* (oceanspray), and other shrubs has resulted in shaded habitat which have replaced areas that the Taylor's checkerspot butterfly is currently using. Sites that currently have Taylor's checkerspot butterflies present will quickly become unsuitable if trees and shrubs are not removed and if the site is not managed specifically for the long-term conservation of the Taylor's checkerspot butterfly or the maintenance of bald habitat. This is the case for several balds recently occupied by Taylor's but no longer supporting the species, including Bald Hills NAP in south Puget Sound, and Highway 112 and Striped Peak on the Olympic Peninsula.

A large portion of the existing Taylor's checkerspot butterfly habitat on Denman Island in Canada resulted from timber harvest. After the area was logged, Taylor's checkerspot butterflies colonized the disturbed area from nearby suitable habitat. Currently, *Alnus rubra* (red alder), bigleaf maple, and Douglas-fir trees are expanding onto the site, which will directly threaten the butterfly habitat there (COSEWIC 2011, p. 18). As the forest becomes reestablished on the property, it will shade and outcompete the host plants for Taylor's checkerspot butterfly for space, water, light, and nutrients. The population of Taylor's checkerspot butterfly is expected to decline significantly within the next 10 years at the Canada site if the habitat on Denman Island is not managed for the species (COSEWIC 2011, p. 31).

Streaked Horned Lark. Prior to the construction of dams on the Columbia River, annual flooding and scouring likely created nesting and wintering habitat for streaked horned larks on sandy islands and beaches along the river's edge (Stinson 2005, p. 67). Once the dams were in place, *Salix* spp. (willows), *Populus trichocarpa* (black cottonwood), and other vegetation established broadly on the sandbars and

banks (Rogers 2000, pp. 41–42), resulting in unsuitable habitat for larks. Loss of these habitats may have been partially ameliorated by the formation of dredge spoil islands that have been established as part of the U.S. Army Corps of Engineers' (Corps) shipping channel maintenance (Stinson 2005, p. 67).

Streaked horned larks currently use sand islands in the lower Columbia River for both breeding and wintering habitat; these islands are a mosaic of Federal, State, and private lands, but there are no management or conservation plans in place to protect larks or these important habitats. The Corps has a dredging program to maintain the navigation channel in the Columbia River. In 2002, the Corps established a deeper navigation channel in the river, a regular maintenance dredging program, and a plan for disposition of dredge material on the islands in the lower Columbia River (U.S. Fish and Wildlife Service (USFWS) (USFWS 2002b, pp. 1–14). In this plan, the Corps addressed the disposition of dredge material in the lower Columbia River, which has the potential to both benefit and harm streaked horned larks, depending on the location and timing of deposition. Recent studies by Anderson (2010a, p. 29) on the islands in the lower Columbia River have shown that fresh dredge material stabilizes and develops sparse vegetation suitable for lark nesting approximately 3 years after deposition, and can be expected to remain suitable for approximately 2 years before vegetation becomes too dense. Thus, deposition of dredge material can be both a tool for habitat creation and a threat, as deposition of dredge material at the wrong time (e.g., during the nesting season) can destroy nests and young or degrade suitable habitat.

Destruction of occupied lark habitat through the deposition of dredge materials has been documented several times on the lower Columbia River islands (Stinson 2005, p. 67; Pearson and Altman 2005, p. 11; Pearson *et al.* 2008, p. 14). In 2006, dredge spoils were deposited on Whites Island while larks were actively nesting. All nests at this site were apparently destroyed (Pearson 2012a, pers. comm.). This site had at least 21 nests and 13 territories during the 2005 nesting season (Pearson *et al.* 2008, p. 21). In a similar situation on Rice Island, singing males were observed on Rice Island in June 2000, but dredge spoil was placed on the site in July 2000, which destroyed nesting habitat during the breeding season (MacLaren 2000, p. 3). In 2004 on Miller Sands Spit, the Army Corps of Engineers deposited dredge material on lark breeding habitat, which likely resulted in nest failure (Pearson and Altman 2005, p. 10). The Corps has recently began working with the Center for Natural Lands Management to coordinate dredge spoil depositions with timing of lark breeding season (Anderson 2011, *in litt.*).

Dredge spoil deposition also creates habitat for Caspian terns (*Sterna caspia*), a native bird species that nests in very large numbers in the lower Columbia River; these large terns have been shown to eat substantial numbers of salmon smolts, and the reduction of predation by terns on young salmon has been the focus of an interagency effort for the past decade (Lyons *et al.* 2011, p. 2). One aspect of the effort to reduce the numbers of terns in the lower Columbia River has been a program to discourage tern nesting on Rice Island by planting vegetation and placing barrier fencing on open sandy habitats; these measures have also reduced habitat available to larks on the island and are ongoing (Stinson 2005, p. 73; Roby *et al.* 2011, p. 14).

There is ample evidence that larks respond positively to habitat management that simulates natural processes. From 2001 through 2004, JBLM used nonbreeding season mowing and controlled burns to control Scot's broom (Pearson and Hopey 2005, p. 30). The September 2004 burns resulted in increased lark abundance and a dramatic vegetative response on 13th Division Prairie; relative to the control sites, late summer fire in 2006 resulted in increased use of the burned areas by larks immediately after the fires, and in the breeding season following the fires (Pearson and Hopey 2005, p. 30).

Throughout the year, streaked horned larks use areas of bare ground or sparse vegetative cover in grasslands. These grasslands may be native prairies in the Puget lowlands, perennial or annual grass seed fields in the Willamette Valley, or the margins of airport runways throughout the range of the species. All of these habitats receive management to maintain desired structure: prairies require frequent burning or mowing to prevent succession to woodlands; agricultural fields are mowed at harvest or burned to reduce weed infestations; airports mow to maintain low-stature grasses around airfields to minimize attracting hazardous wildlife. Burning and mowing are beneficial to larks in that they maintain the habitat structure required by the bird, but these activities can also harm larks if the activities occur during the breeding season when nests and young are present (Pearson and Hopey 2005, p. 29). In the nesting seasons from 2002 to 2004, monitoring at the Puget lowlands sites (Gray Army Airfield, McChord Field, and Olympia Airport) documented nest failure of 8 percent of nests caused by mowing over the nests, young, and adults (Pearson and Hopey 2005, p. 18). Habitat management to maintain low-stature vegetation is essential to maintaining suitable habitat for streaked horned larks, but the timing of the management is important, as improperly-timed actions can destroy nests and young.

Military Training

Populations of Taylor's checkerspot butterflies and streaked horned larks occurring on JBLM are exposed to differing levels of training activities on the base. The DOD's proposed actions under 'Grow the Army' (GTA) include stationing 5,700 new soldiers, new combat service support units, a combat aviation brigade, facility demolition and construction to support the increased troop levels, additional aviation, maneuver, and live fire training (75 FR 55313, September 10, 2010). The increased training activities will affect nearly all training areas at JBLM resulting in an increased risk of accidental fires, and habitat destruction and degradation through vehicle travel, dismounted training, bivouac activities, and digging. While training areas on the base have degraded habitat for these species, with implementation of conservation measures, these areas still provide habitat for Taylor's checkerspot butterfly and streaked horned lark.

Taylor's Checkerspot Butterfly. Military training on JBLM has resulted in direct mortality of Taylor's checkerspot butterflies and destruction of Taylor's checkerspot butterfly habitat. Vehicle use and soldier foot traffic can crush larvae and damage larval host plants. These actions disrupt intact prairie plant communities by disturbing vegetation and exposing soils, directly introducing invasive plant seeds carried in on tires or boots, and accelerating the rate of establishment of invasive grasses or other nonnative plants that are light-seeded and easily blown onto a site from adjacent areas, like *Cirsium* spp. (thistles), *Senecio* spp. (groundsel), *Chrysanthemum leucanthemum* (oxeye daisy). For example, in January 2009 an exercise occurred that did not follow the documented training plan, which would have restricted vehicles to established roads in order to protect sensitive habitat. Instead vehicles moved haphazardly across an area known to be occupied by Taylor's checkerspot butterflies and streaked horned larks.

Approximately 67 ac (27 ha) of prairie were repeatedly traversed by eight wheeled armored personnel carriers known as Strykers. DOD staff later estimated that up to 37.5 ac (15 ha) were highly disturbed (Gruhn 2009, pers. comm.), with much of this acreage scraped to bare soil (Linders 2009b, entire). This impact would have directly affected overwintering larvae by crushing larvae and destroying the larvae plants used by Taylor's checkerspot butterflies.

Taylor's checkerspot butterfly counts were the lowest ever recorded at this site during the following spring (Linders 2009a, entire; Randolph 2009, p. 4; Thomas 2009, pers. obs). Prior to the butterfly flight season in May 2009, the three brigades of Strykers were dispatched away from JBLM and the prairies were not used for Stryker training during the spring of 2009 or 2010, which corresponds to the butterfly flight period. This training break allowed Range 74–76 of the 91st Division Prairie to regenerate or recover the vegetative qualities associated with Taylor's checkerspot butterfly and streaked horned lark habitat. JBLM has subsequently coordinated with the Service to establish specific conservation measures regarding vehicle use within this training area. Military training also occurs on a specific portion of the 91st Division Prairie called Training Area 50 where Taylor's larvae have been translocated during spring 2009, 2010, and 2011, and at the proposed checkerspot translocation site at 13th Division Prairie.

Under the GTA initiative, more troops and vehicles will be stationed at JBLM; this is likely to result in increased pressure on Taylor's checkerspot butterfly habitat and larvae, particularly if the Army continues training on 91st Division Prairie. It is likely that a higher number of troops will equate to a higher number of individuals recreating on JBLM in places like Marion and Jackson prairies (this is further discussed under recreational impacts below).

Streaked Horned Lark. Military training, including bombardment with explosive ordnance and hot downdraft from aircraft has been documented to cause nest failure and abandonment for streaked horned larks at Gray Army Airfield and McChord Field at JBLM (Stinson 2005, pp. 71–72). These activities harass and may kill some streaked horned larks, but the frequent disturbance also helps to maintain sparse vegetation and open ground needed for streaked horned lark nesting.

In the odd-numbered years since 2005, McChord Field has hosted a military training event known as the Air Mobility Rodeo. This international military training exercise is held at the end of July. This event includes aircraft, vehicles, and tents staged on or near lark nesting areas, although the majority of these activities take place on concrete hardstand areas (Geil 2010, *in litt.*). In even-numbered years, McChord Field hosts a public air show known as Air Expo, which is scheduled in mid-July. At the Air Expo, aerial events incorporate simulated bombing and fire-bombing, including explosives and pyrotechnics launched from an area adjacent to the most densely populated streaked horned lark nesting site at this location; these disturbances likely have adverse effects to fledglings of late nests (Stinson 2005, p. 72). Surveys in 2004 detected 31 pairs of streaked horned larks at McChord Field (Anderson 2011, p. 14). In 2006, the number of lark pairs at McChord Field had dropped by more than half to 14 pairs, and the number of lark pairs has remained low, with just 11 pairs detected in 2011 (Anderson 2011, p. 14). The Rodeo and Air Expo events are scheduled to take advantage of the good weather that typically occurs in the summer on the south Puget Sound; this timeframe also coincides with the streaked horned lark nesting season, and the disturbance may continue to cause nest failure and abandonment (Pearson *et al.* 2005a, p. 18). During the airshows, tents, vehicles and concession stands are set up in the grassy areas along the runways used by streaked horned larks for nesting and thousands of visitors a day line the runways for viewing the shows.

Airports routinely implement a variety of approaches to minimize the presence of hazardous wildlife on or adjacent to airfields and to prevent wildlife strikes by aircraft. McChord Field uses falcons to scare geese and gulls off the airfield, and also uses two dogs for this purpose; the falcons and dogs are part of McChord Field's Integrated Bird/Wildlife Aircraft Strike Hazard program and are designed to minimize aircraft and crew exposure to potentially hazardous bird and wildlife strikes (Geil 2010, *in litt.*). The falcons and dogs cause streaked horned larks to become alert and fly (Pearson and Altman 2005, p. 12), which imposes an energetic cost to adults and could expose nests to predation. Portland International Airport uses a variety of hazing and habitat management tools to minimize wildlife hazards. Raptors and waterfowl pose the greatest danger to aircraft operations, but the airport's Wildlife Hazard Management Plan aims to reduce the potential for any bird strikes (Port of Portland 2009, pp. 5–6). Streaked horned larks are not known to nest near the runways at Portland International Airport, but foraging individuals from the nearby Southwest Quad could be harassed by the hazing program, which could impose resulting energetic costs.

JBLM has committed to restrictions both seasonally and operationally on military training areas, in order to avoid and minimize potential affects to the Taylor's checkerspot butterfly and streaked horned lark. These restrictions include identified non-training areas, seasonally restricted areas during breeding, and the adjustment of mowing schedules to protect these species. These conservation management practices are outlined in an operational plan that the Service has assisted the DOD in developing for JBLM (Thomas 2012, pers. comm.).

Restoration Activities

Management for invasive species and encroachment of conifers requires control through equipment, herbicides, and other activities. While restoration has conservation value for the species, management activities to implement restoration may also have direct impacts to the species that are the target of habitat restoration.

Taylor's Checkerspot Butterfly. On occupied sites, Taylor's checkerspot butterflies are present throughout the year in some life cycle form. Restoration activities (application of herbicides, use of restoration equipment, and fire) can result in trampling, crushing and destruction of Taylor's checkerspot butterfly larvae and larval host plants. Mowing to reduce the cover and competition from woody species, if done at the wrong time of year, can crush larval host plants and nectar plants used by adult butterflies on a site.

Streaked Horned Lark. The introduction of *Ammophila arenaria* (Eurasian beachgrass) and *A. breviligulata* (American beachgrass), currently found in high and increasing densities in most of coastal Washington and Oregon, has dramatically altered the structure of dunes on the outer coast (Wiedemann and Pickart 1996, p. 289). The tall leaf canopy of beachgrass creates areas of dense vegetation, which is unsuitable habitat for streaked horned lark nesting (MacLaren 2000, p. 5). Streaked horned larks require sparse, low-stature vegetation with at least 16–17 percent bare ground; areas invaded by beachgrass are too dense for streaked horned larks. The area suitable for streaked horned lark breeding on the Washington coast has decreased as a result of the spread of beachgrasses (Stinson 2005, p. 65; USFWS 2011a, p.

4–2). In a 10-year period (from 1977 to 1987) at Leadbetter Point on the Willapa National Wildlife Refuge, spreading beachgrass reduced the available nesting habitat for streaked horned larks by narrowing the distance from vegetation to water by 112 feet (34 meters) (WDFW 1995, p. 19). Since 1985, encroaching beachgrasses have spread to cover over two-thirds of Damon Point at Grays Harbor, another lark breeding site on the Washington coast (WDFW 1995, p. 19). At Damon Point, Scot's broom is also encroaching on lark habitat, reducing the area available for nesting (Pearson 2011, *in litt.*). On the Oregon coast, the disappearance of the streaked horned lark has been attributed to the invasion of exotic beachgrasses and the resultant dune stabilization (Gilligan *et al.* 1994, p. 205).

Some efforts have been successful in reducing the cover of encroaching beachgrasses. The Service's Willapa National Wildlife Refuge has restored habitat on Leadbetter Point. In 2007, the area of open habitat measured 84 ac (34 ha); after mechanical and chemical treatment to clear beachgrass (mostly American beachgrass) and spreading oyster shell across 45 ac (18 ha), 121 ac (50 ha) of sparsely vegetated open habitat suitable for lark nesting was created (Pearson *et al.* 2009, p. 23). The main target of the Leadbetter Point restoration project was the threatened western snowy plover (*Charadrius alexandrinus nivosus*), but the restoration actions also benefited the streaked horned lark. Before the restoration project, this area had just 2 streaked horned lark territories (Pearson *et al.* 2005a, p. 7); after the project, an estimated 8 to 10 territories were located in and adjacent to the restoration area (Pearson 2012b, pers. comm.).

Disease Impacts to Habitat

Disease is not known to be a threat to the habitats of the streaked horned lark.

Taylor's Checkerspot Butterfly. Until recently disease was not known to be a factor affecting the habitat of the Taylor's checkerspot butterfly. We now have evidence of a plant pathogen (*Pyrenopeziza plantaginis*) known to affect the leaf tissue of the narrow-leaf plantain, the primary larval food for Taylor's checkerspot butterfly at several locations, and the exclusive larval food plant at all sites known from Oregon. At some locations on the north Olympic Peninsula, the Taylor's checkerspot butterflies select harsh paintbrush as the primary larval food plant and select narrow-leaf plantain as the secondary larval host. *Pyrenopeziza plantaginis* is active in late winter through early spring, and contributes to the mortality of leaf tissue at a time when post-diapause larvae are feeding on narrow-leaf plantain. Narrow-leaf plantain is an exotic but widely distributed invasive European weed in North America (Wolff and Schaal 1992, pp. 326, 330). Although the pathogen is common in Europe it has only recently been reported in North America (Severns 2011, *in litt.;* Stone *et al.* 2011, p. 1). Severns and Warren (2008. p. 476) identified the pathogen on leaves of narrow-leaf plantain from remnant prairies in Benton County, Oregon, where Taylor's checkerspot butterflies are known to occur and where they feed exclusively on narrow-leaf plantain. Similar instances of leaf mortality were previously attributed to frost damage on prairies of south Puget Sound, Washington. Recently, *P. plantaginis* has been identified on narrow-leaf plantain at Scatter Creek Wildlife Area in Thurston County, and at the 91st Division Prairie on JBLM, in Pierce County; both sites are in Washington.

Uncertainty exists regarding how *Pyrenopeziza plantaginis* affects Taylor's checkerspot butterfly larvae. The pathogen has been identified locally in Washington at sites where Taylor's checkerspot larvae feed on narrow-leaf plantain. The pathogen kills leaf tissue in late winter and early spring, coinciding with the time post-diapause larvae are feeding (Severns 2011, *in litt.*), which would lead to declining food resource to support the butterfly's larvae. If the food resource is killed by this pathogen it may affect the ability of Taylor's checkerspot butterfly larvae to survive through the critical larval feeding period prior to emergence as an adult butterfly. Therefore, based on our review of the best available scientific and commercial information, we conclude that disease may be a threat to the larval foods utilized by Taylor's checkerspot butterfly, and, subsequently, may indirectly affect the butterfly. At this time, we have evidence of the presence of this pathogen at Scatter Creek Wildlife Area in Washington, where the pathogen appears common and its effect to *Plantago* is severe (Severns 2011, *in litt.*) This threat may affect populations if the pathogen were to become widespread on sites occupied by Taylor's checkerspots; however, because we are uncertain of its potential as a population-level threat, we conclude that disease is a relatively minor threat to Taylor's checkerspot at this time, and we have no evidence to suggest that it is likely to become a significant threat within the future.

Transient Agricultural Habitat

The Taylor's checkerspot butterfly is not affected by transient agricultural habitat.

Streaked Horned Lark. Roughly half of all the agricultural land in the Willamette Valley is devoted to grass seed production fields (Oregon Seed Council 2012, p. 1). Grasslands—both rare native prairies and grass seed fields—are important habitats for streaked horned larks in the Willamette Valley; open areas within the grasslands are used for both breeding and wintering habitat (Altman 1999, p. 18; Moore and Kotaich 2010, p. 11; Myers and Kreager 2010, p. 9). About 420,000 ac (170,000 ha) in the Willamette Valley are currently planted in grass seed production fields. Demand for grass seed is declining in the current economic climate (Oregon Department of Agriculture 2011, p. 1); this decreased demand for grass seed has resulted in farmers switching to other agricultural commodities, such as wheat or nurseries and greenhouses (U.S. Department of Agriculture—National Agricultural Statistical Service Oregon Field Office 2009, p. 3; Oregon Department of Agriculture 2011, p. 1). The continued decline of the grass seed industry in the Willamette Valley will likely result in conversion from grass seed fields to other agricultural types; this will result in fewer acres of suitable breeding and wintering habitat for streaked horned larks.

Another potential threat related to agricultural lands is the streaked horned lark's use of ephemeral habitats. In the breeding season, streaked horned larks will move into open habitats as they become available, and as the vegetation grows taller over the course of the season, will abandon the site to look for other open habitats later in the season (Beason 1995, p. 6). This ability to shift locations in response to habitat changes is a natural feature of the streaked horned lark's life history strategies, as breeding in recently disturbed habitats is part of their evolutionary history. In the Willamette Valley, patches of suitable habitat in the agricultural fields shift from place to place as fields are burned, mowed, or harvested. Other suitable sites appear when portions of grass fields perform poorly, inadvertently creating optimal habitat for larks. The shifting nature of suitable habitat is not in itself a threat; the potential threat is in the overall reduction of compatible agriculture, which would reduce the area within which lark habitat could occur.

Summary of Factor A

Taylor's Checkerspot Butterfly. Taylor's checkerspot butterflies face threats from loss of habitat due to conversion of native grasslands to agriculture, and permanent loss when prairies are developed for residential or commercial purposes. Taylor's checkerspot butterflies also face threats from changes in vegetation structure and composition of native grassland-dominated plant communities. Changes to vegetation structure and composition can occur through conversion to agriculture, through natural succession processes, and invasion by nonnative species (Agee 1993, p. 345; Chappell and Kagan 2001, p. 42). In addition to the loss of grasslands from development, conversion to agriculture, and other uses, as well as plant succession, these plant communities are faced with degradation due to invasion of the grassland habitat that remains by native conifers and nonnative pasture grasses, shrubs, and forbs. As grasslands have been converted, the availability of Taylor's checkerspot butterfly larval host plants and adult nectar plants has declined.

In addition, we conclude that disease, specifically *Pyrenopeziza plantaginis,* may pose a potential threat to the larval food plant of the Taylor's checkerspot, and therefore a potential indirect threat to the species. However, we have no information to suggest that it is currently a threat to Taylor's checkerspot butterfly. Any threat of disease to the larval food plant for this species has the potential to become a threat in the future due to the small number of remaining populations of Taylor's checkerspot butterfly. However, based on our review of the best available information, we have no data at this point to suggest that it is likely to become a widespread threat in the future.

The current threats to Taylor's checkerspot butterflies are similar to those identified at the time the species was determined to be a candidate for listing in 2001. Since then, the threat from invasive species and their impacts on native vegetation has increased. Other threats, particularly the pressure to develop Taylor's checkerspot butterfly habitat, have increased on Denman Island, Canada, in south Puget Sound, and in the Willamette Valley (IAE 2010, p. 1). Moreover, prior to entering two wars in 2003, military training (DOD, Army, JBLM) on occupied Taylor's checkerspot butterfly habitat was lower in intensity and duration. The only remaining high-quality native habitat occupied by the Taylor's checkerspot butterfly within the south Puget Sound region is found on the 91st Division Prairie of JBLM, a site of highly active training that can inadvertently result in the destruction of larval host plants and crushed larvae.

Based on current projected development and impacts to habitat, the loss of historically occupied locations, military training, recreation, the limited distribution of the species, existing and future habitat fragmentation, habitat disturbance, and land use changes associated with agriculture and long-term fire suppression, we conclude that there are current and ongoing threats to Taylor's checkerspot butterfly habitat which are expected to continue into the future.

Streaked Horned Lark. The streaked horned lark population decline in the south Puget Sound of Washington indicates that the observed range contraction for this subspecies may be continuing, and the subspecies may disappear from that region in the near future. There are many other ongoing threats to the streaked horned lark's habitat throughout its range, including: (1) Conversion to agriculture and industry; (2) loss of natural disturbance processes such as fire and flooding; (3) encroachment of woody vegetation; (4) invasion of coastal areas by nonnative beachgrasses; and (5) incompatible management practices. The continued loss and degradation of streaked horned lark habitat may result in smaller, more isolated habitats available to the subspecies, which could further depress the rangewide population or reduce the geographic distribution of the streaked horned lark. We conclude that the current and ongoing threats to streaked horned lark habitat are resulting in a significant impact to the species and its habitat and will continue into the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization of species results when the number of individuals removed from the system exceeds the ability of the population of the species to sustain its numbers or reduces populations of the species to a level such that it is vulnerable to other influences (threats) upon its survival. This overutilization can result from removal of individuals from the wild for commercial, recreational, scientific or educational purposes.

Taylor's Checkerspot Butterfly. Populations of Taylor's checkerspot butterflies have declined dramatically during the past decade. We know of no overutilization of the Taylor's checkerspot butterfly for commercial, recreational, or educational purposes. However, scientific studies may have negatively affected Taylor's checkerspot butterfly populations at the 13th Division Prairie on JBLM (Vaughan and Black 2002). Over 7,000 individuals were observed as recently as 1997, but only 10 adults were observed during surveys in 2000, and no Taylor's checkerspot butterflies have been observed since (Stinson 2005, p. 94; Linders 2012c, *in litt.*). Mark-recapture studies were conducted at this site for several years during this timeframe, and the study methods involved capturing all adults and moving them to a single release location. This action likely influenced the population demographics, but because no simultaneous population monitoring was conducted, it is impossible to know whether there was an effect. According to McGarrahan (1997), mark, release, and recapture studies of the Bay Edith's checkerspot (*Euphydryas editha bayensis*) were considered a contributing factor in the extirpation of this population from Stanford's Jasper Ridge Preserve. There are no current Taylor's checkerspot butterfly ''mark, release and recapture studies'' in progress. Collection of butterflies and the threat of trampling associated with scientific studies continue to be a threat to the species, although it is likely a minor one.

Streaked Horned Lark. Overutilization for commercial, recreational, scientific, or educational purposes is not known to be a threat to the streaked horned lark.

Summary of Factor B

In summary, although there is some evidence of historical mortality from overutilization for the Taylor's checkerspot butterfly and there may have been recent mortality from utilization of the Taylor's checkerspot butterfly, we have no reason to believe that current levels of utilization impact the species alone or to a degree such that it is vulnerable to other threats. We have no information to suggest that overutilization will become a threat in the future. In addition, there is no evidence that commercial, recreational, scientific, or educational use is occurring at a level that would pose a threat to the streaked horned lark.

Factor C. Disease or Predation

Disease

Most healthy ecosystems include organisms such as viruses, bacteria, fungi, and parasites that cause disease. Healthy wildlife and ecosystems have evolved defenses to fend off most

diseases before they have devastating impacts. An ecosystem with high levels of biodiversity (diversity of species and genetic diversity within species) is more resilient to the impacts of disease because there are greater possibilities that some species and individuals within a species have evolved resistance, or if an entire species is lost, that there will likely be another species to fill the empty niche.

Where ecosystems are not healthy, due to a loss of biodiversity and threats such as habitat loss, climate change, pollutants or invasive species, wildlife and ecosystems are more vulnerable to emerging diseases. Diseases caused by or carried by invasive species are particularly severe threats, as native wildlife may have no natural immunity to them (National Wildlife Federation 2012).

Our review of the best available scientific and commercial data found no evidence to indicate that disease is a threat to the Taylor's checkerspot butterfly or streaked horned lark. We conclude that disease is not a threat to the Taylor's checkerspot butterfly or streaked horned lark now, nor do we anticipate it to become a threat in the future.

Predation

Predation is a process of major importance in influencing the distribution, abundance, and diversity of species in ecological communities. Generally, predation leads to changes in both the population size of the predator and that of the prey. In unfavorable environments, prey species are stressed or living at low population densities such that predation is likely to have negative effects on all prey species, thus lowering species richness. In addition, when a nonnative predator is introduced to the ecosystem, negative effects on the prey population may be higher than those from co-evolved native predators. The effect of predation may be magnified when populations are small, and the disproportionate effect of predation on declining populations has been shown to drive rare species even further towards extinction (Woodworth 1999, pp. 74–75).

Predation has an impact on populations of the Taylor's checkerspot butterfly and streaked horned lark. The degree of threat to Taylor's checkerspot butterfly from predation is not as pronounced as with the streaked horned lark due to the concentration of defensive plant compounds within the larvae and adults that make them distasteful to predators.

Taylor's Checkerspot Butterfly. Generally, butterflies exhibit some protective mechanisms to avoid predation, and this is true for the Taylor's checkerspot butterfly. Larvae of the Taylor's checkerspot butterfly sequester iridoid glycosides (plant defensive chemicals) during consumption of their larval host plants, narrow-leaf plantain and paintbrush species. These compounds are distasteful to predators (COSEWIC 2011, p. 36) and generalist predators such as insects and spiders avoid checkerspot larvae (Kuussaari *et al.* 2004, p. 140). Taylor's checkerspot butterfly larvae also tend to be brightly colored, which makes them highly visible and signals the presence of noxious compounds to predators, including birds and some invertebrate predators that avoid Taylor's checkerspot butterfly larvae (Kuussaari *et al.* 2004, p. 139). However, birds are known to attack and consume adult butterflies. Bowers *et al.* (1985, p. 101), found avian predation to be a significant factor in mortality of adult variable checkerspot butterflies (*Euphydryas chalcedona*) They also found sex bias in selection of prey as the avian predator ate more female variable butterflies (less bright red) than male variable checkerspot butterflies, adding support to the idea that brightly colored insects are avoided (Bowers 1985 p. 100). This is likely a naturally occurring predation event and we conclude that at this time it is currently not a threat, nor do we expect it to become a threat to Taylor's checkerspot butterfly.

Streaked Horned Lark. Predation on adult streaked horned larks has not been identified as a threat, but it is the most frequently documented source of mortality for eggs and young larks. In most studies of streaked horned lark nesting ecology, predation has been the primary documented source of nest failure (Altman 1999, p. 18; Pearson and Hopey 2004, p. 15; Pearson and Hopey 2005, p. 16; Pearson and Hopey 2008, p. 1; Moore and Kotaich 2010, p. 32). Sixty-nine percent of nest failures were caused by predation at four south Puget Sound study sites (Gray Army Airfield, 13th Division Prairie, Olympia Airport, McChord Field) in 2002–2004 (Pearson and Hopey 2005, p. 18). Anderson (2006, p. 19) concluded that the primary predators of streaked horned lark eggs and young were avian, most likely American crows (*Corvus brachyrhynchos*), although garter snakes (*Thamnophis* spp.) and western meadowlarks have also been documented preying on eggs and young in the region (Pearson and Hopey 2005, p. 16; Pearson and Hopey 2008, p. 4). On the Washington coast and lower Columbia River islands, 46 percent of nest failures were caused by predation at three study sites (Midway Beach, Damon Point, and Puget Island) in 2004 (Pearson and Hopey 2005, p. 18). A study of five sites in the Willamette Valley (Corvallis Airport, M–DAC Farms, William L. Finley, Baskett Slough, and Ankeny National Wildlife Refuges) determined that 23 to 58 percent of all streaked horned lark nests were lost to predation (Moore and Kotaich 2010, p. 32).

Video cameras were used to identify predators in this Willamette Valley study; documented predators include: red-tailed hawk (*Buteo jamaicensis*), northern harrier (*Circus cyaneus*), American kestrel (*Falco sparverius*), great-horned owl (*Bubo virginianus*), and rats and mice (Family Cricetidae) (Moore and Kotaich 2010, p. 36). Streaked horned larks are ground-nesting birds and are vulnerable to many other potential predators, including domestic cats and dogs, coyotes (*Canis latrans*), raccoons (*Procyon lotor*), striped skunks (*Mephitis mephitis*), red foxes (*Vulpes vulpes*), long-tailed weasels (*Mustela frenata*), opossums (*Didelphis virginiana*), meadow voles (*Microtus pennsylvanicus*), deer mice (*Peromyscus maniculatus*), and shrews (*Sorex* spp.) (Pearson and Hopey 2005, p. 17; Stinson 2005, p. 59).

Predation is a natural part of the streaked horned lark's life history, and in stable populations, the effect of predation would not be considered a threat to the species. However, in the case of the streaked horned lark, the effect of predation may be magnified when populations are small, and the disproportionate effect of predation on declining populations has been shown to drive rare species even further towards extinction (Woodworth 1999, pp. 74–75). We consider the effect of predation on streaked horned lark populations, particularly on the south Puget Sound, to be a threat to the subspecies.

The one area where predation does not appear to be a threat to nesting streaked horned larks is in Portland at Rivergate Industrial Complex and the Southwest Quad at Portland International Airport. In 2009 and 2010, nesting success was very high, and only a single predation event was documented at these sites (Moore 2011, p. 11). The reason for the unusually low predation pressure may be that the two industrial sites have few predators since both sites are isolated from other nearby natural habitats.

Predation may have contributed to the extirpation of streaked horned larks on the San Juan Islands. The subspecies

was last documented on the islands in 1962 (Lewis and Sharpe 1987, p. 204). The introduction of several exotic animal species to the island roughly coincides with the disappearance of the streaked horned lark, including feral ferrets (*Mustela outorius*) and red foxes. These introduced predators may have significantly affected ground nesting birds and played a role in the eventual extirpation of streaked horned larks (Rogers 2000, p. 42).

Summary of Factor C

Based on our review of the best available information, we conclude that disease is not a threat to the Taylor's checkerspot butterfly or streaked horned lark now, nor do we expect it to become a threat in the future.

We found only one study with evidence to indicate that predation from avian predators may be a threat to the Taylor's checkerspot butterfly. While predation does occur on the Taylor's checkerspot butterfly, it does not appear to be occurring beyond expected natural levels; therefore, we do not consider it to be a threat now, and we have no information to indicate that it will become a threat in the future.

Because the populations of streaked horned larks are declining and small, we find that effect of the threat of predation is resulting in a significant impact on the species. Therefore, based on our review of the best available scientific and commercial information, we conclude that predation is currently a threat to the streaked horned lark now and will continue to be in the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *.'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

The following section includes a discussion of Federal, State, or local laws, regulations, or treaties that apply to the Taylor's checkerspot butterfly or the streaked horned lark. It includes legislation for Federal land management agencies and State and Federal regulatory authorities affecting land use or other relevant management.

Canadian Laws and Regulations

In British Columbia, Taylor's checkerspot butterfly and the streaked horned lark are on the Conservation Data Centre's Red List. The Red List includes ecological communities, indigenous species and subspecies that are extirpated, endangered, or threatened in British Columbia; placing taxa on the Red List flags them as being at risk and requiring investigation, but does not confer any protection (British Columbia Ministry of Environment 2012, p. 1).

In 2003, the Taylor's checkerspot butterfly and in 2005, the streaked horned lark were determined to be endangered under the Canadian Species at Risk Act (SARA) (Environment Canada 2007, p. iii). SARA makes it an offense to kill, harm, harass, capture or take an individual of a listed species that is endangered or threatened; possess, collect, buy, sell or trade an individual of a listed species that is extirpated, endangered or threatened, or its part or derivative; damage or destroy the residence of one or more individuals of a listed endangered or threatened species or of a listed extirpated species if a recovery strategy has recommended its reintroduction.

For many of the species listed under SARA, the prohibitions on harm to individuals and destruction of residences are limited to Federal lands, but this limitation is inapplicable to migratory birds protected under the Migratory Birds Convention Act, including the streaked horned lark (Statutes of Canada (S.C). ch. 29, § 34). Hence, SARA protects streaked horned larks, where present, from harm and destruction of their residences, not only on Federal lands, but also on provincial and private lands, where most of the remaining habitat for the species occurs. Moreover, SARA mandates development and implementation of a recovery strategy and action plans (S.C. ch. 29, §§ 37, 47). Invertebrate species assessed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) as endangered will be protected by the British Columbia Wildlife Act and Wildlife Amendment Act, once these regulations are finalized (COSEWIC 2011, p. 44).

The horned lark (all subspecies) is also protected under Canada's Federal Migratory Birds Convention Act, 1994 (MBCA) (S.C. ch. 22), which is their domestic legislation similar to the United States' Migratory Bird Treaty Act of 1918 (MBTA). The MBCA and its implementing regulations prohibit the hunting of migratory nongame birds and the possession or sale of ''migratory birds, their nests, or eggs'' (S.C. ch. 22 §§ 5, 12).

Although British Columbia has no stand-alone endangered species act, the provincial Wildlife Act protects virtually all vertebrate animals from direct harm, except as allowed by regulation (e.g., hunting or trapping). Legal designation as endangered or threatened under this act increases the penalties for harming a species, and also enables the protection of habitat in a Critical Wildlife Management Area (British Columbia Wildlife Act 1996, accessed online). The streaked horned lark is not listed under Canada's provincial Wildlife Act as an endangered or threatened species.

To date there is no finalized recovery strategy for Taylor's checkerspot butterfly in Canada (COSEWIC 2011, p. 44). A majority (97 percent) of the known populations observed in Canada occur on private land on Denman Island, which is not protected from development by individual landowners; approximately 1,173 ac (475 ha) of this private land has been officially transferred to the government and will become a Provincial Park or Ecological Reserve (COSEWIC 2011, p. 45). A final recovery strategy for the streaked horned lark was released in 2007 (COSEWIC 2011, p. 40); the streaked horned lark is essentially extirpated in Canada, and the recovery goal for this species is to reestablish a breeding population of at least 10 breeding pairs at a minimum of 3 sites within its historical breeding range in Canada (Environment Canada 2007, p. iv). Based on our evaluation, we have determined that SARA provides protections for both the Taylor's checkerspot butterfly and streaked horned lark given their limited occurrences in British Columbia, and, additionally, the streaked horned lark is afforded protections under the MBCA.

United States Federal Laws and Regulations

There are no Federal laws in the United States that specifically protect the Taylor's checkerspot butterfly. The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) is the only Federal

law in the United States currently providing specific protection for the streaked horned lark due to its status as a migratory bird. The MBTA prohibits the following actions, unless permitted by Federal regulation:

To ''pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird * * * or any part, nest, or egg of any such bird.''

There are no provisions in the MBTA that prevent habitat destruction unless direct mortality or destruction of active nests occurs (for example, as was described in Factor A, above, for dredge spoil disposal in the breeding season), nor does the MBTA require any planning to recover declining species or provide funding to protect individuals or their habitats. Therefore, we conclude that the MBTA does not address threats to the streaked horned lark from further population declines associated with habitat loss or inappropriate management.

The Sikes Act (16 U.S.C. 670) authorizes the Secretary of Defense to develop cooperative plans with the Secretaries of Agriculture and the Interior for natural resources on public lands. The Sikes Act Improvement Act of 1997 requires Department of Defense installations to prepare Integrated Natural Resource Management Plans (INRMPs) that provide for the conservation and rehabilitation of natural resources on military lands consistent with the use of military installations to ensure the readiness of the Armed Forces. INRMPs incorporate, to the maximum extent practicable, ecosystem management principles and provide the landscape necessary to sustain military land uses. While INRMPs are not technically regulatory mechanisms because their implementation is subject to funding availability, they can be an added conservation tool in promoting the recovery of endangered and threatened species on military lands.

On JBLM in Washington, several policies and an INRMP are in place to provide conservation measures to grassland-associated species that occupy training lands on the military base. JBLM in partnership with local agencies and nongovernmental organizations has provided funding to conserve these species through the acquisition of new conservation properties and management actions intended to improve the amount and distribution of habitat for these species. JBLM has also provided funding to reintroduce declining species (e.g., Taylor's checkerspot butterfly) into suitable habitat on and off military lands. In June 2011, representatives from DOD (Washington, DC office) met with all conservation partners to assess the success of this program and make decisions as to future funding needs. Support from the Garrison Commander of JBLM and all partners resulted in an increase in funding for habitat management and acquisition projects for these species on JBLM.

The Service has worked closely with the DOD to develop protection areas within the primary habitat for Taylor's checkerspot butterfly on JBLM. These include areas where no vehicles are permitted on occupied habitat, where vehicles will remain on roads only, and where foot traffic is allowed.

JBLM policies include Army Regulation 420–5, which covers the INRMP, and AR–200–1. This is an agreement between each troop and DOD management that actions taken by each soldier will comply with restrictions placed on specific Training Areas, or range lands. Within the INRMP, the wildlife branch of the DOD developed updated Endangered Species Management Plans (ESMPs) that provide site specific management and protection actions that are taken on military lands for the conservation of Taylor's checkerspot butterfly and streaked horned lark. The ESMPs provide assurances of available funding, and an implementation schedule that determines when certain activities will occur and who will accomplish these actions. ESMPs require regular updates to account for dispersal of animals, or for activities to enhance habitat for animals that may have been translocated to a new habitat patch. INRMPs also have a monitoring component that would require modifications, or adaptive management, to planning actions when the result of that specific action may differ from the intent of the planned action. Based on the military's efforts, we conclude that although military actions may continue to harm individuals of the species, through the Sikes Act, the JBLM INRMP protects the Taylor's checkerspot butterfly and streaked horned lark from further population declines associated with habitat loss or inappropriate management on JBLM properties.

The National Park Service Organic Act of 1916, as amended (39 Stat. 535, 16 U.S.C. 1), states that the National Park Service (NPS) ''shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations * * * to conserve the scenery and the national and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' The NPS Management Policies indicate that the Park Service will ''meet its obligations under the National Park Service Organic Act and the Endangered Species Act to both pro-actively conserve listed species and prevent detrimental effects on these species.'' This includes working with the Service and undertaking active management programs to inventory, monitor, restore, and maintain listed species habitats, among other actions.

The National Forest Management Act (16 U.S.C. 1604(g)(3)(B) has required the U.S. Department of Agriculture's (USDA) Forest Service to incorporate standards and guidelines into Land and Resource Management Plans, including provisions to support and manage plant and animal communities for diversity and for the long-term, rangewide viability of native species. The final planning rule (2012 rule, 36 CFR part 219) provides a framework to guide the collaborative and science-based development, amendment and revision of land management plans. This framework is designed to promote healthy, resilient, diverse, and productive national forests and grasslands with a range of social, economic, and ecological benefits now and for future generations. In the face of changing environmental conditions and stressors, such as a changing climate, the 2012 rule requires plans to include plan components to: (1) Maintain and restore ecosystem and watershed health and resilience (ecological integrity); (2) protect key resources on the unit, including water, air, and soil; and (3) address water quality and riparian area protection and restoration.

The 2012 rule contains a strong implementation approach to provide for the diversity of plant and animal communities and the persistence of native species in the plan area. This approach requires that plans use a complementary ecosystem and species-specific approach to maintaining the diversity of plant and animal communities and the persistence of native species in the plan area. The intent is to provide the ecological conditions (habitat) necessary to keep common native species common, contribute to the recovery of threatened and endangered species, conserve proposed and candidate species, and maintain viable populations of each

species of conservation concern within the plan area. The 2012 rule requires that plans provide the ecological conditions necessary to contribute to the recovery of threatened and endangered species, and to conserve candidate and proposed species. In addition, the requirements for restoration and ecological sustainability are intended to reduce the risk that species will become listed as an endangered or a threatened species in the future.

On USDA Forest Service (FS) lands, management for listed and candidate species, as well as species of concern, follow FS Sensitive Species policy (Kerwin and Huff 2007, p. 6). For the FS, these policies require the agency to maintain viable populations of all native and desired nonnative wildlife, fish, and plant species in habitats distributed throughout their geographic range on National Forest System lands. Management ''must not result in a loss of species viability or create significant trends toward Federal listing'' for any identified Sensitive Species (Kerwin and Huff 2007, p. 6).

The Olympic National Forest is in the process of developing site management plans for each location where Taylor's checkerspot butterfly is known to occur. This planning document will call for restoration actions to remove encroaching conifers and shrubs, nonnative plant removal and control, road management, and may possibly include planting or seeding of larval host plants (Holtrop 2010, p. 7). Because this planning process is not finished, however, we do not rely on it in our assessment of the adequacy of Forest Service regulatory mechanisms. As a Federal candidate species, the Taylor's checkerspot butterfly receives support from the Forest Service Interagency Special Status and Sensitive Species Program (Huff, 2011, pers. comm.). Based on our review, we conclude that the Taylor's checkerspot butterfly and streaked horned lark are protected from further population declines associated with habitat loss or inappropriate management on FS lands, and the inadequacy of existing regulations under the National Forest Management Act is not a threat to these species.

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*) establishes the protection of biodiversity as the primary purpose of the National Wildlife Refuge (NWR) system. This has led to various management actions to benefit the federally listed species including development of Comprehensive Conservation Plans (CCP) on NWRs. CCPs typically set goals and list needed actions to protect and enhance populations of key wildlife species on refuge lands. The Taylor's checkerspot butterfly is not known to occur on any NWR. However, streaked horned larks occur on the Willapa National Wildlife Refuge on the Washington coast and in the Willamette Valley Complex on the William L. Finley, Ankeny, and Baskett Slough Refuges. The CCPs for the Willapa Refuge and all the units in the Willamette Valley Complex contain habitat conservation measures to address threats such as habitat degradation and benefit streaked horned larks; measures include surveys, habitat enhancement, and removal of invasive plants (USFWS 2011a, p. 2–34; USFWS 2011b, pp. 2-47–2-48). The joint CCP for the Lewis and Clark and Julia Butler Hansen Refuges in the lower Columbia River states that streaked horned larks do not occur on the refuges, although they do occur on suitable habitats near the refuge parcels (USFWS 2010, p. 4–37). The joint CCP identifies actions to benefit streaked horned larks on off-refuge lands (but that are within the refuge acquisition boundary), including working with the U.S. Army Corps of Engineers to manage the dredge spoil deposition program to benefit larks (USFWS 2010, pp. 2-29–2-30).

CCPs detail program planning levels that are sometimes substantially above current budget allocations, and as such, are primarily used for strategic planning and priority setting; inclusion of a project in a CCP does not guarantee that the project will be implemented. The CCPs at the Willapa and Willamette Valley National Wildlife Refuges specifically provides for the conservation of the streaked horned lark, and implementation of the conservation measures in the refuge CCPs could benefit as many as 10 nesting pairs of larks at Willapa (USFWS 2011a, pp. 4-44–4-45) and likely more than 50 pairs at the three Willamette Valley refuges (Moore 2009, pp. 5–9). These actions may improve the status of streaked horned larks on the refuges. Therefore based on our review, we conclude that the streaked horned lark is protected from further population declines associated with habitat loss or inappropriate management on NWR lands, and the inadequacy of existing regulatory mechanisms is not a threat to the species on NWR lands.

State Laws and Regulations

Although there is no State Endangered Species Act in Washington, the Washington Fish and Wildlife Commission has authority to list species (Revised Code of Washington (RCW) 77.12.020). State-listed species are protected from direct take, but their habitat is not protected (RCW 77.15.120). The Taylor's checkerspot butterfly and streaked horned lark are listed by the WDFW and are listed as critically imperiled (S1) by the Washington Natural Heritage Program. State listings generally consider only the status of the species within the State's borders, and do not depend upon the same considerations as a potential Federal listing. Unoccupied or unsurveyed habitat is not protected unless by County prairie ordinances or other similar rules or laws.

Taylor's checkerspot butterfly and streaked horned lark are Priority Species under WDFW's Priority Habitats and Species Program (WDFW 2008, pp. 19, 80, 120). As Priority Species, the Taylor's checkerspot butterfly and streaked horned lark may benefit from some protection of their habitats under environmental reviews of applications for county or municipal development permits (Stinson 2005, pp. 46, 70). For Taylor's checkerspot butterfly, WDFW has developed a recommended approach to protect the species on private property. Their approach is non-regulatory and encourages landowners to engage in cooperative efforts to protect and conserve Taylor's checkerspot butterfly habitat. However, State regulatory mechanisms appear to be insufficient to protect these species in areas where permits are not required or requested. We therefore conclude that Washington State regulatory mechanisms are inadequate to protect the Taylor's checkerspot butterfly and the streaked horned lark and do not protect these species from further population declines associated with habitat loss or inappropriate management.

Under the Washington State Forest Practices Act (RCW 76.09 accessed online 2012), WDNR must approve certain activities related to growing, harvesting or processing timber on all local government, State, and privately owned forest lands. WDNR's mission is to protect public resources while maintaining a viable timber industry. The primary goal of the forest practices rules is to achieve protection of water quality, fish and wildlife habitat, and capital improvements while ensuring that harvested areas are reforested. Presently, the Washington State Forest Practices Rules do not specifically protect Taylor's checkerspot butterflies or streaked horned larks; only the Taylor's checkerspot butterfly actually occurs within areas where Forest Practices Rules might apply. Landowners have the option to develop a management plan for the species if it resides on their property, or if

landowners choose to not develop a management plan for the species with WDFW, their forest practices application will be conditioned to protect this public resource. If this approach does not provide the required protections for the Taylor's checkerspot butterfly, then WDFW and WDNR may request the Forest Practice Board to initiate rule making, and possibly, an emergency rule would be developed (Whipple 2008, pers. comm.).

The WDNR also manages approximately 66,000 ac (26,710 ha) of lands as Natural Area Preserves (NAP). NAPs provide the highest level of protection for excellent examples of unique or typical land features in Washington State. These NAPs provide protection for the Taylor's checkerspot butterfly and therefore, based on their proactive management, we do not find Taylor's checkerspot butterfly to be threatened by the inadequacy of existing regulatory mechanisms on WDNR lands.

Oregon has a State Endangered Species Act (ESA), which was last updated in 1998. The streaked horned lark is not State-listed, and the State does not protect invertebrates like the Taylor's checkerspot butterfly under the State ESA (Oregon ESA 2004, p. 3). The list of threatened and endangered species tracked by the Oregon Department of Fish and Wildlife does not include insects, and does not classify the streaked horned lark with any conservation status. However, once an Oregon ''native wildlife'' species is federally listed as threatened or endangered, it is included as a State-listed species and receives some protection and management, primarily on State-owned or managed lands (OAR 635–100–0100 to OAR 635–100–0180; ORS 496.171 to ORS 496.192).

The Oregon Forest Practices Act (ORS 527.610 to 527.992 and OAR Chapter 629, Divisions 600 to 665) lists protection measures specific to private and State-owned forested lands in Oregon. These measures include specific rules for resource protection, including threatened and endangered species, riparian areas along lakes, streams, springs and seeps; and wetlands. Compliance of the forest practice rules does not substitute for or ensure compliance with the Federal Endangered Species Act. Landowners and operators are advised that Federal law prohibits a person from taking certain threatened or endangered species which are protected under the Endangered Species Act (OAR 629–605–0105). Although neither the streaked horned lark nor the Taylor's checkerspot butterfly are forest-dependent species, protective measures taken on forest lands in Oregon may provide benefits for these species.

Based on our review of State regulatory mechanisms for the States of Washington and Oregon, we conclude that they do not protect the Taylor's checkerspot butterfly and the streaked horned lark from further population declines associated with habitat loss or inappropriate management.

Local Laws and Regulations

The Washington State Growth Management Act of 1990 requires all jurisdictions in the state to designate and protect critical areas. The state defines five broad categories of critical areas, including: (1) Wetlands; (2) areas with a critical recharging effect on aquifers used for potable water; (3) fish and wildlife habitat conservation areas; (4) frequently flooded areas; and (5) geologically hazardous areas. *Quercus garryana* (Oregon white oak) habitat and prairie both predominantly fall into the category of fish and wildlife habitat conservation areas, though due to the coarse nature of prairie soils and the presence of wet prairie habitat across the landscape, critical area protections for crucial aquifer recharge areas and wetlands may also address prairie habitat protection.

Within counties, the CAO applies to all unincorporated areas, but incorporated cities are required to independently address critical areas within their Urban Growth Area. The incorporated cities within the range of the streaked horned lark and the Taylor's checkerspot butterfly are: (1) Shelton (Mason County); and (2) Olympia, Lacey, Tumwater, Tenino and Yelm (Thurston County), all in the State of Washington.

In 2009, the Thurston County Board of Commissioners adopted Interim Ordinance No. 14260, which strengthened protections for prairie and Oregon white oak habitat in consideration of the best available science. The County worked with the Service and WDFW to include an up-to-date definition of prairie habitat and to delineate soils where prairie habitat is likely to occur. In July 2010, the ordinance was renewed and amended, including revisions to the prairie soils list and changes to administrative language. Since July 2010, the interim prairie ordinance has been renewed on a 6-month basis and is currently in place. Several prairie species were also included as important species subject to critical areas regulation, including the Taylor's checkerspot butterfly and streaked horned lark (Thurston County 2012, p. 1).

County staff use the known presence or historical locations of the Taylor's checkerspot or streaked horned lark to determine whether these species may be present at a site and impacted by the land use activity. After a field review, if one of these species is found on the site, the County requires a habitat management plan (HMP) to be developed, typically by a consultant for the landowner, in accordance with WDFW's management recommendations. This HMP specifies how site development should occur, and assists developers in achieving compliance with CAO requirements to minimize impact to the prairie habitat and species. The HMPs typically include onsite restoration and enhancement activities. Mitigation for prairie impacts may also be required, on-site or off (Thurston County 2012, p. 2).

In Clallam, Pierce, and Mason Counties, specific critical area ordinances have not been identified for the Taylor's checkerspot butterfly or the streaked horned lark. However, prairie habitats and species garner some protection under Fish (or Aquatic) and Wildlife Habitat Conservation Areas (Mason County 2009, p. 64; Clallam County 2012, Part Three, entire; Pierce County 2012, pp. 18E.40–1–3). All developments within these areas are required to: preserve and protect habitat adequate to support viable populations of native wildlife (Clallam County 2012, Part Three, entire); to achieve ''no net loss'' of species and habitat where, if altered, the action may reduce the likelihood that these species survive and reproduce over the long term (Pierce County 2012, p. 18E.40–1); and support viable populations and protect habitat for Federal or State listed * * * fish or wildlife (Mason County 2009, p. 63). While these regulations are likely adequate for the management of species with stable populations and large ranges, the loss of individual animals can have a cumulative impact deleterious to species facing a wide range of other threats and that already have decreased numbers of individuals or populations.

County-level CAOs do not apply to incorporated cities within county boundaries, thus the incorporated cities of Olympia, Lacey, Tumwater, Yelm, and Tenino that overlap the range of the Taylor's checkerspot butterfly and the streaked horned lark do not provide the same specificity of protection for these taxa as the Thurston County CAO. Below we address the relevant city ordinances that overlap these species' ranges. We conclude below with a summary of whether we deem these city

ordinances adequate for the conservation of the Taylor's checkerspot and the streaked horned lark.

The City of Olympia. The City of Olympia's municipal code states that ''The Department [City] may restrict the uses and activities of a development proposal which lie within one thousand feet of important habitat or species location,'' defined by Washington State's Priority Habitat and Species (PHS) Management Recommendations of 1991, as amended.'' (Olympia Municipal Code (OMC) 18.32.315 B). When development is proposed within 1,000 feet of habitat of a species designated as important by Washington State, the Olympia CAO requires the preparation of a formal ''Important Habitats and Species Management Plan'' unless waived by the WDFW (OMC 18.32.320).

The City of Lacey. The City of Lacey CAO includes in its definition of critical area any area identified as habitat for a Federal or State endangered, threatened, or sensitive species or State listed priority habitat and calls these Habitat Conservation Areas (HCAs) (Lacey Municipal Code (LMC) 14.33.060). These areas are defined through individual contract with qualified professional biologists on a site by site basis as development is proposed. The code further states that ''No development shall be allowed within a habitat conservation area or buffer [for a habitat conservation area] with which state or federally endangered, threatened, or sensitive species have a primary association'' (LMC 14.33.117).

The City of Tumwater. The City of Tumwater CAO outlines protections for Habitat Critical Areas and for ''habitats and species of local importance.'' Tumwater's Habitat Critical Areas are established on a case-by-case basis by a ''qualified professional'' as development is proposed and the Habitat Critical Areas are required to be consistent with the ''recommendations issued by the Washington State Department of Fish and Wildlife'' (Tumwater Municipal Code (TMC) 16.32.60). Species of local importance are defined as locally significant species that are not State-listed as threatened, endangered, or sensitive, but live in Tumwater and are of special importance to the citizens of Tumwater for cultural or historical reasons, or if the city is a critically significant portion of its range (TMC 16.32.055 A). Tumwater is considered a ''critically significant portion of a species' range'' if the species' population would be divided into nonviable populations if it is eliminated from Tumwater'' (TMC 16.32.055 A2). Species of local importance are further defined as State monitor or candidate species where Tumwater is a significant portion of its range such that a significant reduction or elimination of the species from Tumwater would result in changing the status of the species to that of State endangered, threatened, or sensitive (TMC 16.32.055 A3).

The City of Yelm. The municipal code of Yelm states that it will ''regulate all uses, activities, and developments within, adjacent to, or likely to affect one or more critical areas, consistent with the best available science'' (Yelm Municipal Code/(YMC) 14.08.010E4f) and mandates that ''all actions and developments shall be designed and constructed to avoid, minimize, and restore all adverse impacts.'' Further, it states that, ''no activity or use shall be allowed that results in a net loss of the functions or values of critical areas'' (YMC 14.08.010 G) and ''no development shall be allowed within a habitat conservation area or buffer which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by WDFW or applicable state or federal agency'' (YMC 14.080.140 D1a). The City of Yelm municipal code states that by ''limiting development and alteration of critical areas'' it will ''maintain healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, and * * * conserve the biodiversity of plant and animal species'' (17.08.010 A4b) .

The City of Tenino. The City of Tenino municipal code gives Development Regulations for Critical Areas and Natural Resource Lands that include fish and wildlife habitat areas (Tenino Municipal Code (TMC) 18D.10.030 A) and further ''protects unique, fragile, and valuable elements of the environment, including critical fish and wildlife habitat'' (TMC 18D.10.030 D). The City of Tenino references the DNR Critical Areas Fish and Wildlife Habitat Areas-Stream Typing Map and the WDFW PHS Program and PHS Maps as sources to identify fish and wildlife habitat (TMC 18D.10.140 E1, 2). The City also defines critical fish and wildlife species habitat areas as those areas known to support or have ''a primary association with State or Federally listed endangered, threatened, or sensitive species of fish or wildlife (specified in 50 CFR 17.11, 50 CFR 17.12, WAC 232–12–011) and which, if altered, may reduce the likelihood that the species will survive and reproduce over the long term.'' (TMC 18D.40.020A, B).

The City of Shelton. The CAO for the city of Shelton (Mason County) specifies compliance with the PHS through designation of habitat conservation areas (HCAs) (Shelton Municipal Code (SMC) 21.64.300 B1), indicating that where HCAs are designated, development will be curtailed (SMC 21.64.010 B) except at the discretion of the director (city), who may allow single-family development at such sites without a critical areas assessment report if development is not believed to directly disturb the components of the HCA (SMC 21.64.360 B).

Summary. Each city's CAO has been crafted to preserve the maximum amount of biodiversity while at the same time encouraging high density development within their respective Urban Growth Areas. Each city requires that potential fish and wildlife habitat be surveyed by qualified professional habitat biologists as development is proposed. A Habitat Conservation Area (HCA) is determined according to the WDFW Priority Habitat and Species list. If an HCA is identified at a site, the development of the parcel is then subject to the CAO regulations. Mitigation required by each city's CAO prioritizes reconsideration of the proposed development action in order to avoid the impact to the HCA.

For the Taylor's checkerspot butterfly and streaked horned lark, only known or historical locations are considered prior to applying the CAOs. There are currently no WDFW Priority Habitat and Species Recommendations for these species and no surveys are completed for these species in suitable habitats that may be affected by development or site disturbance.

Connectivity of populations, abundance of resources (prey species or food plants), and undisturbed habitat are three primary factors affecting plant and animal populations. The piecemeal pattern that development unavoidably exhibits is difficult to reconcile with the needs of the Taylor's checkerspot butterfly and streaked horned lark within a given Urban Growth Area. Further, previously common species may become uncommon due to disruption by development, and preservation of small pockets of habitat is unlikely to prevent extirpation of some species without intensive species management, which is beyond the scope of these individual CAOs. The Taylor's checkerspot butterfly and the streaked horned lark have been affected by habitat loss through development and conversion. Protective measures undertaken while development of lands is taking place may provide benefits for these species; however, based on our

review of the Washington County and State regulatory mechanisms, we conclude that these measures are currently inadequate to protect the Taylor's checkerspot butterfly, and the streaked horned lark from further population declines associated with habitat loss, inappropriate management and loss of connectivity.

In Oregon, the Land Conservation and Development Commission in 1974 adopted ''Goal 5'' a broad Statewide planning goal that covers more than a dozen resources, including wildlife habitats and natural areas. Goal 5 and related Oregon Administrative Rules (Chapter 660, Divisions 16 and 23) describe how cities and counties are to plan and zone land to conserve resources listed in the goal.

Goal 5 and its rules establish a five-step planning process for Oregon's cities and counties: (1) Inventory local occurrences of resources listed in Goal 5 and decide which ones are important; (2) Identify potential land uses on or near each resource site and any conflicts that might result; (3) Analyze economic, social, environmental, and energy consequences of such conflicts; (4) Decide whether the resource should be fully or partially protected, and justify the decision; and, (5) Adopt measures such as zoning to put that policy into effect. This five-step Goal 5 process was established by rules adopted in 1982, and revised in 1996. The revisions tailored the process to the individual resources covered by the Goal.

Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. Local governments shall analyze the consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The local government shall determine the level of protection for each significant site. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site.

In summary, Goal 5 is a required planning process that allows local governments to make decisions about land use regulations and whether to protect the individual resources based upon potential conflicts involving economic, social, environmental, and energy consequences. It does not require minimum levels of protections for natural resources, but does require weighing the various impacts to resources from land use. Based on our review of Oregon State regulatory mechanisms, we conclude that they are inadequate to protect the Taylor's checkerspot butterfly or streaked horned lark from further population declines associated with habitat loss or inappropriate management.

Summary of Factor D

In summary, the existing regulatory mechanisms described above are not sufficient to significantly reduce or remove the existing threats to the Taylor's checkerspot butterfly and the streaked horned lark. The Canadian recovery strategy is a positive forward step for the streaked horned lark, although, as the species is thought to be extirpated from Canada, it is unlikely to result in a change in the streaked horned lark's downward trend across its range. Lack of essential habitat protection under State laws leaves these species at continued risk of habitat loss and degradation in Washington and Oregon. National Wildlife Refuges provide important protections for streaked horned lark habitat in Washington and Oregon.

On JBLM, regulations applying to the Taylor's checkerspot butterfly and the streaked horned lark are covered by the current INRMP and ESMP. We find that the military training, as it currently occurs, causes direct mortality of individuals and impacts habitat for the Taylor's checkerspot butterfly and streaked horned larks in all areas where training and the species overlap; however, these management plans sufficiently provide for the long-term conservation of these species on the military base. Therefore, we do not find existing regulatory mechanisms to be inadequate on JBLM lands.

The Washington CAOs generally provide conservation measures to minimize habitat removal and direct effects to the Taylors' checkerspot butterfly and streaked horned lark. However, habitat removal and degradation, direct loss of individuals, increased fragmentation, decreased connectivity, and the lack of consistent regulatory mechanisms to address the threats associated with these effects continues to occur.

Based upon our review of the best commercial and scientific data available, we conclude that the existing regulatory mechanisms are not adequate to reduce the threats to the Taylor's checkerspot butterfly and streaked horned lark now or in the future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Low Genetic Diversity, Small or Isolated Populations, and Low Reproductive Success

Most species' populations fluctuate naturally, responding to various factors such as weather events, disease, and predation. Johnson (1977, p.3), however, suggested that these factors have less impact on a species with a wide and continuous distribution. Populations that are small, fragmented, or isolated by habitat loss or modification of naturally patchy habitat, and other human-related factors, are more vulnerable to extirpation by natural randomly occurring events, cumulative effects, and to genetic effects that plague small populations, collectively known as small population effects. These effects can include genetic drift (loss of recessive alleles), founder effects (over time, an increasing percentage of the population inheriting a narrow range of traits), and genetic bottlenecks leading to increasingly lower genetic diversity, with consequent negative effects on evolutionary potential.

Taylor's Checkerspot Butterfly. Although the genetic diversity and population structure of the Taylor's checkerspot butterfly is unknown, a loss of genetic diversity may have occurred as a result of geographic isolation and fragmentation of habitat patches across the distribution of the existing populations. Dispersal of individuals directly affects the genetic composition of populations and possibly the abundance of individuals in a population (Hellmann *et al.* 2004, p. 59). For other subspecies of Edith's checkerspot and their closely related European relative *Melitaea,* small populations led to a high rate of inbreeding (Boggs and Nieminen 2004, p. 98). The Service is currently partnering with WDFW to explore questions of genetic relatedness in the subpopulations of Taylor's checkerspot butterflies. Due to its small population size and fragmented distribution, we conclude that these negative factors associated with small population size, as well as the potential historical loss of genetic diversity, may contribute to further population declines for the Taylor's checkerspot butterfly.

Streaked Horned Lark. Genetic analysis has shown that streaked horned larks have suffered a loss of genetic diversity due to a population bottleneck (Drovetski *et al.* 2005, p. 881), the effect of which may be exacerbated by continued small total population size. In general, decreased genetic diversity has

been linked to increased chances of inbreeding depression, reduced disease resistance, and reduced adaptability to environmental change, leading to reduced reproductive success (Keller and Waller 2002, p. 235).

Recent studies in Washington have found that streaked horned larks have lower fecundity and nest success than other Northwestern horned lark subspecies (Camfield *et al.* 2010, p. 277). In a study on the south Puget Sound, all measures of reproductive success were lower for streaked horned larks than for other ground-nesting birds at the same prairie sites (Anderson 2010, p. 15). The streaked horned lark's egg hatching rate at these sites is extremely low (i.e., 44 percent at 13th Division Prairie) (Anderson 2010, p. 18). Comparisons with savannah sparrows (*Passerculus sandwichensis*), a bird with similar habitat requirements that nests on the same prairies, found that streaked horned lark fecundity was 70 percent lower (Anderson 2010, p. 18). If the streaked horned lark's very low reproductive success was caused by poor habitat quality, other ground-nesting birds at the study sites would be expected to show similarly low nest success rates; that other bird species have much higher nest success in the same habitat suggests that inbreeding depression may be playing a role in the decline of streaked horned larks in the south Puget Sound (Anderson 2010, p. 27). Other factors consistent with hypothesized inbreeding depression in the south Puget Sound population include two cases of observed mother-son pairings (Pearson and Stinson 2011, p. 1), and no observations of immigration from other sites into the Puget lowland breeding sites (Pearson *et al.* 2008, p. 15).

Estimates of population growth rate (λ) that include vital rates from all of the nesting areas in Washington (south Puget Sound, Washington Coast, and one lower Columbia River island) indicate that streaked horned larks in Washington are declining by 40 percent per year, apparently due to a combination of low survival and fecundity rates (Pearson *et al.* 2008, pp. 10, 13; Camfield *et al.* 2011, p. 7). Territory mapping at 4 sites on the south Puget Sound found that the total number of breeding streaked horned lark territories decreased from 77 territories in 2004 to 42 territories in 2007—a decline of over 45 percent in 3 years (Camfield *et al.* 2011, p. 8). The combination of low genetic variability, small and rapidly declining nesting populations, high breeding site fidelity, and no observed migration into the Puget lowlands populations suggests that the south Puget Sound population could become extirpated in the near future (Pearson *et al.* 2008, pp. 1, 14, 15).

In 2011, a project was initiated to increase genetic diversity in the south Puget Sound streaked horned lark population. Twelve eggs (four three-egg clutches) were collected from streaked horned lark nests in the southern Willamette Valley and were placed in nests at the 13th Division Prairie site at JBLM (Wolf 2011, p. 9). At least five young successfully fledged at the receiving site; if even one of these birds return to breed in future years, it will likely increase genetic diversity in the receiving population, resulting in improved fitness and reduced extinction risk for the south Puget Sound larks (Wolf 2011, p. 9). Based on our consideration of these factors, we conclude that the loss of genetic diversity, the current number of small and isolated populations (particularly in Washington State), and the species' low reproductive success are likely to combine to result in continued population declines for the streaked horned lark.

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. (For these and other examples, see IPCC 2007a, p. 30; and IPCC 2007d, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; IPCC 2007d, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., IPCC 2007c, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the extent and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the scope and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; IPCC 2007c, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011 (entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007e, pp. 214–246). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is

susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, scope, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as endangered or threatened, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

Global climate projections are informative, and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (e.g., IPCC 2007a, pp. 8–12). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling). With regard to our analysis for the Taylor's checkerspot butterfly and the streaked horned lark, downscaled projections are available.

The ranges of the Taylor's checkerspot butterfly and the streaked horned lark extend from the southern edge of the Georgia Basin, down through the Puget Sound trough, and south to the Willamette Valley. Downscaled climate change projections for this ecoregion predict consistently increasing annual mean temperatures from 2012 to 2095 using the IPCC's medium (A1B) emissions scenario (IPCC 2000, p. 245). Using the General Circulation Model (GCM) that most accurately predicts precipitation for the Pacific Northwest, the Third Generation Coupled Global Climate Model (CGCM3.1) under the medium emissions scenario (A1B), annual mean temperature is predicted to increase approximately 1.8 °Fahrenheit (F) (1 °Celsius (C)) by the year 2020, 3.6 °F (2 °C) by 2050, and 5.4 °F (3 °C) by 2090 (Climatewizardcustom 2012). This analysis was restricted to the ecoregion encompassing the overlapping range of the species of interest and is well supported by analyses focused only on the Pacific Northwest by Mote and Salathé in their 2010 publication, Future Climate in the Pacific Northwest (Mote and Salathé 2010, entire). Employing the same GCM and medium emissions scenario, downscaled model runs for precipitation in the ecoregion project a small (less than 5 percent) increase in mean annual precipitation over approximately the next 80 years. Most months are projected to show an increase in mean annual precipitation. May–August are projected to show a decrease in mean annual precipitation, which corresponds with the reproductive season for all species of interest in this proposed rule (Climatewizardcustom 2012).

The potential impacts of a changing global climate to Taylor's checkerspot butterfly and streaked horned lark are presently unclear. Projections localized to the Georgia Basin—Puget Sound Trough—Willamette Valley Ecoregion suggest that temperatures are likely to increase approximately 5 °F (2.8 °C) at the north end of the region by the year 2080 based on an average of greenhouse gas emission scenarios B1, A1B, and A2 and all Global Circulation Models employed by Climatewizard (range = 2.6 °F to 7.6 °F; 1.4 °C to 4.2 °C). Similarly, the mid region projection predicts an increase an average of 4.5 °F (range = 2.1 °F to 7.1 °F) (average of 2.5 °C with a range of 1.2 °C to 3.9 °C) and the southern end to increase by 4.5 °F (range = 2.2 °F to 7.1 °F) (average of 2.5 °C with a range of 1.2 °C to 3.9 °C). Worldwide, the IPCC states it is very likely that extreme high temperatures, heat waves, and heavy precipitation events will increase in frequency (IPCC 2007c, p. 783).

Taylor's Checkerspot Butterfly. Because the Taylor's checkerspot butterfly occupies a relatively small area of specialized habitat, it may be vulnerable to climatic changes that could decrease suitable habitat or alter food plant seasonal growth patterns (phenology). However, while it appears reasonable to assume that the butterfly may be affected, as detailed below, we lack sufficient certainty to know specifically how climate change will affect the subspecies.

The relationship between climate change and survival for the *Euphydryas editha* complex is driven more by the indirect effects of the interaction between seasonal growth patterns of host plants and the life cycle of the checkerspot butterfly than by the direct effects of temperature and precipitation (Guppy and Fischer 2001, p. 11; Parmesan 2007, p. 1868; Singer and Parmesan 2010, p. 3170).

Predicting seasonal growth patterns of butterfly host plants is complicated, because these patterns are likely more sensitive to moisture than temperature (Cushman *et al.* 1992, pp. 197–198; Bale *et al.* 2002, p. 11), which is predicted to be highly variable and uncertain in the Pacific Northwest (Mote and Salathé 2010, p. 31). Climate models for the Georgia Basin—Puget Sound Trough—Willamette Valley Ecoregion consistently predict a deviation from the historical monthly average precipitation, with the months of January–April projected to show an increase in precipitation across the region while June–September are predicted to be much drier than the historical average (Climatewizard 2012).

During the active season of pre-diapause larvae (early spring), the Taylor's checkerspot butterfly feeds primarily on plants of the family Scrophulariaceae (snapdragon family, including species of *Castilleja* and *Triphysaria*) and Plantaginaceae (plaintain family) (Stinson 2005, p. 88). Available information suggests that if climate change disrupts seasonal growth patterns of food plants, it is conceivable that as an adult the butterfly may be able to use alternative food plants that occur within its range (Singer and Wee 2005, pp. 353–355; Singer *et al.* 1992, pp. 17–18). The larval stage of Taylor's checkerspot is more limited in terms of potential host plant species. Nevertheless, we have no information indicating that any of these changes (e.g., in availability of food plants) is likely to occur in the near future.

It is likely that the overlap of seasonal growth patterns between these primary larval host plants and the Taylor's checkerspot butterfly will display some level of stochasticity due to climatic shifts in precipitation and increased frequency of extreme weather events. For the Edith's checkerspot (*Euphydryas editha*), Parmesan (2007, p. 1869) reported that a lifecycle mismatch can cause a shortening of the time window available for larval feeding, causing the death of those individuals unable to complete their larval development within the shortened period, citing a study by Singer (1972, p. 75). In that study, Singer documented routine

mortality of greater than 98 percent in the field due to phenological mismatches between larval development and senescence of their annual host plant *Plantago erecta* (California plantain). When mismatches such as these form the 'starting point,' insects may be highly vulnerable to small changes in synchrony with their hosts (Parmesan 2007, p. 1869).

Predicting future population dynamics and distributions is complex for animals such as butterflies that have two very different physiological stages (larva and adult) (for example, see Bale *et al.* 2002, p. 5). Moreover, forecasting the responses of butterflies and other insects to elevated temperatures or variable precipitation is largely based on field and laboratory studies (Hellmann 2002, pp. 927–929). However, the relationship between these changing environmental conditions and the Taylor's checkerspot butterfly has not been explicitly studied, though the extirpation of populations in British Columbia is attributed to drought conditions and the encroachment of woody vegetation into formerly suitable habitat (Guppy 2012, *in litt.*). One of the two primary host plants for the butterfly is ubiquitous across the entire range of the species and extends well beyond areas where the butterfly populations persist. This suggests that there is potential for range shifting, if the butterfly had the capacity to disperse across the landscape.

Uncertainty about climate change impacts does not mean that impacts may or may not occur; it means that the risks of a given impact are difficult to quantify (Schneider and Kuntz-Duriseti 2002, p. 54; Congressional Budget Office 2005, entire; Halsnaes *et al.* 2007, p. 129). The interplay between host plant distribution, larval and adult butterfly dispersal, and female choice of where to lay eggs will ultimately determine the population response to climate change (Singer and Parmesan 2010, p. 3164). However, determining the long-term responses to climate change from even well-studied butterflies in the genus *Euphydryas* is difficult, given their ability to switch to alternative larval food plants in some instances (Singer and Thomas 1996, pp. S33–34; Hellmann 2002, p. 933; Singer *et al.* 1992, pp. 17–18). Attempts to analyze the interplay between climate and host plant growth patterns using predictive models or general State-wide assessments and to relate these to the butterfly are equally complicated (Murphy and Weiss 1992, p. 8). Despite the potential for future climate change in Western Washington, as discussed above, we have not identified, nor are we aware of any data on, an appropriate scale to evaluate habitat or populations trends for the Taylor's checkerspot butterfly or to make predictions about future trends and whether the species will be significantly impacted.

Streaked horned lark. Sea level on the Pacific Coast of Washington and Oregon is predicted to rise according to expected values generated by an ensemble mean of models of relative sea level rise (Tebaldi 2012, p. 4). At Toke Point, Willapa Bay, Washington, near occupied nesting habitat for the streaked horned lark, sea level is predicted to rise 3.9 in (9.9 cm) by 2030 and 9.8 in (0.25 cm) by 2050 (Tebaldi 2012, p. 4). Streaked horned larks are attracted to breeding sites where there are long sight lines and sparse vegetation, making sandy islands and shorelines ideal habitats for nesting. Sea level rise is not currently projected to reach the height of streaked horned lark nesting habitat on the beaches. If these projections underestimate sea level rise and nesting habitat is infringed upon by rising waters, streaked horned larks will likely respond by moving to up shore or to other breeding habitats.

The indirect effects of climate change are primarily associated with changes in habitat, such as succession from a sparsely vegetated condition to a shrubby or forested state, which would make habitat unsuitable for nesting. These negative impacts may be offset by other, potentially positive effects and continued management of occupied habitats. On the ocean beaches an increase in the frequency of winter storm surges may improve upshore nesting habitat for larks by disturbing or killing encroaching vegetation. Many islands used for nesting in the Columbia River are likely to continue receiving dredge spoil deposits, perpetuating the conditions of early primary succession that streaked horned larks seek for nesting. Primary management on most of the currently occupied breeding sites on the mainland of Washington and Oregon is for agricultural, industrial, or military uses. Such management attracts streaked horned larks through the reduction of standing vegetation, thus conversion to unsuitable habitat due to shifts in climate is less likely in these areas. As a result, we have not identified nor are we aware of any data on an appropriate scale to evaluate habitat or populations trends for the streaked horned lark or to make predictions about future trends and whether the species will be significantly impacted. Habitat changes to streaked horned lark habitat from climate change may provide some benefit to the species and as such is not currently considered a threat.

Stochastic Weather Events

Stochasticity of extreme weather events may impact the ability of threatened and endangered species to survive. Vulnerability to weather events can be described as being composed of three elements; exposure, sensitivity, and adaptive capacity.

The small, isolated nature of the remaining populations of Taylor's checkerspot butterfly and streaked horned lark increases the species' vulnerability to stochastic (random) natural events. When species are limited to small, isolated habitats, they are more likely to become extinct due to a local event that negatively affects the population. While a population's small, isolated nature does not represent an independent threat to the species, it does substantially increase the risk of extirpation from the effects of all other threats, including those addressed in this analysis, and those that could occur in the future from unknown sources.

Taylor's Checkerspot Butterfly. Environmental threats exacerbated by small population size and weather can be a factor in Taylor's checkerspot butterfly breeding success. Poor weather conditions, such as cool temperatures and rainy weather, reduce the number of days in the flight period for several early spring flying butterflies, including Taylor's checkerspot butterfly. A shorter flight season reduces the number of opportunities for oviposition (egg laying) for female butterflies, thus affecting the emergence of adult butterflies in the future. Peterson (2010, *in litt*) provided climate and butterfly abundance data that indicated cold winter temperature may affect the timing of butterfly emergence and the size of populations in years when winters are severe. Late emergence of adults may directly impact the mortality of larval stages if larvae are unable to complete their life cycle before their host plants senesce, or the larvae may return to diapause.

Butterflies, including Taylor's checkerspot butterfly, may experience increased mortality or reduced fecundity if the timing of plant development does not match the timing of larval or adult butterfly development (Peterson 1997, p. 167), and large fluctuations in population sizes have been observed based on local weather patterns (Hellmann *et al.* 2004, p. 45). During 2010 and 2011, the emergence of Taylor's adults was approximately three weeks later than ''normal'' due to wet and cool spring weather. In addition, it has been reported that both drought and

deluge may interrupt the insect-plant interaction, resulting in decreased populations (Hellmann *et al.* 2004, p. 45). The effects of drought have been shown to deleteriously affect populations of Edith checkerspots in California (Hellmann *et al.* 2004, p. 45). Based on our review, we conclude that stochastic weather events are a threat to the Taylor's checkerspot butterfly due to the vulnerability of isolated, small populations.

Streaked Horned Lark. There are estimated to be fewer than 1,600 streaked horned larks rangewide (Altman 2011, p. 213). During the breeding season, small populations of larks are distributed across the range; in the winter, however, streaked horned larks concentrate mainly on the lower Columbia River sites and in the Willamette Valley. Such concentration exposes the wintering populations to potentially disastrous stochastic events such as ice storms or flooding that could kill individuals or destroy limited habitat; a severe weather event could wipe out a substantial percentage of the entire subspecies (Pearson and Altman 2005, p. 13). We have not documented the occurrence of these threats to date, but the small and declining population of streaked horned larks is certainly at risk of random environmental events that could have catastrophic consequences. Based on our review, we conclude that the effects of stochastic weather events are a potential threat to the streaked horned lark.

Aircraft Strikes and Activities at Civilian Airports

Streaked horned larks are attracted to the flat open habitats around airports throughout their range. Horned lark strikes are frequently reported at military and civilian airports throughout the country, but because of the bird's small size, few strikes result in significant damage to aircraft (Dolbeer *et al.* 2011, p. 48; Air Force Safety Center 2012, p. 2). Most of the specific information available for threats to streaked horned larks at airports comes from the monitoring program at the Department of Defense's JBLM on the south Puget Sound; similar threats to streaked horned larks likely exist at other airports, but without focused monitoring, the threats to the birds have not been documented. Information provided from monitoring at McChord Field is used here as a surrogate for civilian airport information which is not readily accessible. McChord Field has had seven confirmed streaked horned lark strikes from 2002 through 2010; the larks were killed in the strikes, but the strikes resulted in only minimal cost or damage to the aircraft (Elliott 2011, pers. comm.). Aircraft strikes are potentially a large source of adult mortality for streaked horned larks at McChord Field. Surveys in 2010 at McChord Field detected up to 26 individuals at the site (Linders 2011a, p. 3); loss of even 1 adult (and possibly more, since some strikes may not be noticeable given the small mass of a horned lark) per year could remove up to 4 percent of the population each year. Recent modeling has shown that adult survival has the greatest influence on population growth rates for streaked horned larks (Pearson *et al.* 2008, p. 13; Camfield *et al.* 2011, p. 10), so consistent loss of adult streaked horned larks to aircraft strikes could be pushing this population closer to extirpation.

The annual Olympic Air Show takes place in June at the Olympia Regional Airport; the events at the air show include low-level aerobatic flying (Olympic Flight Museum 2012, p. 1). The events do not occur on lark habitat, but parking and staging for the event may occur on the streaked horned lark's breeding grounds (Tirhi 2012b, *in litt.*). As the air show occurs during the streaked horned lark's breeding season, the level of human activity at the site could cause nest abandonment, exposure of young to predators or actual nest destruction (see discussion for similar military activities under Factor A).

The Corvallis Municipal Airport is the site of the largest known streaked horned lark population. The airport hosts training exercises for police departments on the airport grounds (Moore and Kotaich 2010, p. 25); intensive training sessions have destroyed nests, and the disturbance may also cause streaked horned larks to delay breeding activity (Moore and Kotaich 2010, p. 25) (see discussion for similar use at military sites under Factor A, military activities).

The Taylor's checkerspot butterfly is not known to be impacted by aircraft strikes and aircraft activities at airports. Habitat management activities at these sites are covered under Factor A.

Pesticides and Herbicides

In the south Puget Sound region, currently occupied Taylor's checkerspot butterfly sites are found in a matrix of rural agricultural lands and low-density development. In this context herbicide and insecticide use may have direct effects on nontarget plants (butterfly larval and nectar hosts) and arthropods like butterflies (Stark *et al.* 2012, p. 23).

The application of the pesticide *Bacillus thuringiensis* var. *kurstaki* (*Btk*) for control of the Asian gypsy moth (*Lymantria dispar*) likely contributed to the extirpation of three historical locales for Taylor's checkerspot butterflies in Pierce County, Washington (Vaughan and Black 2002, p. 13). Spraying of *Btk* is known to have adverse effects to nontarget lepidopteran species (butterflies and moths) (Severns 2002, p. 169). Severns (2002) sampled butterfly diversity, richness, and abundance (density) for 2 years following a *Btk* application at Schwarz Park in Lane County, Oregon. Diversity, richness and density were found to be significantly reduced for 2 years following spraying of *Btk* (Severns 2002, p. 168). Species like Taylor's checkerspot butterflies, which have a single brood per year, are active in the spring and their larvae are active during the spray application period. Most lepidopterans are more susceptible to *Btk* than the target species (Asian gypsy moth) (Haas and Scriber 1998). For nontarget lepidoptera, the early instar stages of larvae are the most susceptible stage (Wagner and Miller 1995, p. 21).

The application of pesticides is usually restricted to a short period of the year. However, if the target species is active at the same time as larvae and adult Taylor's checkerspot butterflies, the effect could be significant. Spraying of *Btk* still occurs in Pierce County for gypsy moths during the time of year when Taylor's checkerspot larvae are active and the threat of pesticide drift onto the prairies of Pierce County cannot be discounted. At this time, however, we have no evidence that *Btk* has been sprayed in any locations where Taylor's checkerspot butterflies are known to occur.

Organophosphate-based insecticides are used in a number of agricultural applications including black fly and mosquito control, spraying of vegetable, nut, and fruit crops, and treatment of seed, though they are now banned from residential use. One of these insecticides, Naled (Dibrom), has been determined to have broad impacts on a wide array of butterfly families (Bargar 2011, p. 888) and direct effects to the larvae and adults of a closely related species of a federally listed threatened butterfly, the Bay checkerspot (*Euphydyras editha bayensis*) (EPA 2010, p. 23), if exposed. The extent to which these insecticides are used in the Taylor's checkerspot butterfly's range is currently unknown and current data was not available from the USDA.

The streaked horned lark is not known to be impacted by pesticides or herbicides directly, but may be impacted by the equipment used to dispense them. These impacts are covered under Factor A.

Recreation

Taylor's Checkerspot Butterfly. Recreational foot traffic may be a threat to Taylor's checkerspot butterfly, as trampling will crush larvae if they are present underfoot. The incidence of trampling is limited to the few locations where Taylor's checkerspot butterflies and recreation overlap. For example, foot traffic is relatively common at Scatter Creek Wildlife Area in Washington, where plants and butterfly habitat have been trampled by horses during specialized dog competitions in which dogs are followed by observers on horseback (Stinson 2005, p. 6), and by foot traffic using the trail system to access the meadows of Beazell Memorial Forest (Park) in Oregon. Recreation by JBLM personnel and local individuals occurs on and near the 13th Division Prairie. Trampling by humans and horses, as well as people walking dogs on the 13th Division Prairie, is likely to crush some larvae, and the larval and nectar prairie plant communities that are restored and managed for in this area.

Larvae have been crushed on Dan Kelly Ridge, on the north Olympic Peninsula by vehicles that access the site to maintain a cell tower on the ridge. Also, recreational off-road vehicle (ORV) traffic on Dan Kelly Ridge, and on Eden Valley, has damaged larval host plants. The ORV damage on Dan Kelly Ridge occurs despite efforts by WDNR to block access into the upper portions of the road system through gating of the main road. Based on our review, we conclude that recreation is a threat to the Taylor's checkerspot butterfly and where the population is depressed may constitute a serious threat to the long-term conservation of the species.

Streaked Horned Lark. There are documented occurrences of adverse effects to larks from recreation. Recreation at coastal sites is a common threat to rare species; activities such as dog walking, beachcombing, ORV use, and horseback riding in coastal habitats may indirectly increase predation, nest abandonment and nest success for streaked horned larks (Pearson and Hopey 2005, pp. 19, 26, 29). One nest (of 16 monitored) at Midway Beach on the Washington coast was crushed by a horse in 2004 (Pearson and Hopey 2005, pp. 18–19). Open sandy beaches (e.g. dredge spoil sites on the lower Columbia islands) make good camping areas for kayakers and boaters, and nests could be lost due to accidental crushing. During western snowy plover surveys conducted between 2006 and 2010 at coastal sites in Washington, human-caused nest failures were reported in 4 of the 5 years (Pearson *et al.* annual reports, 2007, p. 16; 2008, p. 17; 2009, p. 18; 2010, p. 16). Because streaked horned larks nest in the same areas as snowy plovers along the Washington Coast, it is highly likely that human-caused nest failures also occur due to recreational activities at these sites. Good communication between researchers and landowners has resulted in some positive actions to reduce the adverse effects of recreation. In 2002, JBLM restricted recreational activity at the 13th Division Prairie to protect lark nesting; prohibiting model airplane flying, dog walking, and vehicle traffic in the area used by streaked horned larks (Pearson and Hopey 2005, p. 29).

Although restrictions to recreational use were placed on the 13th Division Prairie by JBLM, it is a difficult area to patrol and enforce restrictions of this type. This area, adjacent to where streaked horned larks nest, is scheduled for a release of captive bred and translocated Taylor's checkerspot butterfly larvae during March 2012. Based on our review, we conclude that activities associated with recreation are threats to the streaked horned lark.

Nest Parasitism

Nest parasitism by brown-headed cowbirds (*Molothrus ater*) is a potential, though little documented, threat to streaked horned larks. Cowbirds are common in grasslands and urban areas throughout North America; female cowbirds lay their eggs in the nests of other songbirds (Lowther 1993, p. 1). Upon hatching, young cowbirds compete for food with the young of the host species, and may result in lower reproductive success for the host pair (Lowther 1993, p. 11). In a study in Kansas, brown-headed cowbird parasitism of horned lark nests reduced the larks' nest success by half in those nests that were parasitized (from 1.4 young larks fledged per nest in non-parasitized nests to 0.7 young larks produced per nest with cowbird parasitism (Hill 1976, pp. 560–561)). Cowbirds are native to the open grasslands of central North America, but apparently only expanded into Oregon and Washington in the 1950's, as a result of human clearing of forested habitats (Lowther 1993, p. 2). Brown-headed cowbirds have been noted at all streaked horned lark study areas, and fledgling cowbirds have been observed begging for food from adult streaked horned larks in the south Puget Sound (Stinson 2005, p. 56). Extensive nest monitoring of streaked horned nests in the Willamette Valley has not identified cowbird brood parasitism as a threat in this area (Moore 2009, entire; Moore and Kotaich 2010, entire). Streaked horned larks have had just 50 years of exposure to brown-headed cowbirds, and as such, have not coevolved with this nest parasite. We, therefore, conclude that the effect of cowbird brood parasitism may be considered a threat if it further depresses nest success of the declining streaked horned lark population on the south Puget Sound.

The Taylor's checkerspot butterfly is not known to be impacted by nest parasitism.

Summary of Factor E

Based upon our review of the best commercial and scientific data available, the loss, degradation, and fragmentation of prairies has resulted in smaller population sizes, loss of genetic diversity, reduced gene flow among populations, destruction of population structure, and increased susceptibility to local population extirpation for the Taylor's checkerspot butterfly and the streaked horned lark from a series of threats including pesticide use, crushing and trampling from recreational activities, aircraft strikes and collisions, and nest parasitism, as summarized for each species below.

Taylor's Checkerspot Butterfly. Based upon our review of the best commercial and scientific data available, the degradation of habitat from recreational trampling and crushing produced by humans, dogs, and horses has killed larvae at several sites occupied by Taylor's checkerspot butterflies. In addition, the use of the insecticide *BtK* is suspected to be responsible for the extirpation of two sites in Pierce County, WA in 1992. We have also determined that the loss of genetic diversity through inbreeding depression due to habitat fragmentation and the isolation of the species is likely an ongoing active threat. We consider the impacts from recreation and pesticide use to pose potential threats to Taylor's checkerspot butterfly, particularly given its inherent vulnerability due to small population sizes and isolation of small populations.

Streaked horned lark. Genetic analysis has shown that streaked horned larks have suffered a loss of genetic diversity due to a bottleneck in population size (Drovetski *et al.* 2005, p. 881), the effect of which may be exacerbated by continued small total population size.

Habitat changes to streaked horned lark habitat from climate change may provide some benefit to the species and as such is not currently considered a threat. However, recreation activities can cause the degradation of streaked

horned lark habitat and direct mortality to nest and young.

We consider the impacts from recreation, the loss of genetic diversity, and the species' low reproductive numbers to pose potentially substantial threats to Taylor's checkerspot butterfly, particularly given its inherent vulnerability due to small population sizes and isolation of small populations.

Proposed Determination

Taylor's checkerspot butterfly

The Taylor's checkerspot butterfly has been lost from most locations in the Canadian portion of its range with just one known population remaining. In Washington the species was once known from seven Puget Sound counties, and is now known to occur naturally in just two counties, Clallam and Pierce. In Oregon, the range of Taylor's checkerspot butterfly has been reduced to two small relict grasslands in the foothills of the coast range near Corvallis, in Benton County, Oregon. The distribution of Taylor's checkerspot butterflies has been reduced from greater than 70 populations to 10 populations rangewide today; some of these populations have been extirpated in the past decade, and many declined from robust population sizes with greater than 5,000 individual butterflies to zero within a 3-year interval and have not returned. Most remaining populations of Taylor's checkerspot butterflies are very small; 5 of the 10 known populations have fewer than 100 individuals. Only 1 population consistently has more than 1,000 individual butterflies, and this population has been severely impacted due to habitat impacts from military training.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Taylor's checkerspot butterfly. We find that the threat of development and adverse impacts to habitat from conversion to other uses (agriculture), the loss of historically occupied locations resulting in the present isolation and limited distribution of the species, the impacts of military training and recreation, existing and likely future habitat fragmentation, habitat disturbance, and land use changes associated with agriculture, long-term fire suppression, the and the threats associated with the present and threatened destruction, modification, and curtailment of Taylor's checkerspot butterfly habitat are significant. These threats are currently ongoing and will continue into the foreseeable future for Taylor's checkerspot butterflies.

We find that disease may be a threat, but is not currently at a significant level to affect Taylor's checkerspot butterfly. The threat of disease to the larval host plant of the species may become substantial in the foreseeable future due to the prevalence of small population sizes for the Taylor's checkerspot butterfly. Predation is not a threat to Taylor's checkerspot butterflies at this time. We conclude that the existing regulatory mechanisms do not address and reduce the threats to the Taylor's checkerspot butterfly. The voluntary protections from WDNR have not provided protection to the species on DNR lands in north Olympic peninsula, and WDNR grassland properties in south Puget Sound no longer support the subspecies.

The observed habitat fragmentation and the isolation of small populations of Taylor's checkerspot butterfly suggests that the loss of genetic diversity through inbreeding depression may be a threat. All known locations where Taylor's checkerspots are found in Oregon and Washington are sufficiently distant from each other such that exchange of genetic material from a dispersing individual moving from population to populations would be unlikely. The threat of extreme weather events (drought and deluge, and overcast, cold springs) affect host plant phenology and adult butterfly emergence, which influences whether the larvae completes their annual life cycle, thus affecting the size of annual populations. The effects of weather events are particularly a threat when it affects one of the few small populations that remain. There is a potential threat of continuing pesticide application, which is suspected to be responsible for the extirpation of some populations of Taylor's checkerspot butterfly in Pierce County. Recreational activities (off-road vehicles, trampling and crushing from hikers and horses) have been shown to be a threat at several of the sites occupied by Taylor's checkerspot butterflies.

In summary, the combination of several significant threats and the ongoing nature of these threats to the few remaining small populations of Taylor's checkerspot butterfly leads us to conclude that the species is currently in danger of extinction throughout the species' range. The threats to the survival of the Taylor's checkerspot butterfly occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination will apply to the species throughout its entire range. The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' Because we find that the Taylor's checkerspot butterfly is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above, and the fact that the range and population size of the species has already been drastically reduced, a proposed determination of threatened species status for Taylor's checkerspot butterfly is not appropriate. Therefore, on the basis of the best available scientific and commercial information, we determine that the Taylors' checkerspot butterfly meets the definition of an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

This proposal is based on current information about the location, status and threats for these subspecies. If new information is found which results in an expanded range of habitats used by the subspecies, or a decreased level of threats, we will consider that information in the final rule.

Significant Portion of the Range

Having determined that the Taylor's checkerspot butterfly meets the definition of an endangered species throughout its entire range, we need not further evaluate any significant portion of the range for this species.

Proposed Determination for the Streaked Horned Lark

The streaked horned lark has disappeared from all formerly documented locations in the northern portions of its range (British Columbia, the San Juan Islands, and the northern Puget trough), the Oregon coast, and the southern edge of its range (Rogue and Umpqua Valleys). There are currently estimated to be fewer than 1,600 streaked horned larks rangewide.

The streaked horned lark's range may be continuing to contract. The south Puget Sound breeding population is estimated to be 150–170 individuals; the Washington coast and Columbia River islands breeding population is 120–140 individuals. Recent research estimates that the number of streaked horned larks in Washington and on the Columbia River islands is declining. This decline taken together with evidence of inbreeding depression on the south Puget Sound indicates that the streaked horned lark's range may contract further in the future.

Throughout the entirety of the streaked horned lark's range, its habitat is threatened by loss of natural disturbance regimes, succession of woody plants and the invasion of nonnative plants that alter habitat structure, and incompatible management practices. In winter, most of the subspecies congregates in the Willamette Valley, putting it at risk of stochastic events in bad weather years. Most of the sites used by streaked horned larks require management to maintain the low vegetative structure and open landscape needed by streaked horned larks, although few of the streaked horned lark's breeding or wintering habitats are managed for the conservation of the subspecies.

The range of the streaked horned lark is small and shrinking; the magnitude of threats is not uniform throughout the range since they appear to be concentrated in Washington based on the more severe population level effects observed there, but weighing the small overall population size there against the relatively larger and stable populations in Oregon, we conclude the subspecies as a whole is not in danger of extinction now, but is likely to become endangered within the foreseeable future.

We have carefully assessed the best scientific and commercial information available regarding past, present, and future threats to the streaked horned lark. Threats exist throughout the range of the subspecies, population numbers are declining, and there are few regulatory protections in place that could reduce the threats to the subspecies. Based on the threats to the subspecies throughout its range, we have determined the streaked horned lark meets the definition of a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Distinct Vertebrate Population Segment

After finding that the streaked horned lark is a threatened species throughout its range, we next consider whether a distinct vertebrate population segment (DPS) meets the definition of endangered, in accordance with the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (61 FR 4722, February 7, 1996). The policy identifies three elements that are to be considered regarding the status of a possible DPS. These elements include:

(1) The discreteness of the population segment in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing (i.e., does the population segment, when treated as if it were a species, meet the Act's definition of endangered or threatened?) (61 FR 4722; February 7, 1996).

The first two elements are used to determine if a population segment constitutes a valid DPS. If it does, then the third element is used to consider whether such DPS warrants listing. In this section, we will consider the first two criteria (discreteness and significance) to determine if any unit of the streaked horned lark's overall population is a valid DPS (i.e., a valid listable entity). Our policy further recognizes it may be appropriate to assign different classifications (i.e., threatened or endangered) to different DPSs of the same vertebrate taxon (61FR 4722; February 7, 1996).

Discreteness. Under the DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity (separation based on genetic or morphological characters) may provide evidence of this separation;

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Marked Separation. In our evaluation of discreteness under the DPS policy, we primarily considered the information indicating the separation of streaked horned larks during the breeding season into three regions (the south Puget Sound, Washington Coast and Columbia River, and the Willamette Valley). Observation of banded streaked horned larks has shown that the birds show strong site philopatry in the breeding season (i.e., individuals tend to return to the same location to breed each year), but birds from all regions mix in the winter (Pearson *et al.* 2005, pp. 2–6). In the winter most of the streaked horned larks that breed in the south Puget Sound migrate south to the Willamette Valley or west to the Washington coast; larks that breed on the Washington coast either remain on the coast or migrate south to the Willamette Valley; birds that breed on the lower Columbia River islands remain on the islands or migrate to the Washington coast; and birds that breed in the Willamette Valley remain there over the winter (Pearson *et al.* 2005b; pp. 5–6). Streaked horned larks spend the winter in large mixed subspecies flocks of horned larks in the Willamette Valley, and in smaller flocks along the lower Columbia River and Washington Coast (Pearson *et al.* 2005b, p. 7; Pearson and Altman 2005, p. 7).

Possible evidence of inbreeding depression (Anderson 2010, p. 27, Pearson and Stinson 2011, p. 1) may suggest that there is a discrete population of streaked horned larks that breed in Washington. Estimates of population growth rate with data from nesting areas in Washington (south Puget Sound, Washington Coast, and one lower Columbia River island) indicate that the number of streaked horned larks in Washington is declining each year, apparently due to a combination of low survival and fecundity rates (Pearson *et al.* 2008, pp. 10, 13; Camfield *et al.* 2011, p. 7); this trend is not apparent in Oregon (Myers and Kreager 2010, p. 11). The combination of low genetic variability, small and rapidly declining nesting populations, high breeding site fidelity, and no observed migration into the south Puget Sound suggests that the streaked horned lark in the south Puget Sound could become extirpated in the near future (Pearson *et al.* 2008, pp. 1, 14, 15). Efforts to reduce this apparent isolation and concomitant genetic consequences have been implemented within the last year.

A project was initiated in 2011 to counteract the apparent decline in the south Puget Sound breeding birds. This genetic rescue effort is aimed at increasing genetic diversity in the streaked horned larks breeding in Washington, which could result in increased nest success and an increase in the population. Twelve eggs (four three-egg clutches) were collected from streaked horned lark nests in the southern Willamette Valley and were placed in nests at the 13th Division Prairie site at Joint Base Lewis-McChord (Wolf 2011, p. 9). At least five young successfully fledged at the receiving site; if even one of these birds returns to breed in future years, it will likely increase genetic diversity in the receiving population, resulting in improved fitness and reduced extinction risk for the south Puget Sound larks (Wolf 2011, p. 9). This genetic rescue project will likely be continued for the next several years.

With the evidence of extensive mixing that occurs in the winter, and the genetic rescue project to bolster genetic diversity in Washington, which has

resulted in genetic mixing between Oregon and Washington populations, there does not appear to be marked separation among streaked horned larks from the three regions. In addition, the evidence of deleterious genetic consequences to the birds breeding in Washington suggests that any possible isolation of this population is not the result of adaptation or natural differentiation of this population, but rather is symptomatic of drastic population declines and loss of connectivity between potentially interbreeding subpopulations. Because we find the potential ''regional populations'' are not markedly separate, we do not consider them to be discrete under the DPS policy.

Evaluation of Discreteness. Our analysis of the apparent level of isolation and evidence of inbreeding depression does not lead to a finding that any subunit of streaked horned larks that nest in Washington, in the south Puget Sound, the Washington coast or the Columbia River islands, are discrete, therefore these populations cannot be considered as a potential DPS. This does not mean that the three breeding regions of the subspecies are unimportant and do not have significant conservation value. It simply means that, per our policy, the best available data at this time do not support a marked separation between the breeding larks in the three regions, based on information available to us, such that this population would meet the discreteness criterion of our DPS policy.

Significance. Under our DPS Policy, a population must be discrete *and* significant to qualify as a DPS. Since we have determined that no populations of streaked horned larks are discrete, we will not consider whether that population segment is significant.

Conclusion of DPS Analysis for the Streaked Horned Lark

On the basis of the best available information, we have determined that there are no discrete populations of the streaked horned lark. Since no population segments met the discreetness element, and therefore, no populations qualify as a DPS under the Service's DPS policy, we will not proceed with an evaluation of the status of the population segment under the Act.

Significant Portion of the Range

As described above, we have determined that the streaked horned lark is likely to become endangered within the foreseeable future throughout all of its range, therefore the subspecies meets the definition of a threatened species under the Act. In the course of this rangewide determination, we considered whether some portion of the full range of the subspecies may face threats or potential threats acting individually or collectively on the streaked horned lark to such degree that the subspecies as a whole should be considered endangered. We detail our consideration of that question here.

Although the threats to streaked horned larks in Washington and Oregon are apparently similar in nature (including loss of habitat to development, poor habitat quality due to lack of adequate management to maintain low-stature vegetation, predation, and human disturbance during the breeding season), for reasons unknown, the population trend for streaked horned larks in Washington appears to be markedly different than the trend for the subspecies in Oregon.

Streaked horned larks in Washington occur on the south Puget Sound, the Washington coast, and on islands and dredge disposal sites in the lower Columbia River (including two sites in Portland, Oregon). The total estimated population of streaked horned larks in these areas is 270–310 birds (Altman 2011, p. 213). Demographic modeling using data from these sites uniformly show precipitous population declines. Pearson *et al.* (2008, pp. 3, 12) examined population vital rates (reproductive rates, juvenile survival and adult survival) at seven sites (four in the south Puget Sound, two on the Washington Coast, and one Columbia River island) over 4 years (2002–2005) and concluded that the Washington population is declining by 40 percent per year. Schapaugh (2009, pp. 9, 15, 18) used both deterministic and stochastic models to analyze the data collected by Pearson *et al.* (2008, p. 3), and projected that, in all cases, the streaked horned larks in Washington would likely become extinct within 25 years.

Camfield *et al.* (2011, p. 4) analyzed the data from the same three local populations considered by Pearson *et al.* (2008) and Schapaugh (2009), described above (the data were collected from about 137 nests over 4 years (2002–2005)). Camfield *et al.* (2011, p. 8) concluded that these populations have reached a point where they are declining towards extinction, and are not sustainable without immigration. The declining trend is probably most pronounced in the south Puget Sound population, where studies have identified apparent inbreeding depression, which is likely a result of the small population size, high site fidelity, and complete absence of breeding season immigration (i.e., no observed immigration of breeding birds from any other sites) (Pearson *et al.* 2008, pp. 14–15).

The population of streaked horned larks in the Willamette Valley of Oregon appears to be more stable. The population in the Willamette Valley is estimated at 900–1,300 birds (Altman 2011, p. 213); no population modeling has been done using data from Oregon, but the apparent trend of the species in the Willamette Valley is stable or slightly increasing, based on the Oregon Department of Fish and Wildlife's 1996 and 2008 surveys for streaked horned larks at sites throughout the Willamette Valley (Myers and Kreager 2010, p. 11). Population monitoring at various sites in the Willamette show that several large populations are fairly stable or increasing. Surveys conducted at Baskett Slough National Wildlife Refuge from 2006 to 2009 showed a population increase from 18 pairs in 2006 to 35 pairs in 2009 (Moore 2008, p. 8; Moore 2012, *in litt.*). Surveys at William L. Finley National Wildlife Refuge found the population increasing from 15 pairs in 2006 to 40 pairs in 2010 (Moore 2008, p. 9; Moore 2012, *in litt.*). The streaked horned lark population at Corvallis Municipal Airport, the site of the largest known population of the subspecies, measured 75 pairs in 2006, 102 pairs in 2007, 80 pairs in 2008, and 85 pairs in 2011 (Moore 2008, p. 16; Moore 2012, *in litt.*).

Although streaked horned larks in the Willamette Valley face many of the same threats as populations in Washington, we have no information to indicate that populations in the Willamette Valley are experiencing declines, or to suggest that they are likely to experience significant declines in the foreseeable future, to the degree that this population would be considered in danger of extinction at the present time. The threats in the Willamette Valley are relatively small population size, and likely loss of habitat to future development and incompatible management practices, which leads us to conclude that the subspecies is threatened in the Willamette Valley.

The best available data therefore suggests that under current conditions, streaked horned larks in Washington (south Puget Sound, Washington coast, Columbia River islands) will likely continue to decline towards extinction within this century. Having already determined that the streaked horned lark is threatened throughout its range, we considered whether threats may be so concentrated in some portion of its range that, if that portion were lost, the entire subspecies would be in danger of

extinction. In applying this test, we determined that even with the potential loss of the Washington populations, the relatively larger, more stable population in the Willamette Valley of Oregon would likely persist, therefore the subspecies as a whole is not presently in danger of extinction, and therefore does not meet the definition of an endangered species under the Act.

Continued decline of the Washington populations is considered in conjunction with the relatively more stable populations in the Willamette Valley leads us to the conclusion that, on balance, the subspecies is appropriately defined as a threatened species throughout its range under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Listing results in recognition and public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Washington and Oregon would be eligible for Federal funds to implement management actions that promote the protection and recovery of the Taylor's checkerspot butterfly and streaked horned lark. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Taylor's checkerspot butterfly and streaked horned lark are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or 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.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include actions to manage or restore critical habitat, actions that require collecting or handling the species for the purpose of captive propagation and translocation to new habitat, actions that may negatively affect the species through removal, conversion or degradation of habitat. Examples of activities conducted, regulated or funded by Federal agencies that may affect listed species or their habitat include, but are not limited to:

(1) Military training activities and air operations conducted in or adjacent to occupied or suitable habitat on DOD lands;

(2) Activities with a Federal nexus that include vegetation management such as burning, mechanical treatment, and/or application of herbicides/pesticides on Federal, State, private, or Tribal lands;

(3) Ground-disturbing activities regulated, funded or conducted by Federal agencies in or adjacent to occupied and/or suitable habitat; and

(4) import, export or trade of the species, to name a few.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill,

trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the Taylor's checkerspot butterfly or streaked horned lark, such as the introduction of competing, nonnative plants or animals to the States of Washington and Oregon;

(3) The unauthorized release of biological control agents that attack any life stage of these species, for example, *Btk* release in the range of Taylor's checkerspot butterflies;

(4) Unauthorized modification of the soil profiles or the vegetation components on sites known to be occupied by Taylor's checkerspot butterflies and streaked horned larks; and

(5) Deposition of dredge materials on occupied streaked horned lark breeding habitats, intentional harassment of species at airports as part of a wildlife hazard reduction program, mowing or burning of occupied species habitats during the breeding season.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6158; facsimile 503–231–6243).

If the Taylor's checkerspot butterfly or streaked horned lark are listed under the Act, the States of Washington and Oregon Endangered Species Acts (WAC 232–12–297 and OAR 629–605–0105) are automatically invoked, which would also prohibit take of these species and encourage conservation by State government agencies. Further, the States may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species. Funds for these activities could be made available under section 6 of the Act (Cooperation with the States) or through competitive application to receive funding through our Recovery Program under section 4 of the Act. Thus, the Federal protection afforded to these species by listing them as endangered or threatened species will be reinforced and supplemented by protection under State law.

Special Rule

Under section 4(d) of the Act, the Secretary may publish a special rule that modifies the standard protections for threatened species in the Service's regulations at 50 CFR 17.31, which implement section 9 of the Act, with special measures that are determined to be necessary and advisable to provide for the conservation of the species. As a means to promote conservation efforts on behalf of the streaked horned lark, we are proposing a special rule for this species under section 4(d) of the Act. In the case of a special rule, the general regulations (50 CFR 17.31 and 17.71) applying most prohibitions under section 9 of the Act to threatened species do not apply to that species, and the special rule contains the prohibitions necessary and appropriate to conserve that species.

Under the proposed special rule, take of the streaked horned lark caused by restoration and maintenance activities either through agricultural operations or by airports on State, county, private, or tribal lands would be exempt from section 9 of the Act. These activities include mechanical weed and grass removal on airports. In addition, we also propose to exempt certain normal farming or ranching activities, including: grazing, routine fence and structure maintenance, mowing, herbicide use, burning, and other routine activities described under proposed § 17.41 (Special Rules—Birds) at the end of this document. The rule targets these activities to encourage landowners to continue to maintain those areas that are not only important for airport safety and agricultural use, but also provide habitat for the streaked horned lark. Airport restoration and maintenance activities on Federal lands will be addressed through the section 7 process.

Justification

Airport Management. Some management actions taken at airports are generally beneficial to streaked horned larks. Streaked horned larks have been documented to breed successfully and to maintain stable populations at airports in the south Puget Sound and Willamette Valley. Although horned larks are one of the most commonly struck birds according to the Federal Aviation Administration's bird strike database, they rarely cause damage to airplanes due to their small size. However, larger birds can cause significant damage and are a danger to planes. The Service believes current management of these areas provide for safe aircraft operations while simultaneously providing for the conservation of streaked horned larks. Under the proposed rule, covered actions would include vegetation management to maintain desired grass height on or adjacent to airports through mowing or herbicide use; hazing of hazardous wildlife (geese, and other large birds and mammals), routine management, repair and maintenance of roads and runways; and management of forage, water, and shelter to be less attractive to these hazardous wildlife.

If finalized, the listing of the streaked horned lark would impose a requirement of airport managers where the species occur to consider the effects of their management activities on these species. Additionally, airport managers would likely take actions to deter the species from areas where they currently

occur in order to avoid the burden of the resulting take restrictions that would accrue from the presence of a listed species. However, special rule under section 4(d) of the Act for airports which exempts activities, such as mowing or other management to deter hazardous wildlife, that would result in take under section 9 of the Act, would eliminate the incentive for airports to reduce or eliminate populations of streaked horned larks from the airfields.

Agricultural Lands. Streaked horned larks use agricultural habitats in the Willamette Valley each year, even though appropriate habitat characteristics on these lands may shift from year to year. In the agricultural fields of the Willamette Valley, the open habitats with the desired combination of bare ground and low vegetation structure may occur anywhere within the agricultural matrix of the valley floor. Habitat characteristics of agricultural lands used by streaked horned larks include: (1) Bare or sparsely vegetated areas within or adjacent to grass seed fields, pastures, or fallow fields; (2) recently planted (0–3 years) Christmas tree farms with extensive bare ground; and (3) wetland mudflats or ''drown outs'' (i.e., washed-out and poorly performing areas within grass seed or row crop fields). Currently, there are approximately 420,000 ac (169,968 ha) of grass seed fields in the Willamette Valley, and an additional approximately 500,000 ac (202,343 ha) of other agriculture. In any year, some portion of these roughly 1 million ac (404,685 ha) will have suitable streaked horned lark habitat, but the geographic location of those areas will not be consistent from year to year, nor can we predict their occurrence.

While some agricultural activities may harm or kill streaked horned larks, maintenance of extensive agricultural lands in the Willamette Valley is crucial to maintaining a large, stable population of streaked horned larks in the valley. Section 9 of the Act provides general prohibitions on activities that would result in take of a threatened species; however, the Service recognizes that routine agricultural activities, even those with the potential to inadvertently take individual streaked horned larks, may be necessary components of agricultural operations and may provide for the long-term conservation needs of the streaked horned lark. The Service recognizes that in the long term, it is a benefit to the streaked horned lark to maintain those aspects of the Willamette Valley's agricultural landscape that can aid in the recovery of the species. We believe this special rule will further conservation of the species by discouraging conversions of the agricultural landscape into habitats unsuitable for the streaked horned lark and encouraging landowners to continue managing the remaining landscape in ways that meet the needs of their operation as well as providing suitable habitat for the streaked horned lark. Under the proposed rule, we propose to exempt normal farming activities such as planting, harvest and rotation of crops, mowing and tilling, herbicide use, and burning, which may result in take of the streaked horned lark under section 9 of the Act.

In addition, we believe that, in certain instances, easing the general take prohibitions on non-Federal agricultural lands may encourage continued responsible land uses that provide an overall benefit to the species. We also believe that such a special rule will promote the conservation efforts and private lands partnerships critical for species recovery (Bean and Wilcove 1997, pp. 1–2). However, in easing the take prohibitions under section 9, the measures developed in the special rule must also contain prohibitions necessary and appropriate to conserve the species. As discussed elsewhere in this proposed rule, the streaked horned lark faces many threats. Foremost among these is the scarcity of large, open spaces with very early seral stage vegetation. In the Willamette Valley, large expanses of burned prairie or the scour plains of the Willamette and Columbia Rivers may have provided suitable habitat for streaked horned larks in the past. With the loss of these natural habitats during the last century, alternative breeding and wintering sites, including active agricultural lands, have become critical for the continued survival and recovery of the streaked horned lark.

Provisions of the Proposed Special Rule

We believe these actions and activities, while they may have some minimal level of harm to or disturbance of the streaked horned lark, are not expected to adversely affect the species' conservation and recovery efforts.

This proposal will not be finalized until we have reviewed comments from the public and peer reviewers. Exempted activities include existing routine airport practices as outlined above by non-Federal entities on existing airports, and agricultural and ranching activities.

Critical Habitat Designation for Taylor's Checkerspot Butterfly and Streaked Horned Lark

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the Taylor's checkerspot butterfly and the streaked horned lark in this section of the proposed rule.

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification

finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographic area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species, but that was not occupied at the time of listing, may be determined to be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Methods

As required by Section 4 of the Act, we used the best scientific data available in determining those areas that contain the physical or biological features essential to the conservation of these species. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species (if available), articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge. In this case we used existing occurrence data for each species and identified the habitat and ecosystems upon which they depend. These sources of information included, but were not limited to:

1. Data used to prepare the proposed rule to list the species;
2. Information from biological surveys;
3. Peer-reviewed articles, various agency reports, and databases;
4. Information from the U.S. Department of Defense—Joint Base Lewis McChord and other cooperators;
5. Information from species experts;
6. Data and information presented in academic research theses; and
7. Regional Geographic Information System (GIS) data (such as species occurrence data, land use, topography, aerial imagery, soil data, and land ownership maps) for area calculations and mapping.

Habitat is dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015).

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the species that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the final critical habitat for this species to address the effects of climate change.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

Species Proposed for Listing

As we have discussed under the threats analysis for Factor B, there is no documentation that the Taylor's checkerspot butterfly or streaked horned lark are currently significantly threatened by collection for private or commercial purposes. We do have some evidence that the historical collection of butterflies for scientific studies may have contributed to the decline and extirpation of the 13th Division Prairie population of Taylor's checkerspot butterfly in the late 1990s. This is consistent with the decline and extirpation of the Jasper Ridge population of Edith's checkerspot in California reported by McGarrahan (1977, p. 479), which was determined to have been caused, in part, by scientific studies.

We reviewed the information available for the Taylor's checkerspot butterfly and streaked horned lark pertaining to their biological needs and habitat characteristics. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits of critical habitat to the Taylor's checkerspot butterfly and streaked horned lark include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

The primary regulatory effect of critical habitat is the section 7(a)(2) requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. We find that the designation of critical habitat for Taylor's checkerspot butterfly and streaked horned lark will benefit these subspecies by serving to focus conservation efforts on the restoration and maintenance of ecosystem functions that are essential for attaining their recovery and long-term viability. In addition, the designation of critical habitat serves to inform management and conservation decisions by identifying any additional physical or biological features of the ecosystem that may be essential for the conservation of these subspecies. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Taylor's checkerspot butterfly and streaked horned lark, as critical habitat would be beneficial and there is no evidence that the designation of critical habitat would result in an increased threat from taking or other human activity for these species.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the Taylor's checkerspot butterfly and streaked horned lark and habitat characteristics where these subspecies are located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Taylor's checkerspot butterfly and streaked horned lark.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we identify the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features required for each subspecies from studies of their habitat, ecology, and life history as described above in this document. We have determined that the physical and biological features described below are essential for the conservation of Taylor's checkerspot butterfly and the streaked horned lark, and have further determined that these features may require special management considerations or protection.

The designation of critical habitat is an authority restricted to the boundaries of the United States; critical habitat cannot be designated in a foreign country (50 CFR 424.12(h)). Thus for the Taylor's checkerspot butterfly and streaked horned lark, both subspecies that range into Canada (or historically occurred there), we discuss the population in Canada (in the listing portion of the document) for the purpose of evaluating the viability of the species, and to inform our determination of those areas within the United States that are essential for the conservation of the species. We do not propose to designate critical habitat in Canada.

Taylor's Checkerspot Butterfly

We have determined that the following physical or biological features are essential for the Taylor's checkerspot butterfly.

Space for Individual and Population Growth and for Normal Behavior

Habitat for the Taylor's checkerspot butterfly is characterized by open

grassland habitat with short-statured vegetation structure (Stinson 2005, p. 86; Severns and Warren 2008, p. 476) throughout their range in British Columbia, Washington, and Oregon. A diverse topography is a feature that is essential to the conservation of other checkerspot butterflies (Ehrlich and Murphy 1987, p. 122; Hellmann *et al.* 2004, p. 41) and strongly influences the distribution and abundance of larvae and butterflies within a habitat patch (Hellmann *et al.* 2004, p. 46). Topographic diversity creates conditions where larval food plant phenology (timing of bud development, bud break, and flowering) is variable across different slopes angles. For example, plants on south facing slopes may develop earlier in the season as compared to those on north facing aspects. This difference in plant phenology, as influenced by topography, allows larvae to move to areas with plentiful, mature host plants, or to move away from hot exposed slopes when the larval host plants begin to dry and wither, and no longer provides sufficient amounts or quality nutrition for the larvae. Topography has been shown to directly influence post-diapause larval growth (Hellmann 2004 p. 46), and topographically influenced microclimates affect the distribution and abundance of larvae and butterflies within its habitat (Hellmann *et al.* 2004, p. 46). Open grassland habitat dominated by short statured native grasses and diverse native forbs, without the presence of conifers, and shrubs such as the nonnative Scot's broom, and native snowberry (*Symphoricarpus albus*), and rose (*Rosa* spp.) facilitate the movement of butterflies for mating, egg-laying (ovipositing), and adult nectaring (see below—Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring).

Areas of habitat with open bare soil may also be advantageous to the butterfly as these areas warm more quickly than the surrounding vegetation, and butterflies thermo-regulate by basking (Scott 1986, p. 296; Kuussaari *et al.* 2004, p. 140; Stinson 2005, p. 81). The presence of tall, nonnative grasses creates a habitat structure that is unsuitable to checkerspot butterflies, making it difficult for adults to locate larval host plants for egg-laying (ovipositing). Given a choice, Taylor's checkerspot butterflies oviposited on larval host plants surrounded by short-statured native bunchgrasses and adult nectar plants, indicating that females select egg-laying sites based on habitat conditions (structure) rather than just the presence of the host plant (Severn and Warren 2008, p. 476). Post-diapause larvae forage singularly and are capable of moving much greater distances than pre-diapause larvae (Kuussaari *et al.* 2004, p. 140). Edith's checkerspot larvae have been documented to move up to 10 m (33 ft) from a release site, often moving within a habitat patch to different exposures to raise their body temperature (Stinson 2005, p. 81), and presumably to find suitable foraging conditions (Kuussaari *et al.* 2004, p. 140). Dispersal within a habitat patch benefits the larvae because they are able to elevate their body temperature to an optimal range for foraging and development.

Large expanses of open grassland habitat are in limited abundance throughout the range of the Taylor's checkerspot butterfly; however, using current occupation by the butterfly as an example, it appears the Taylor's checkerspot butterfly can use relatively small patches of suitable habitat. At this time, only one area of open grassland habitat that supports Taylor's checkerspot butterflies is larger than 50 ac (20 ha). This location is known as the Artillery Impact Area (91st Division Prairie) on JBLM and it is approximately 6,000 ac (2,430 ha). Even on this large expansive prairie the butterfly uses two distinct patches that are less than 100 ac (40 ha) each in size, and they are separated by several kilometers. The areas between the patches are not trained upon, and are composed of grasslands, however, the abundance and diversity of larval host and adult nectar plants in this intervening area does not appear to be sufficient to attract and be used by Taylor's checkerspot butterflies. In Oregon, the two locations where Taylor's are found are composed of several distinct grassland patches with no individual patch larger than 5 ac (2 ha) (Kaye *et al.* 2011, p. 10) and many of the numerous bald patches on the north Olympic Peninsula in Washington are small as well. The WDNR balds on Dan Kelly Ridge and Eden Valley are a series of small openings that are all less than 1 ac (0.4 ha) (Hays 2011, pp. 8–9, 18); whereas the Taylor's locations found on Forest Service lands on the Olympic Peninsula range in size from 25 to 60 ac (10 to 24 ha) (Holtrop 2009, pp. 7–10). The Oregon sites and the north Olympic Peninsula balds are both found in a matrix of conifer forests (Kaye *et al.* 2011, pp. 19–20).

Based on information provided by an expert panel and predictions from a Prairie Reserve Design model, Taylor's checkerspot butterfly have the highest probability of survival on patches from approximately 20–50 ac (8–20 ha) in size (probability of survival range 0.8–0.98) (Converse *et al.,* 2010, p. 8). In the case of this model, survival is defined as *patch of habitat that is occupied* in year *y*+1 if Taylor checkerspot butterfly eggs were oviposited in the patch in year *y.* The model was run annually for 50 years to predict the occupancy probability in relation to patch size for the species. Beyond a patch size of 50 ac (20 ha) there was no added probability of survival (Converse *et al.* 2009, p. 8).

Little work has been carried out on the ability of this species to disperse. However, a mark-recapture study conducted in Oregon (Kaye *et al.* 2011, p. 15) showed that dispersal distance was short (less than 984 ft (300 m) (Kaye *et al.* 2011, p. 16) and that Taylor's checkerspot butterflies tended to move to the nearest open patch, or from poor resource patches to rich resource patches, although rates of recapture were low (2 out of 100) (Kaye *et al.* 2011, p. 12). Mark-recapture studies with checkerspot butterflies in Finland documented that they generally flew less than 1,640 ft (500 m), and that long distance migrations were clearly restricted (Nieminen *et al.* 2004, p. 73). Research conducted in California on Edith's checkerspot butterfly described the butterfly as sedentary (Murphy *et al.* 2004, p. 23) and rarely undertaking long-distance movements (Singer and Hanski 2004, p. 184). Hellmann *et al.* (2004, p. 37) found evidence of limited dispersal between closely situated populations even though the habitat provided similar food resources and was well within dispersal distance (Hellmann *et al.* 2004, p. 39). Based upon the current distribution of the known Taylor's checkerspot butterfly populations, there is a lack of opportunity for genetic interchange and a reduced likelihood that populations that decline due to stochastic events are likely to be repopulated by emigrating individuals.

While Taylor's checkerspot butterflies may not need large areas to survive, they do require habitat patches composed of short-statured, abundant, and diverse larval host and nectar species (described below). These patches (separated by 984 ft (300 m) or less (Kaye *et al,* 2011. p.16)) should be scattered throughout their range to allow for movement within patches, dispersal to new habitat patches, and recolonization of lost or nonviable sites both within and between patches due to habitat or population changes. Although dispersal by Taylor's checkerspot butterflies appears to be limited, in order to recover the species there will need to be an ability to recolonize new

habitat and provide for genetic exchange, which is essential to the long-term viability (survival) of the species. At this time, the distance between habitat patches in Washington and Oregon is too great for Taylor's checkerspot butterflies to disperse between patches. The connections between patches are lacking throughout the species' range, and only through protection and restoration using special management of the intervening patches will genetic exchange be accomplished. High quality reproductive habitat is currently relegated to relatively small areas within a larger context of degraded prairie landscape (Severns and Warren 2008, p. 476; Severns and Grossball 2011, p. 2).

Landscape and habitat diversity, or heterogeneity, are essential elements for the conservation of Edith's checkerspot butterflies (Ehrlich and Murphy 1987, p. 122; Hellman *et al.* 2004, p. 41), and based on their similar habitat needs, we presume that habitat diversity is also essential to the conservation of the Taylor's checkerspot butterfly, even though the species may only require and use small areas of suitable habitat. Patches of habitat where Taylor's checkerspot butterfly populations are robust also tend to have high topographic diversity including areas with mima mounds (low, domelike, mounds of earth found in certain prairies) and areas composed of swales (depressions) that produce ecotone habitat (Johnson and O'Neil 2001, p. 715) between dry upland habitat typical of south Puget Sound prairies, and wet prairie habitat more typical of the Willamette Valley (Easterly *et al.* 2005, p. 1). Swales may enhance the wildlife resources available on the landscape (Easterly *et al.* 2005, p. 1) or improve the richness of wildlife resources (biodiversity) of an area and as such are important for wildlife conservation (Thomas *et al.* 1979, p. 48). Mima mounds and swales are important because they may support plants not found in the either the dry or wet portions of a grassland. Swales formed on the prairies of south Puget Sound support a rich assemblage of native plants because of the variation in aspect exposure found there, with the south aspect being dry compared with more shaded northern aspects. The north-facing portion of a swale is likely to maintain moist conditions later into the growing season than the surrounding level ground.

Moist, cool conditions of a swale or a mima mound may be similar to the moist, cool, and overcast conditions experienced throughout most of the species' range in 2011, which made for one of the longest flight seasons on record for Taylor's checkerspot butterfly in Washington (45 days; Linders 2011b, p. 17) and in Oregon (42 days; Ross 2011, in litt. p. 3). In a study by Peterson (1997, p. 167), he demonstrated that flowering phenology varied by aspect and elevation of plant patches, which affects a butterfly's ability to complete its life cycle. The timing of plant flowering directly affects whether a butterfly larva finds the required plant patches during the period they have to complete their larval development. If the food resource becomes exhausted before the larvae complete their life cycle they will either return to diapause, or die.

Based on the information above, we identified areas of open grassland habitat with suitable habitat patches of short-statured grasses from less than 1 acre to greater than 50 ac (roughly 0.4 ha to more than 20 ha) in size within a large landscape context are essential to the conservation of the Taylor's checkerspot butterfly. In the Pacific Northwest, suitable occupied habitat patches may be found in a large forested landscape with small grassland opening of suitable habitat (such as in Oregon or at sites on the north Olympic Peninsula), or the entire landscape may be a large relatively degraded grassland with smaller suitable habitat patches occupied by the Taylor's checkerspot. To allow for dispersal between suitable habitat patches the occupied patches would ideally be located within approximately 1,640 ft (500 m) of other suitable habitat patches within the larger landscape context.

In summary, a wide range of suitable habitat patch sizes, including large to very small connected patches, appear to accommodate the requisite needs of the Taylor's checkerspot butterfly, as the butterfly is known to occupy areas in disjunct locations scattered across the Pacific northwest grassland landscape from sea-level to as high as 4,000 ft (1,220 m) elevation.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Because checkerspots are cold-blooded (exothermic), they are required to complete their life cycle in a short period of time in open conditions where solar exposure is maximized. Larvae often seek and disperse to warm, open slopes (James and Nunnallee 2011, p. 286). Adult checkerspot butterflies often bask and remain in open grassland conditions using the sunshine and warm air temperature to increase their body temperature to the level required for normal activity (73 FR 3328, p. 3335; January 17, 2008).

The availability of abundant food resources for larval development and adult nectaring is an essential factor to protecting populations of Taylor's checkerspot butterfly. Taylor's checkerspot butterflies require open grassland habitat with specific host plants for larval development, and nectar plants for adult feeding. Habitat quality may range from relatively pristine to severely degraded (disturbed) as long as the requisite larval host plants (*Plantago lanceolata,* (nonnative narrow-leaf plantain) and *Castilleja hispida* (native harsh paintbrush), and in Canada, nonnative and native species of *Veronica* (speedwell) such as *V. scutella* (marsh speedwell), *V. beccabunga* var. *americana* (American speedwell), and *V. serpyllifolia* (thymeleaf speedwell) are present in sufficient abundance to support larval development, chrysalis formation, and emergence as an adult.

Regardless of the quality of grassland habitat for Taylor's checkerspot butterflies, conditions suitable to support Taylor's checkerspot butterfly must have representatives of at least one, or both, of the two food plant families utilized by the larvae (Pyle 2002, p. 311; Erhlich and Hanski 2004, p. 17; Severns 2008, p. 2; Severns and Warren 2008; p. 476). Specifically, larval food plants utilized by the Taylor's checkerspot butterfly are species from the Orobanchacae (formerly Scrophulariacae; the snapdragon or figwort family) and Plantanginacae (Plantain) family (Erlich and Hanski 2004, p. 22). These plant families represent two of four plant families found within the region that contain secondary chemicals called iridoid glycosides (Erhlich and Hanski 2004, p. 22), which may make adult butterflies distasteful to predators (van Nouhuys and Hanski 2004, p. 161; Murphy *et. al.* 2004 p. 22). Although numerous plant families (up to 16) may be utilized by checkerspot larvae (Murphy *et. al.* 2004, p. 22), the larvae are known to preferentially select plant members of the plantain and snapdragon (now broomrape) families in the Pacific Northwest. Checkering on wings of adult butterflies and the sequestering of chemical compounds that make adult butterflies distasteful are two of many mechanisms used by butterflies as a signal and defense against natural enemies (Van Nouhys and Hanski 2004, p. 161).

Adult Taylor's checkerspot butterflies are known to use a wide diversity of nectar plants for feeding, including, but not limited to several native plant

species including: *Balsamorhiza deltoidea* (balsamroot); *Eriophyllum lanatum* (woolly sunshine); *Lomatium triternatum* (nine-leaved desert parsley); *Lomatium utriculatum* (fine-leaved desert parsley, spring gold); *Camassia quamash* (common camas); *Erigeron speciosus* (showy fleabane); *Cirsium arvense* (Canada thistle); *Achillea millefolium* (common yarrow); *Lupinus lepidus* (prairie lupine); and *Lupinus albicaulis* (sickle-keeled lupine).

Adult butterflies obtain some moisture from nectar sources and the need for actual water sources may only occur during years of extreme drought (Stinson 2005, p. 81). There is evidence that points to butterflies using puddles to obtain salts leached from soil (Stinson 2005, p. 81), or they may use mud, carrion, animal urine, or feces to obtain salts, minerals, amino acids and proteins (Guppy and Shepard 2001, p. 69). The intake of amino acids by females results in larger eggs, and consequently larger and healthier larvae (Murphy *et al.* 1983, p. 259).

Therefore, based on the information above, we identify open, short-statured grassland structure with rich and diverse plant communities containing one or both primary larval food plants, the narrow-leaved plantain and harsh paintbrush, as a physical and biological feature essential to the conservation of the Taylor's checkerspot butterfly. Habitat should include open bare soil with a background structure composed of a bunchgrass community (Roemer's fescue or California oat-grass). A source of water, or puddles, is used to avoid dehydration and to acquire nutrients, particularly in drought years (Stinson 2005, p. 81; Guppy and Shepard 2001, p. 41). Other important larval food plants include, but are not limited to, other members of the Orobanchaceae (broomrape; formerly Scrophulariaceae (snapdragon or figwort)) family, which are documented larval host plants (James and Nunnallee 2011, p. 286; Pyle 2001, p. 311; Hellmann *et al.,* 2004, p. 35) and are essential to the conservation of the Taylor's checkerspot butterfly. Other species of the Plantaginaceae family have not been documented as a favored larval host plant, except in Canada (COSEWIC 2011 p. 25), where Taylor's have been observed utilizing the nonnative *Plantago major* (common plantain). Plant community patches utilized by Taylor's checkerspot butterfly, especially those within a highly degraded prairie landscape context, must also include a diverse mix of native forbs to provide nectar for adult butterflies.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Taylors's checkerspot butterflies require open grassland habitat with specific host plants for larval and adult feeding as discussed above. As plant communities become invaded by taller structure grass, sites for breeding are reduced and the availability of larval and adult butterfly resources is limited.

The encroachment of nonnative, invasive species reduces the quality and size of habitat patches used for reproduction that are found in an otherwise larger grassland landscape (Severns and Warren 2008, p. 478; Severns and Grosboll 2011, p. 2). The quality of Taylor's checkerspot butterfly habitat resources is quite variable across its distribution, with Oregon sites being relatively depauperate (sparse vegetation and low plant diversity) when compared with floristically abundant occupied habitat in Washington (Severns and Grosboll 2011, p. 2).

Oviposition (egg deposition) by Taylor's checkerspot butterfly has most often been documented on narrow-leaf plantain and harsh paintbrush. Taylor's checkerspot butterfly larvae are known to also utilize several species of speedwell in Canada (marsh speedwell, American speedwell, and thyme-leaved speedwell) (COSEWIC 2011, p. 25). In Washington, *Collinsia parviflora* (blue-eyed Mary), and potentially *Plectritis congesta* (sea blush) may be used for egg-laying (James and Nunnullee 2011, p. 286; Severns and Grossball 2011, p. 60).

Taylor's checkerspot butterfly larvae require sheltered sites out of the wind and weather for diapause (Linders 2012, pers. comm.). Adult butterflies tend to roost on nearby nectar plants (deltoid balsamroot, sickle-keeled lupine, and nine-leaved desert parsley) in close proximity to larval host plants (plantain and paintbrush) where eggs are oviposited or larvae are developing by feeding on host plants. The preferred or most suitable habitat for larval feeding is on sites with topographic variation or exposure (Kuussaari *et al.* 2004, p. 140). This allows larvae to move from one host plant to another of the same species, as host plants are ephemeral in nature and phenology of an individual plant can differ within a habitat patch, depending on local weather and host plant quality (Kuussaari *et al.* 2004, p. 140). Because of their limited ability to move, prediapause larvae must hatch from eggs oviposited in a favorable site for locating the appropriate host plant under the appropriate environmental condition (Kuussaari *et al.* 2004, p. 138). In the climate and local weather conditions of the Pacific Northwest, larval development requires a site that is warm and dry (Kuussaari *et al.* 2004, p. 138).

Therefore, based on the information above, we have determined that areas within open grasslands with short-statured structure, that contain larval host plants for egg laying and feeding, which are in close proximity to host plants that provide protection from wind and wet weather for larval rearing is a physical and biological feature essential to the conservation of the Taylor's checkerspot butterfly.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

Disturbance serves an important function in restoring and sustaining habitat composition and function for improving prairie quality. As vegetation responds positively to disturbances, habitat succession occurs, restoring the early seral species, including the larval host plants narrow-leaved plantain and harsh paintbrush.

Typically, management is needed to improve prairie quality. Management treatments disturb the land and soil, and may involve prescribed fire, weed control using herbicides, the harvesting of encroaching trees, or the simple process of planting grasses, forbs and rare or uncommon plant species by hand or using mechanical means. Short term and small scale disturbances range from a few square feet to several acres (1 square meter to a few hectares). Larger scale disturbances can range from ten to hundreds of acres (~2.5 to 40 hectares).

Occupied sites on the north Olympic Peninsula on Forest Service and Washington Department of Natural Resources land receive regular disturbance from off road vehicles (ORV), and service trucks using the road weekly to access cell-phone towers at one site (Dan Kelly Ridge). At the single private land location on the north Olympic Peninsula no public access is permitted on the property. Disturbances generated from the frontage road was reduced at this site by closing the road during the spring and summer leading to the single most important management action carried out at the site (Hays 2011 p. 32). The road closure was implemented for the conservation of the species in 2009 and has improved the habitat in the short-term, leading to increased numbers of larval host plants (*P. lanceolata*) and pre-diapause larval masses observed at the site (Severns and Grosboll 2011, p. 32).

Therefore, based on the information above, we identify areas with early seral habitat that experience regular disturbance as essential to the conservation of the species. Regular disturbance is necessary to maintain early seral habitat conditions required to aid establishment of the larval host and adult nectar plants. Because natural disturbance regimes have largely been eliminated in areas occupied by Taylor's checkerspot, active, planned management is generally required to maintain habitats in the early seral condition required by the butterfly. Between times of planned disturbance, sites should receive protection from disturbance in a temporal context, as too much disturbance too often will reduce numbers of Taylor's checkerspot butterflies and the spatial extent of their habitat. Disturbance will be beneficial and essential to resetting the habitat back to early seral conditions approximately every 2–5 years, based on recovery from disturbance history, and the resiliency of larval food plants as documented from experience at JBLM and other south Puget Sound locations that have received proactive management. The larval host plants and adult nectar plants are resilient and can recover if the habitat is provided sufficient time to rest (at least two growing seasons) between episodes of use and disturbance.

Primary Constituent Elements for Taylor's Checkerspot Butterfly

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Taylor's checkerspot butterfly in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Taylor's checkerspot butterfly are:

(i) Patches of early seral, short-statured, perennial bunchgrass plant communities composed of native grass and forb species in a diverse topographic landscape ranging in size from less than 1 ac up to 100 ac (0.4 to 40 ha) with little or no overstory forest vegetation that have areas of bare soil for basking that contain:

(a) In Washington and Oregon, common bunchgrass species found on northwest grasslands include *Festuca roemeri* (Roemer's fescue), *Danthonia californica* (California oat grass), *Koeleria cristata* (prairie Junegrass), *Elymus glaucus* (blue wild rye), *Agrostis scabra* (rough bentgrass), and on cooler, high-elevation sites typical of coastal bluffs and balds, *Festuca rubra* (red fescue).

(b) On moist grasslands found near the coast and in the Willamette Valley, there may be *Bromus sitchensis* (Sitka brome) and *Deschampsia cespitosa* (tufted hairgrass) in the mix of prairie grasses. Less abundant forbs found on the grasslands include, but are not limited to, *Trifolium* spp. (true clovers), narrow-leaved plantain, harsh paintbrush, Puget balsam root, woolly sunshine, nine-leaved desert parsley, fine-leaved desert parsley, common camas, showy fleabane, Canada thistle, common yarrow, prairie lupine, and sickle-keeled lupine.

(ii) Primary larval host plants (narrow-leaved plantain and harsh paintbrush) and at least one of the secondary annual larval host plants (blue-eyed Mary, sea blush, or dwarf owl-clover) or one of several species of speedwell (marsh speedwell, American speedwell, or thymeleaf speedwell).

(iii) Adult nectar sources for feeding that include several species found as part of the native (and one nonnative) species mix on northwest grasslands, including: Narrow-leaved plantain; harsh paintbrush; Puget balsam root; wooly sunshine; nine-leaved desert parsley; fine-leaved desert parsley or spring gold; common camas; showy fleabane; Canada thistle; common yarrow; prairie lupine; and sickle-keeled lupine.

(iv) Aquatic features such as wetlands, springs, seeps, streams, ponds, lakes, and puddles that provide moisture during periods of drought, particularly late in the spring and early summer. These features can be permanent, seasonal, or ephemeral.

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of the primary constituent elements essential to support the life-history processes of the species. We are proposing to designate critical habitat within the geographical area occupied by the species at the time of listing. In addition, we are proposing to designate some specific areas outside the geographical area occupied by the species at the time of listing that were historically occupied, but are presently unoccupied, because we have determined that these areas are essential for the conservation of the species.

Streaked Horned Lark

We have determined that the following physical or biological features are essential for the streaked horned lark:

Space for Individual and Population Growth and for Normal Behavior

An open landscape context is an essential attribute of habitat used by streaked horned larks. Open areas allow streaked horned larks to detect predators while nesting and foraging on the ground and provide the space needed during aerial courtship displays in the springtime. Our data indicate that sites used by streaked horned larks are generally found in open (i.e., flat, treeless) landscapes of 300 ac (120 ha) or more. Sites used by streaked horned larks are usually flat, with slopes between 0 and 5 percent, and generally not more than 10 percent, over the entire area. Some patches with the appropriate characteristics (i.e., sand, bare ground, low stature vegetation) may be smaller in size if the adjacent patches provide the required open landscape context. This situation may occur in agricultural habitats and on sites next to water. For example, some of the sites used by streaked horned larks on the islands in the Columbia River are small, but are adjacent to open water, which provides the open landscape context needed. Streaked horned larks use the same habitats for all life history processes, in both the breeding and wintering seasons.

Therefore, based on the information above, we identify flat (typically 0 to 5 percent slope), open sites (treeless, low vegetation or bare ground), or smaller suitable habitat patches located in an open landscape context (roughly 300 ac (120 ha) in size), as a physical or biological feature essential to the conservation of the streaked horned lark.

Sites for Breeding, Reproduction, Rearing of Offspring, Foraging and Wintering

Streaked horned larks use habitats that have very early seral stage vegetation for all life stages. Suitable streaked horned lark habitats have substantial areas of bare ground, few or no shrubs, and sparse, low stature vegetation, primarily short annual grasses, bunch grasses, and forbs (Pearson and Hopey 2005, p. 27). Suitable habitat is generally 16–17 percent bare ground (consisting of dirt, gravel, or sand), and may be more open at sites selected for nesting (Altman

1999, p. 18; Pearson and Hopey 2005, p. 27). Vegetation height is generally less than 13 inches (33 centimeters) (Altman 1999, p. 18; Pearson and Hopey 2005, p. 27), with less than 15 percent shrub cover (Pearson and Hopey, 2005 p. 2). Streaked horned larks apparently select nesting sites based on the vegetation structure, and not on the presence of any particular type of vegetation (Altman 1999, p. 18; Pearson and Hopey 2005, pp. 19–20). Nests are generally placed on the north side of a clump of grass or a forb (Moore and Kotaich, 2010, p. 18). These sites may be frequently disturbed in a way that resets succession, eliminating dense grasses and forbs, and halting the invasion of shrubs and trees.

These habitats may be native prairies, coastal dunes, fallow and active agricultural fields, wetland mudflats, sparsely vegetated edges of grass fields, recently planted Christmas tree farms with extensive bare ground, moderately to heavily grazed pastures, gravel roads or gravel shoulders of lightly traveled roads, graveled or grassy areas adjacent to airport runways, idle industrial properties, and dredge material deposition sites. These sites provide both breeding and wintering habitat for streaked horned larks.

Therefore, based on the information above, we identify sparse, low-stature vegetation with areas of bare ground as a physical or biological feature essential to the conservation of the streaked horned lark.

Primary Constituent Elements for Streaked Horned Lark

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the streaked horned lark in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the streaked horned lark are:

(i) Areas having a minimum of 16 percent bare ground that have sparse, low stature vegetation composed primarily of grasses and forbs less than 13 in (33 cm) in height found in:

a. Large (300-ac (120-ha)), flat (0–5 percent slope) areas within a landscape context that provides visual access to open areas such as open water or fields, or

b. Areas smaller than described in i(a), but that provide visual access to open areas such as open water or fields.

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of the primary constituent elements sufficient to support the life-history processes of the species. All but one of the units proposed to be designated as critical habitat are currently occupied by the streaked horned lark and contain the primary constituent elements to support the life-history needs of the species. One subunit, Coffeepot Island in the Columbia River, is not currently occupied by the streaked horned lark, but has been determined to be essential to the conservation of the species, as described below.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. Here we describe the type of special management considerations or protections that may be required for the physical or biological features identified as essential for Taylor's checkerspot butterfly and streaked horned lark. The specific critical habitat units and subunits where these management considerations or protections apply for each species are identified in Table 1.

All areas designated as critical habitat will require some level of management to address the current and future threats to the Taylor's checkerspot butterfly and streaked horned lark and to maintain or restore the PCEs. A detailed discussion of activities influencing the Taylor's checkerspot butterfly and streaked horned lark and their habitats can be found in the preceding proposed listing rule. Threats to the physical or biological features that are essential to the conservation of these species and that may warrant special management considerations or protection include, but are not limited to: (1) Loss of habitat from conversion to other uses; (2) control of nonnative, invasive species; (3) development; (4) construction and maintenance of roads and utility corridors; and (5) habitat modifications brought on by succession of vegetation from the lack of disturbance, both small and large scale. These threats also have the potential to affect the PCEs if they are conducted within or adjacent to designated units.

The physical or biological features essential to the conservation of Taylor's checkerspot butterfly may require special management considerations or protection to improve the viability and distribution of habitat suitable for the butterfly. These include preventing the establishment of invasive, nonnative and native woody species, and hastening restoration by actively managing sites to establish native plant species and the structure of the plant community that is suitable for the Taylor's checkerspot butterfly. Restoration and maintenance of occupied Taylor's sites will require active management to plan, restore, enhance and manage habitat using an approach that resets the vegetation composition and structure to an early seral stage. Management actions that produce suitable conditions for Taylor's checkerspot butterflies and reset the ecological clock to early seral conditions favored by the butterfly include prescribed fires, mechanical harvesting of trees, activities such as hand planting or mechanical planting of grasses and forbs, and the judicious use of herbicides for nonnative invasive species control.

These early-seral conditions favor the production and maintenance of plantain, paintbrush, and other larval host plants in a short-structure vegetation community that allows utilization of the plants by the butterfly. Areas where the butterfly occupies a site should have limited soil and vegetation disturbance at times when the larvae are active, which extends from late February when post-diapause larvae are active to late June when pre-diapause larvae are on site. Other activities that could cause trampling or impacts to the larvae and that should be minimized, reduced or restricted during larval feeding include use of the site by off-road vehicles, military training using vehicles or impacts caused by large infantry (foot soldiers), or activities that transport or spread nonnative plants, and the risk of wildfire or prescribed fire.

The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to ensure the provision of early seral conditions and landscape context of sufficient quantity and quality for long-term conservation and recovery of the species. Activities such as mowing, burning, grazing, tilling, herbicide treatment, grading, beach

nourishment, or placement of dredge material can used to maintain or restore nesting and wintering habitats. Regular disturbance is necessary to create and maintain suitable habitat, but the timing of management is important. The management actions should be conducted outside of the breeding season to avoid the destruction of nests and young, or if habitat management must be done during the breeding season, it should be done in a way that minimizes destruction of nests or harassment of individuals. Nesting success is highest in locations with restricted public use or entry such as military facilities, airports, islands, wildlife refuges, or sites that are remote or difficult to access.

TABLE 1—THREATS TO THE TAYLOR'S CHECKERSPOT BUTTERFLY AND STREAKED HORNED LARK IDENTIFIED IN SPECIFIC PROPOSED CRITICAL HABITAT UNITS; THREATS SPECIFIC TO THE PHYSICAL OR BIOLOGICAL FEATURES, WHICH MAY REQUIRE SPECIAL MANAGEMENT CONSIDERATIONS OR PROTECTION AS DESCRIBED IN THE TEXT, ARE IDENTIFIED WITH AN ASTERISK

	Taylor's checkerspot butterfly	Streaked horned lark
Factor A:		
Development *	Unit 1: 1–D, 1–E, 1–F, 1–G, 1–H (Pvt), 1–I, 1–J; Unit 2: 2–C.	Unit 1: 1–A, 1–B, 1–C, 1–D, 1–E, 1–F; 1–G; Unit 3: 3–Q; Unit 4: 4–A, 4–C, 4–E, 4–H.
Columbia River Dredge Spoil Deposition *	NA	Unit 3: 3–E, 3–F, 3–G, 3–H, 3–I, 3–K, 3–M, 3–N.
Loss of Natural Disturbance Processes, Invasive Species and Succession.*	Unit 1: all subunits; Unit 2: all subunits; Unit 4: all subunits.	All units and subunits.
Military Training *	Unit 1: 1–A, 1–B, 1–C, 1–E	Unit 1: 1–B, 1–C, 1–D, 1–E.
Restoration Activities **	All units and subunits	All units and subunits.
Factor B:		
Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.	NA	NA.
Factor C:		
Disease *	Unit 1: 1–A, 1–B, 1–C, 1–E, 1–H; Unit 4: All subunits.	NA.
Predation	NA	All units and subunits.
Factor D:		
The Inadequacy of Existing Regulatory Mechanisms.*	Unit 1: 1–E, 1–F, 1–G, 1–H, 1–I, 1–J; Unit 2: 2–D.	NA.
Factor E:		
Low Genetic Diversity, Small or Isolated Populations, and Low Reproductive Success.	All units and subunits	Unit 1: All subunits.
Stochastic Weather Events	All units and subunits	NA.
Climate Change *	All units and subunits	NA.
Aircraft Strikes and Activities at Civilian Airports.	NA	Unit 1: 1–A, 1–B, 1–C, 1–D, 1–E, 1–F. Unit 3: 3–Q. Unit 4: 4–A, 4–C, 4–E, 4–H.
Pesticides and Herbicides	All units and subunits	NA.
Recreation	Unit 1: 1–C, 1–D, 1–E, 1–F, 1–H; Unit 2: 2–A, 2–B, 2–C, 2–E; Unit 4: 4–A.	Unit 3: 3–A, 3–B, 3–C, 3–D.
Nest Parasitism	NA	NA.

** Although restoration is necessary for the maintenance of suitable habitat, the methods and timing of those restoration practices may directly impact individual Taylor's checkerspot butterfly and streaked horned lark if the life-histories of the species are not taken into consideration during application of restoration techniques. Please see the sections entitled Loss of Natural Disturbance Processes, Invasive Species and Succession and Restoration Activities in the listing portion of the document.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species, and begin by assessing the specific geographic areas occupied by the species at the time of listing. If such areas are not sufficient to provide for the conservation of the species, in accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we then consider whether designating additional areas outside the geographic areas occupied at the time of listing may be essential to ensure the conservation of the species. We consider unoccupied areas for critical habitat when a designation limited to the present range of the species may be inadequate to ensure the conservation of the species. In this case, since we are proposing listing simultaneously with the proposed critical habitat, all areas presently occupied by the subspecies are presumed to constitute those areas occupied at the time of listing; those areas currently occupied by the subspecies are identified as such in each of the unit or subunit descriptions below. These descriptions similarly identify which of the units or subunits are believed to be unoccupied at the time of listing. Our determination of the areas occupied at the time of listing, and our rationale for how we determined specific unoccupied areas to be essential the conservation of the subspecies, are provided below.

We plotted the known locations of the Taylor's checkerspot butterfly and streaked horned lark where they occur in Washington and Oregon using 2011 NAIP digital imagery in ArcGIS, version 10 (Environmental Systems Research Institute, Inc.), a computer geographic information system program.

To determine if the currently occupied areas contain the primary constituent elements, we assessed the

life history components and the distribution of the subspecies through element occurrence records in State natural heritage databases and natural history information on each of the subspecies as they relate to habitat. We first considered whether the presently occupied areas were sufficient to conserve the species. If not, to determine if any unoccupied sites met the criteria for critical habitat, we then considered: (1) The importance of the site to the overall status of the subspecies to prevent extinction and contribute to future recovery of the subspecies; (2) whether the area presently provides the essential physical or biological features, or could be managed and restored to contain the necessary physical and biological features to support the subspecies; and (3) whether individuals were likely to colonize the site. We also considered the potential for reintroduction of the subspecies, where anticipated to be necessary (for Taylor's checkerspot butterfly only).

Occupied Areas

Taylor's Checkerspot Butterfly

For Taylor's checkerspot butterfly, we are proposing to designate critical habitat within the geographical area occupied by the species at the time of listing, as well as in unoccupied areas that we have determined to be essential to the conservation of the species (described below). These presently occupied areas provide the physical or biological features essential to the conservation of the species, which may require special management considerations or protection. We determined occupancy in these areas based on recent survey information. All sites occupied by the Taylor's checkerspot butterfly have survey data as recently as 2011, except for the Forest Service sites on the north Olympic Peninsula where data is as recent as 2010 (Potter, 2011; Linders 2011; Ross 2011; Holtrop 2010, Severns and Grossboll 2011). In addition, there have been some recent experimental translocations of Taylor's checkerspot butterfly to sites where it had been extirpated within its historical range. If translocated populations have been documented as successfully reproducing, we considered those sites to be presently occupied by the subspecies. Areas proposed as critical habitat for the Taylor's checkerspot butterfly are representative of the known historical geographic distribution for the species, outside of Canada.

In all cases, when determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement (such as airport runways and roads), and other structures because such lands lack the essential physical or biological features for Taylor's checkerspot butterfly or streaked horned lark, with the exception of graveled margins of the airport runways and taxiways. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing four units of critical habitat for designation based on sufficient elements of physical and biological features being present to support life-history processes for the Taylor's checkerspot butterfly and streaked horned lark. These 4 units are further divided into 47, some of which contain proposed critical habitat for both subspecies. Some subunits within the units contain all of the identified elements of physical and biological features and support multiple life-history processes. Some subunits contain only some elements of the physical and biological features necessary to support the subspecies' particular use of that habitat. Because we determined that the areas presently occupied by the Taylor's checkerspot butterfly and the streaked horned lark are not sufficient to provide for the conservation of these subspecies, we have additionally identified some subunits that are presently unoccupied, but that we have determined to be essential to the conservation of the species. Therefore, we are also proposing these unoccupied areas as critical habitat for the Taylor's checkerspot butterfly and streaked horned lark.

We invite public comment on our identification of those areas presently occupied by Taylor's checkerspot butterfly or streaked horned lark and provide the physical or biological features that may require special management considerations or protection, as well as areas that are currently unoccupied but that we have determined to be essential to the conservation of the subspecies.

Proposed Critical Habitat Designation

We are proposing critical habitat for the Taylor's checkerspot butterfly and streaked horned lark in four units in the States of Washington and Oregon, as follows:

(1) The South Sound Unit (Unit 1) has proposed critical habitat subunits for both the Taylor's checkerspot butterfly and streaked horned lark.

(2) The Strait of Juan De Fuca Unit (Unit 2) has proposed critical habitat subunits only for the Taylor's checkerspot butterfly.

(3) The Washington Coast and Columbia River Unit (Unit 3) has proposed critical habitat subunits only for the streaked horned lark.

(4) The Willamette Vally Unit (Unit 4) has proposed critical habitat subunits for both the Taylor's checkerspot butterfly and the streaked horned lark.

Taylor's Checkerspot Butterfly—Units 1, 2, and 4

We are proposing three units as critical habitat for Taylor's checkerspot butterfly. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the species. The three units we propose as critical habitat are: Unit 1, South Sound—5,801 ac (2,348 ha) in Washington State (2,324 ac of Federal ownership; 1,444 ac of State ownership; 1,325 ac of private ownership; 545 ac of County ownership; and 163 ac of lands owned by a Port, local municipality, or nonprofit conservation organization); Unit 2, Strait of Juan De Fuca—923 ac (374 ha) in Washington State (160 ac of Federal ownership; 320 ac of State ownership; 253 ac of private ownership; and 190 ac of land owned by a Port, local municipality, or nonprofit organization); and Unit 4, Willamette Valley—the 151 ac (62 ha) in Oregon (151 ac of lands owned by a Port, local municipality, or nonprofit conservation organization). The approximate area of each proposed critical habitat unit and its relevant subunits, as well as land ownership within each unit is shown in table 2.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE TAYLOR'S CHECKERSPOT BUTTERFLY

[Note: Area sizes may not sum due to rounding. Area estimates reflect all land within proposed critical habitat unit boundaries.]

	Subunit name	Federal	State	County	Private	Other*
		Ac (ha)	Ac (ha)	Ac (ha)	Ac (ha)	Ac (ha)
Unit 1 South Sound						
1–A	TA7S	78 (31)	0	0	0	0
1–B	91st Division Prairie	1,377 (557)	0	0	0	0
1–C	13th Division Prairie	647 (262)	0		0	0
1–D	Rocky Prairie	0	54 (22)		385 (156)	28 (12)
1–E	Tenalquot Prairie	222 (90)	0	0	0	135 (55)
1–F	Mima Mounds/Glacial Heritage.	0	406 (164)	545 (220)	0	0
1–G	West Rocky Prairie	0	134 (54)		0	0
1–H	Scatter Creek	0	603 (255)		98 (40)	0
1–I	Rock Prairie	0	0		621 (251)	0
1–J	Bald Hills	0	246 (100)		221 (90)	0
	Unit 1 Totals	2,324 (941)	1,444 (595)	545 (220)	1,325 (537)	163 (66)
Unit 2 Strait of Juan De Fuca						
2–A	Deception Pass State Park.	0	149 (60)	0	0	0
2–B	Central Whidbey	0	39 (16)	0	0	190 (77)
2–C	Elwha	0	132 (53)		102 (45)	0
2–D	Sequim	0	0		151 (61)	0
2–E	Upper Dungeness	160 (65)	0	0	0	0
	Unit 2 Totals	160 (65)	320 (129)	0	253 (106)	190 (77)
Unit 4 Willamette Valley						
4–1	Fort Hoskins Historic Park.	0	0	0	0	6 (3)
4–2	Baezell Memorial Forest.	0	0	0	0	61 (25)
4–3	Fitton Green	0	0	0	0	84 (34)
	Unit 4 Totals	0	0	0	0	151 (62)
	Grand Total—all Units	2,484 (1,006)	1,764 (694)	545 (220)	1,578 (643)	504 (205)

*Other = Ports, local municipalities and non-profit conservation organizations.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Taylor's checkerspot butterfly, below.

Unit 1: South Sound (or Puget Lowland)—Taylor's Checkerspot Butterfly

The South Sound Unit consists of 5,830 ac (2,359 ha) of land proposed for Taylor's checkerspot butterflies in 10 subunits. This critical habitat unit is located in the south Puget Sound region of Washington State, within Pierce and Thurston County. This unit is owned and managed by several State and Federal agencies, and includes the Department of Defense (DOD), Washington Departments of Natural Resources and Fish and Wildlife, Thurston County Parks and Recreation, and a single private site at Tenalquot (Morgan) prairie. The subunits proposed within the South Sound Unit for the Taylor's checkerspot butterfly are a mix of occupied and unoccupied areas; 3 subunits are presently occupied, and 7 subunits are unoccupied but essential to the conservation of the species, for the reasons described in the section Criteria Used to Identify Critical Habitat. Only one subunit (91st Division Prairie; subunit 1–B) is occupied by a native population of Taylor's checkerspot butterfly, and two other subunits (I–B Range 50 and 1–H, Scatter Creek SW) are occupied by recently translocated butterflies that now successfully breed, survive, and have populations that are increasing in numbers. Subunit 1–B is owned and managed by the DOD (Army) on JBLM. Subunit 1–H is located on the local Scatter Creek Wildlife Area (south unit) owned and managed by the Washington Department of Fish and Wildlife. Four of these subunits are being managed primarily for military training.

The DOD (Army) has written Endangered Species Management Plans for these subunits for Taylor's checkerspot butterfly (under the DOD Integrated Natural Resources Management Plan, or INRMP), and we are proposing to exempt of these lands under section 4(a)(3)(B)(i) of the Act (see Exemptions, below). For those threats to the essential physical or biological features that are common to all subunits, special management considerations or protection may be required to address direct or indirect habitat loss due to development, conifer and shrub encroachment, invasive plant species, use of herbicides, and restoration activities. For those threats that are unique to DOD lands, special management considerations or protection may be required to address uncontrolled fires due to deployment of explosive or incendiary devices, military training involving heavy equipment (resulting in trampling or crushing of burrows), digging or trenching, bombardment, or use of live ammunition.

Subunit 1–A: Training Area (TA) 7s. This subunit contains 78 ac (32 ha) in Pierce County, Washington, on DOD lands. This unit is currently unoccupied, but was previously occupied. We have determined it is essential to the conservation of the species because it has the potential for restoration of the physical or biological features sufficient to enable the reintroduction and reestablishment of Taylor's checkerspot butterfly. This subunit is an intensely managed prairie located directly north of the Central Impact Area on JBLM. It is bordered by a gravel pit to the west and Madigan Hospital Grounds to north and west, and the Burlington Northern Railroad Right of Way to the East. The gravel pit is no longer used and could be restored, and is currently a site with extensive distribution of the Taylor's primary host plant, narrow- leaved plantain. The southern border of this subunit is formed by the conifer forest along its southern edge. Landscape heterogeneity from the presence of swales and the gravel pit are present at this subunit. This critical habitat subunit (1–A) is being proposed for exemption from designation of critical habitat under section 4(a)(3)(B)(i) of the Act, contingent on our approval of the DOD INRMP for JBLM (see Exemptions).

Subunit 1–B: The Artillery Impact Area (AIA), also known as the 91st Division Prairie. This subunit (east and west) totals 1,377 ac (557 ha) and is located entirely within Pierce County, Washington, on DOD lands. The eastern portion of this subunit is occupied by the only remaining native population of Taylor's checkerspot butterflies in the south Sound Unit. The west subunit is occupied by translocated Taylor's checkerspot butterflies first released here in 2008 and now represents an occupied ''small population'' center. This subunit provides the essential physical or biological features for Taylor's checkerspot butterfly, which may require special management considerations or protection. This subunit receives periodic, heavy military training, which results in regular ground fires being ignited that serve a surrogate function as the form of special management that would be implemented during prescribed fires. Other forms of special management will be required to control nonnative, invasive species that are found within the eastern portion of the subunit. Some minimal management takes place on the periphery of the AIA, creating conditions suitable for maintaining the PCEs. The eastern portion of the subunit is bordered by a military access road; the southeast corner of this unit is King Hill and extends west for ~1 mile (1.6 km). This area includes the north and south ''castles'' (structures used as target objectives for live fire training) in TA 76 and is bordered to the north by the main paved road (Story Road) north of the AIA. The second area is located at Range 51 and is bordered by the oak/conifer forests to the south. This area extends into the AIA approximately 1 mi (1.6 km) north from the SE corner and extends due west to intersect with the south boundary access road of the AIA. This critical habitat subunit (1–B) is being proposed for exemption from designation of critical habitat under section 4(a)(3)(B)(i) of the Act, contingent on our approval of the DOD INRMP for JBLM (see Exemptions).

Subunit 1–C: Training Area 15, is located in an area often referred to as the 13th Division Prairie. This subunit is located entirely in Pierce County, Washington, on DOD lands and totals 647 ac (262 ha). We have determined it is essential to the conservation of the species because it has the potential for restoration of the physical or biological features sufficient to enable the reintroduction and reestablishment of Taylor's checkerspot butterfly. This site is currently being enhanced to improve butterfly habitat and will be used for release of captive bred and translocated Taylor's checkerspot butterfly larvae, where larval releases are planned for the spring of 2013. This subunit includes grassland habitat and forest margins, and already provides some of the PCEs in the form of large patches of suitable habitat providing abundant, diverse larval host food resources and adult nectar food plants for Taylor's checkerspot butterfly. Water sources are available in Muck and South Creek. This subunit is topographically diverse, with swales and riparian habitat formed by Muck and South Creek. The western and southern boundaries are formed by military access roads. Formerly (prior to the year 2000), this unit was known to harbor thousands of Taylor's checkerspot butterflies. This critical habitat subunit (1–C) is being proposed for exemption from designation of critical habitat under section 4(a)(3)(B)(i) of the Act, contingent on our approval of the DOD INRMP for JBLM (see Exemptions).

Subunit 1–D: Rocky Prairie. This subunit includes the Rocky Prairie Natural Area Preserve (NAP;

Washington Department of Natural Resources), which includes 35 ac (14 ha) of high-quality habitat. The subunit also includes three privately owned properties; the rail line that borders the NAP on the east side (15 ac (6 ha)), and the adjoining grassland east of the railroad property (388 ac (157 ha)), and Wolf Haven International (29 ac; 12 ha), which is south of the grassland. The entire subunit is located within Thurston County, Washington. This subunit is currently unoccupied by Taylor's checkerspot butterflies, although a small population was detected as recently as 1989 (Pyle 1989, p. 170) at the Rocky Prairie NAP. This population is no longer present and this subunit is considered an historical site.

We have determined it is essential to the conservation of the species because it has the potential for restoration of the physical or biological features sufficient to enable the reintroduction and reestablishment of Taylor's checkerspot butterfly. Some of the essential features are already present on the landscape in this area. The proposed subunit is composed entirely of grasslands and includes oak woodland margins, some transitional colonization (first growth) Douglas-fir forest within the greater prairie landscape. Several other PCEs, including landscape heterogeneity, and diverse, abundant larval and adult plant resources are present. The north boundary is formed by Waldrick Road and Highway 99 the west. Wolf Haven International is at the southeastern extent. The Rocky Prairie Natural Area Preserve portion makes up 35 ac (14 ha) of this critical habitat subunit (1–D) and is being proposed for exclusion from designation of critical habitat under section 4(b)(2) of the Act, due to the approved WDNR State Trust Lands HCP (see Exclusions).

Subunit 1–E: Tenalquot Prairie. This subunit includes grassland and oak woodland portions of JBLM Training Area 22 and the privately owned Morgan property. The subunit is located in Thurston County, Washington, and managed by the DOD (Johnson Prairie) and the nonprofit Center for Natural Lands Management, respectively. The subunit designation for Taylor's checkerspot butterfly on Tenalquot Prairie is made up of Johnson Prairie (also known as ''El Guettar dropzone''), (222 ac (90 ha)) on JBLM lands, and the Morgan property (135 ac (55 ha)). Both locations are presently unoccupied by Taylor's, although Johnson Prairie is an historical site. We have determined it is essential to the conservation of the subspecies because it would provide for the reintroduction and reestablishment of Taylor's checkerspot butterfly. Some of the essential features are already present on the landscape in this area and as it would provide a metapopulation center within a large landscape (more than 2,000 ac (810 ha) of managed prairie in the south end of the County. In addition, this proposed subunit provides several of the essential features to support Taylor's checkerspot butterfly, including landscape heterogeneity, diverse and abundant larval and adult plant resources, and bare ground. Each area within the subunit is periodically managed using fire and mechanical methods to remove Scot's broom and sustain early seral conditions. The portion of this proposed critical habitat designation on JBLM (222 ac (90 ha) located at Training Area 22 is being proposed for exemption from designation of critical habitat under section 4(a)(3)(B)(i) of the Act, contingent on our approval of the DOD INRMP for JBLM (see Exemptions).

Subunit 1–F: Mima Mounds/Glacial Heritage. This subunit is located in Thurston County, Washington. The Glacial Heritage Preserve is 545 ac (220 ha) and is owned and managed by Thurston County. The Mima Mounds NAP is roughly 406 ac (164 ha), and is owned and managed as a NAP by the WDNR. Both sites were historically occupied by Taylor's checkerspot butterflies but are currently unoccupied. We have determined it is essential to the conservation of the subspecies because it has the potential to provide for the reintroduction and reestablishment of Taylor's checkerspot butterfly to support recovery. Many of the essential features required to support a reintroduced population are already present on the landscape in this area. This subunit provides diverse topography, a water course, abundant and diverse larval and adult food resources, and areas of bare soil due to active management. Glacial Heritage Preserve had a robust population of Taylor's checkerspot butterfly in the mid-1990s and is scheduled to receive translocated Taylor's checkerspot larvae this year (2012). Both sites contain landscape heterogeneity, abundant and diverse larval and adult food resources, and areas of bare soil, and Glacial Heritage is bounded on the east side by a water course. The Mima Mounds NAP portion (406 ac (164 ha)) of this critical habitat subunit (1–F) is proposed for exclusion from designation of critical habitat under section 4(b)(2) of the Act, due to the approved WDNR State Trust Lands HCP (see Exclusions).

Subunit 1–G: West Rocky Prairie. This subunit contains 134 ac (54 ha) and was historically occupied by Taylor's checkerspot butterfly but is currently unoccupied. It is located in Thurston County, Washington, and owned and managed by WDFW. The subunit lies between 140th Avenue SE to the south, an east-west running Burlington Northern Santa Fe (BNSF) railroad line to the north and a north-south BNSF railroad line to the east and Tilley Road to the west. This subunit contains landscape heterogeneity with topographic relief from mima mounds, small wetland depressions, and an active creek and pond that contains a Federally listed threatened plant (*Howellia aquatilis;* water howellia) and the Federal candidate species Oregon spotted frog (*Rana pretiosa*). Distinct areas of West Rocky Prairie have rich larval host and adult food resources. We have determined this subunit is essential to the conservation of the subspecies because it has the potential to provide for the reintroduction and reestablishment of Taylor's checkerspot butterfly to support recovery. In addition, this area has many of the physical or biological features essential to support the long-term conservation and recovery of Taylor's checkerspot butterfly, providing topographic diversity (including mima mounds), wetlands, ponds, and a perennial creek. This area receives active management to sustain suitable prairie habitat, and is specifically being enhanced for butterflies and the Federally listed threatened plant *Castilleja levisecta* (golden paintbrush), which has been reintroduced to the site.

Subunit 1–H: Scatter Creek. This subunit includes Scatter Creek Wildlife Area (SCWA), a small private land parcel, and a power line right-of-way managed by the Federal Bonneville Power Administration (BPA) in Thurston County, Washington. The north and south units of Scatter Creek SCWA contain 730 ac (295 ha). The private land parcel totals 98 ac (40 ha) and is managed by WDFW in the same way as the Wildlife Area. This property was historically occupied by Taylor's checkerspot butterfly, and is currently occupied by a population established from larvae released between 2007–2011. This subunit contains the physical or biological features essential to the conservation of the species, including landscape heterogeneity with swales and mima mounds; rich, diverse larval and adult food resources; bare ground (due to management practices); and a stream running through the center of the property.

The physical or biological features essential to the conservation of the species may require special management considerations or protection to maintain bare ground in

this subunit. The north subunit is bounded on the east by Case Road, and on the south subunit is bordered by 183rd Avenue SW. Scatter Creek runs through the property and forms the north boundary of the portions subunit and the south boundary of the north subunit; this property is bounded on the west by residential areas. The northern portion of the Wildlife Area is bounded to the west by second growth conifer forests. We are considering the exclusion of approximately 98 ac (40 ha) of private property in this subunit under section 4(b)(2) of the Act, due to the level of public benefits derived from encouraging collaborative efforts and encouraging private and local conservation efforts; and the effect designation would have on partnerships, as well as the existing WDFW lease on this property, and the fact that this property is managed in a manner consistent with the conservation of this species (see Exclusions).

Subunit 1–I: Rock Prairie. This subunit is made up of two private properties in south Thurston County, Washington. The acreage for the subunit is 621 ac (251 ha). The southernmost private property is an historical location for the Taylor's checkerspot butterfly, but it is currently unoccupied. We have determined this subunit is essential to the conservation of the subspecies because it has the potential to provide for the reintroduction and reestablishment of Taylor's checkerspot butterfly to support recovery. In addition, this area has many of the features essential to support the long-term conservation and recovery of Taylor's checkerspot butterfly, including diverse topography with terraces and swales, abundant and diverse larval and adult food resources, and a water course formed by Scatter Creek along the southern boundary of the property. It is managed under a Grassland Reserve Program agreement and has a permanent conservation easement on 530 ac (215 ha) of the property.

The northern border for the southern property and the southern border for the northern property is 183rd Avenue SW.; in other words, 183rd Avenue SW. bisects the two properties. The eastern border of the southern portion of the subunit is an active gravel and sand mining operation, and to the north of the northern portion of the subunit is forest, and to the southwest of the southern property is forest. These forested areas clearly delineate property and land use boundaries. The entire acreage of the proposed critical habitat (379 ac (153 ha)) on one private landowner's property is considered for exclusion under section 4(b)(2) of the Act, due to the conservation easement on approximately 530 acres of their property and the Grassland Reserve Program plan developed in partnership with the USDA's Natural Resources Conservation Service (NRCS) for the long-term management of their property, which is consistent with restoration and management needs for sustaining prairies (see Exclusions).

Subunit 1–J: Bald Hills. This subunit is located in southeast Thurston County, Washington, and is managed by WDNR and several timber companies. The total area of this subunit is 468 ac (189 ha). This is an historical location for Taylor's checkerspot butterflies but was recently extirpated (2007); therefore, it is not believed to be currently occupied. We have determined this subunit is essential to the conservation of the subspecies because it has the potential for active management to restore the physical or biological features essential to Taylor's checkerspot butterfly and to provide for the reintroduction and reestablishment of the subspecies to support recovery. In addition, this area already provides some of the features essential to support the long-term conservation and recovery of Taylor's checkerspot butterfly, including diverse topography of balds, steep slopes, canyons, oak glades, a rich diversity of larval and adult food resources, and areas of bare soil, which are used for basking and resting by the butterfly. This area is the southeastern most distribution of Taylor's checkerspot in Thurston County, and is the only Thurston County site that is formed on bald habitat. The Bald Hills NAP portion (247 ac (100 ha)) of this critical habitat subunit (1–J) is proposed for exclusion from designation of critical habitat under section 4(b)(2) of the Act, due to the approved WDNR State Trust Lands HCP, which covers Natural Area Preserves (see Exclusions).

Unit 2: Strait of Juan de Fuca—Taylor's Checkerspot Butterfly

The Strait of Juan de Fuca Unit for Taylor's Checkerspot butterfly consists of 924 ac (374 ha) of land in 5 subunits. The Strait of Juan de Fuca Unit includes coastal bluff, dune, and bald habitat in Clallam and Island Counties, Washington. Except for two coastal dune sites at Sequim and Deception Pass State Park, the subunits in this location contain bald habitat, surrounded by and found within a large forested landscape. These balds are all found on south, or southwest facing, steep, rocky, and thin-soil areas. The balds themselves and the road margins (verges) are rich in larval and adult food resources, and in this location Taylor's checkerspot butterflies lay eggs and larvae subsist on harsh paintbrush, although plentiful plantain is also available and the plantain is also utilized at this location. This unit is within the historical range of the Taylor's checkerspot butterfly, and several designated subunits are presently occupied by the subspecies.

In addition, some subunits are proposed for designation that are currently unoccupied, but that we have determined to be essential to the conservation and recovery of the subspecies, as described in the section Criteria Used to Identify Critical Habitat. All subunits, both occupied and unoccupied, contain several of the PCEs, and the coastal sites have lagoons, fresh water lakes, wetlands. The bald locations have the PCEs of topographic relief, abundant and diverse larval and adult food plants, and bare soil areas associated with adjacent roads. Management to expand the size of several balds as Douglas fir, *Acer macrphyllum,* (bigleaf maple) *A. circinatum* (vine maple), *Holodiscus discolor* (oceanspray), *Arctostapholus columbiana* (hairy manzanita, and nonnative shrubs (such as Scot's broom) are quickly encroaching. Landowners in this unit include WDNR, the U.S. Forest Service, Washington State Parks, and a private landowner at Sequim. The physical or biological features essential to the conservation of the species may require special management considerations or protection to address threats to the essential physical or biological features including the general succession of vegetation at all sites, which reduces the distribution and availability of native food resources. The subunits on WDNR and Forest Service lands are threatened by ORV use and service trucks accessing cell-phone towers (Dan Kelly Ridge). The owner of the private subunit at Sequim is currently managing the dune and abandoned road corridor for the conservation of the Taylor's checkerspot butterfly.

Subunit 2–A: Deception Pass. This subunit is located on Island County in Washington and managed by Washington State Parks. The subunit contains sites found along low-lying beach areas (coastal dunes), and include several balds on high points within the park. These open areas are disjunct from each other and total 149 ac (60 ha). The State Park is an historically occupied location for Taylor's checkerspot butterfly, but is currently unoccupied. We have determined this subunit is essential to the conservation of the

subspecies because it has the potential to provide for the reintroduction and reestablishment of Taylor's checkerspot butterfly to support recovery. This was an historically occupied location in a coastal area that is currently represented at just one occupied site. In addition, this area has many of the features essential to support the long-term conservation and recovery of Taylor's checkerspot butterfly, including diverse topography on balds and protected beaches, diverse and abundant larval and adult food plants, and areas of bare soil for basking and resting.

Subunit 2–B: Central Whidbey. This subunit is located on Island County in Washington and includes Ebey's Landing, the Naas Conservation Area, and the former Smith Prairie. This subunit contains both State and private lands. In total these areas comprise 230 ac (93 ha), although the Smith Prairie is disjunct from the remaining contiguous coastal grasslands bluffs. The subunit was historically occupied by Taylor's checkerspot butterfly but is not currently occupied. The subunit would require captive breeding and translocation of the species to bring it back to this location. We have determined this subunit is essential to the conservation of the subspecies because it has the potential to provide for the reintroduction and reestablishment of Taylor's checkerspot butterfly to support recovery. In addition, it provides many of the features essential to supporting reintroduced population of the subspecies, including diverse topography, abundant larval and adult nectar food resources, areas of bare soil, some freshwater wetlands, and saltwater along the coast. Some management is ongoing at the site, and will be required to restore and maintain the essential features to support a reintroduced population, including management to restrict encroaching trees and to sustain larval food resources.

Subunit 2–C: Elwha. This subunit includes sites on the northern Olympic Peninsula in Clallam County, Washington, totaling 235 ac (95 ha) and is occupied by the Taylor's checkerspot butterfly at the time of listing. These lands are primarily owned and managed by WDNR (172 ac (69 ha)), although small inholdings of private timber companies (Aloha Lumber) have been included as the habitat continuity was found to follow the topography. At Eden Valley, 23 ac (9 ha) of WDNR property were included in the proposed subunit, as were 2 ac (approximately 1 ha) of private property. At the Dan Kelly Ridge location, 109 ac (44 ha) of WDNR land and 99 ac (40 ha) of private timber lands were included in this subunit. The balds are presently occupied by Taylor's checkerspot butterflies on WDNR lands, and the butterflies have been observed flying up and down the steep slopes of the habitat onto private lands. The location known as Eden Valley is composed of several small connected and some isolated balds. This area contains several PCEs including topographic heterogeneity, abundant and diverse larval and adult food resources, and bare soil for basking. The physical or biological features essential to the conservation of the species may require special management considerations or protection to sustain the open conditions that are needed to manage for and sustain the larval and adult food resources. The subunit runs along the top of the ridge including the north margin (road verge) of the road and extends down the south slope to the 1,250 ft (381 m) contour interval. At Dan Kelly Ridge, the entire ridgeline including the road and road verge on the north margin of the road are part of the subunit. The subunit extends down the south facing slope to include bald habitat recently exposed by forest harvesting.

Subunit 2–D: Sequim. This subunit is located in Clallam County, Washington, on private property that contains approximately 151 ac (61 ha) of low-lying stabilized dune habitat. This unit is presently occupied by Taylor's checkerspot butterfly and contains the physical or biological features essential to the conservation of the subspecies. The subunit includes stabilized dune and beach habitat adjacent to the Strait of Juan de Fuca at approximately 20 ft (6 m) elevation. This subunit contains several PCEs, including landscape heterogeneity with fore dune, and back dune areas and terraces; rich and abundant larval and adult food resources; a marsh; and bare soil for basking. The physical or biological features essential to the conservation of the species may require special management considerations or protection to address threats to the essential features. We are considering the exclusion of private land subunit (2–D) located at Sequim under the section 4(b)(2) of the Act. This consideration of exclusion is due to the ongoing conservation management for Taylor's checkerspot butterflies of this subunit, and the long-term management plan that is currently being developed in coordination with the WDFW. The landowner has been working with WDFW for several years to manage for Taylor's checkerspot butterflies and is in the process of formalizing their management of the site in a Management Plan, developed in coordination with WDFW (see Exclusions).

Subunit 2–E: Upper Dungeness. This subunit occurs in the Upper Dungeness Watershed on U.S. Forest Service lands in Clallam County, Washington. This subunit contains 160 ac (65 ha), is composed of bald habitat, is currently occupied by Taylor's checkerspot butterfly, and contains the physical or biological features essential to the conservation of the subspecies. Sites within the subunit are referred to as Bear Mountain, 3 O'Clock Ridge, and Upper Dungeness. Bear Mountain is disjunct from the 3 O'Clock Ridge and Upper Dungeness units. All sites within this subunit are found within the Dungeness watershed at three separate locations, with Bear Mountain at the lowest elevation, 3 O'Clock Ridge found at mid-elevation and the Upper Dungeness site at the highest elevation where we have detected the Taylor's checkerspot butterfly. The features essential to the conservation of the species may require special management considerations or protection to address threats by encroachment of several conifer species, maple, oceanspray, and sparse amounts of Scot's broom, which all compete with native grasses and forbs for space, water and nutrients. Early restoration work conducted by the Forest Service has included tree harvesting and removal, and has resulted in the larval and adult resources expanding on this habitat. The subunit contains several PCEs, including landscape heterogeneity, abundant larval and adult food resources, nearby streams, and plentiful areas of bare ground for basking. We are considering the exclusion of 160 ac (65 ha) of subunit (2–E) under 4(b)(2) of the Act due to ongoing management for Taylor's checkerspot butterfly habitat, which is consistent with the NW Forest Plan's allowance for small openings in Late Successional Reserve allocations of federal forests (see Exclusions).

Unit 4: Willamette Valley Unit—Taylor's Checkerspot Butterfly

The Willamette Valley Unit for Taylor's Checkerspot Butterfly is made up of three subunits, all of which are located in Benton County, Oregon, totaling 152 ac (61 ha). Two subunits are presently occupied by Taylor's checkerspot butterflies (Beazell Memorial Forest and Fitton Green Natural Area) and contain the physical or biological features essential to the conservation of the species. The third subunit at Fort Hoskins Historic Park is unoccupied, but we have determined it

is essential to the conservation of the subspecies for the reasons detailed in the section Criteria Used to Identify Critical Habitat.

All areas within this subunit provide some physical or biological features essential to the conservation of Taylor's checkerspot butterfly, whether presently occupied or unoccupied by the subspecies, including abundant larval and adult food resources, and areas of bare soil for basking and resting. The habitat for Taylor's checkerspot butterfly is confined to dispersed small meadow (grassland) openings within a larger forested matrix. Areas proposed for critical habitat for the Taylor's checkerspot butterfly in this unit constitute the only known, currently or recently occupied habitat for the species in Oregon with the capability to support the breeding and reproduction of the subpsecies. The features essential to the conservation of the species may require special management considerations or protection to address direct or indirect habitat loss due to development, conifer and shrub encroachment, invasive plant species, use of herbicides, and restoration activities. In all subunits, disturbance will be needed to sustain the early-seral conditions required by the butterfly larval and adult lifestages. Two of the subunits (Beazell and Fort Hoskins Historic Park) are owned and managed by Benton County. Approximately 45 percent of the third subunit (Fitton Green) is held in trust as a permanent conservation easement.

All subunits are proposed for exclusion under section 4(b)(2) of the Act due to the Benton County HCP, and will be managed under the HCP's Prairie Conservation Strategy (see Exclusions). The Benton County HCP Prairie Management Plan meets the species need by conserving occupied prairie habitat by implementing measures to restore, and manage for the long-term conservation of the Taylor's checkerspot butterfly. The plan's goals have been implemented by Benton County Parks and Recreation department and they plan to continue these actions in support of the butterfly. The plan meets the needs of the Taylor's checkerspot butterfly by controlling invasive, nonnative shrubs (Scot's broom), reduces the cover of tall, invasive pasture grasses, reduces the cover of encroaching trees, and to augment through planting and seeding the larval and adult food resources and native grass species that form the low-statured structure of the habitat required by the butterfly.

Subunit 4–A: Fort Hoskins Historic Park. The Fort Hoskins Historic Park subunit is composed of a southern and northern portion. Subunit 4–A north consists of 1.4 ac (0.57 ha) and subunit 4–A south consists of 5 ac (2 ha). This subunit is located within Fort Hoskins Historic Park, which is owned and managed by Benton County, Oregon. The Park is located west of where Hoskins Road joins Oregon Route 223 and is about 12 mi (19 km) northwest of the City of Corvallis. The subunit consists of open meadows on a southwest-facing hillside of Dunn Ridge, mostly surrounded by Douglas-fir/Oregon white oak forest. The park is open to the public for day use and contains hiking trails. The park is also used for natural resource research that has included mowing and burning of meadows. A single individual Taylor's checkerspot butterfly, presumably a dispersing individual, was discovered there in 2005; however, no butterflies have been observed there in subsequent surveys and we consider Fort Hoskins Historic Park to be currently unoccupied. We have determined this subunit is essential to the conservation of the subspecies because it has the potential to provide for the reintroduction and reestablishment of Taylor's checkerspot butterfly to support recovery. In particular, since there are only two small extant populations of Taylor's checkerspot butterfly in the Willamette Valley, an additional population at Fort Hoskins Historic Park would provide essential redundancy in populations for the subspecies. In addition, the subunit provides many of the features essential to supporting a reintroduced population, including abundant and diverse larval and adult food resources in the grassland parts of the park, diverse topography, bare soil patches, and areas dominated by early successional plant species. The site is located far enough away from the other two occupied Oregon sites (greater than 2 mi (3.2 km)) to be considered a separate population if it the Taylor's checkerspot butterfly is reestablished there.

We propose to exclude the 6.4 acres (2.57 ha) of this subunit (4–A) from proposed critical habitat under section 4(b)(2) of the Act, as the Taylor's checkerspot and management for the species at Fort Hoskins Historic Park is covered by the Benton County HCP (see Exclusions).

Subunit 4–B: Beazell Memorial Forest. The Beazell Memorial Forest subunit is composed of five areas that total 61 ac (25 ha), all within the Beazell Memorial Forest owned by Benton County. The Beazell Memorial Forest is located approximately 9 mi (14.5 km) southwest of the City of Corvallis, Oregon. The subunit is mostly open meadow, with some forested components, surrounded by Douglas-fir/Oregon white oak forest at about 1,000–1,300 ft (305–396 m) elevation. This subunit is known to be currently occupied by Taylor's checkerspot butterflies at varying densities, and contains several PCEs including the presence of perennial bunchgrass plant communities with the requisite larval and adult food resources, landscape heterogeneity, and bare soil areas for basking. The subunit is open to the public with hiking trails and picnicking facilities, and is managed as a demonstration forest and open space area, with management intended to protect, conserve, and restore natural, scenic values.

Benton County was issued a section 10(a)1(B) permit on January 14, 2011, in conjunction with their Prairie Species Habitat Conservation Plan (HCP). Some of the meadow areas in the Beazell Memorial Forest will be used for mitigation purposes under the HCP and will be otherwise managed to maintain the meadow complexes under the HCP's Prairie Conservation Strategy. Special management may be required within this subunit to restore or maintain the essential features for Taylor's checkerspot butterfly. While some management is ongoing in the form of mowing and encroaching tree removal, additional management is needed to address invasion of nonnative grasses and woody vegetation, and possibly to improve the diversity of food resources. We propose to exclude the 61 ac (25 ha) in this subunit (4–B) from proposed critical habitat under section 4(b)(2) of the Act, as the Taylor's checkerspot and management for the species at Beazell Memorial Forest is covered by the Benton County HCP (see Exclusions).

Subunit 4–C: Fitton Green Natural Area. This subunit is composed of four areas totaling 83 ac (34 ha). This subunit is located 5 mi (8 km) west of the City of Corvallis, Oregon. Portions of this subunit (approximately 41 ac (17 ha)) are within property acquired by Benton County for the purposes of demonstrating land stewardship practices on mixed public and private ownership. The Benton County owned or managed portions of this subunit are a recognized component of the County's Prairie Species HCP and will be managed under their Prairie Conservation Strategy as well as used as a mitigation site. The Fitton Green Natural Area subunit is mostly composed of open meadows with scattered trees, and bordered by Douglas-fir/Oregon white oak forest. The subunit is currently occupied by Taylor's checkerspot butterflies,

contains the features essential to the conservation of the species and includes areas that function as a dispersal corridor. The subunit contains several PCEs including the presence of perennial bunchgrass plant communities with larval and adult food resources, little or no overstory forest vegetation, landscape heterogeneity, and bare soil areas for basking.

While some management to restore or maintain the features essential to Taylor's checkerspot butterfly has already occurred in the form of mowing and encroaching tree removal, the physical or biological features essential to the conservation of the species may require special management considerations or protection to address invasion of nonnative grasses and woody vegetation, and to improve the diversity of food resources. A portion of the Fitton Green Natural Area subunit is being conserved through a specialized Right of Way Management Plan for Taylor's checkerspot butterfly developed and approved by the BPA and Xerces Society in coordination with the Service's Oregon Fish and Wildlife office in Portland in 2005.

We propose to exclude the 41 acres (17 ha) of County lands (noted as South and BPA) in this subunit (4–C) from proposed critical habitat under section 4(b)(2) of the Act, as the Taylor's checkerspot and management for the species on County-owned lands is covered by the Benton County HCP (see Exclusions).

Streaked horned lark—Units 1, 3, and 4

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the streaked horned lark. In addition, we are proposing one subunit unoccupied at the time of listing, but that we have determined is essential the conservation of the subspecies, as detailed in the section Criteria Used to Identify Critical Habitat.

We are proposing to designate three units as critical habitat for the streaked horned lark. The three units are: Unit 1—South Sound (with 6 subunits), Unit 3—Washington Coast and Columbia River (with 18 subunits), and Unit 4—Willamette Valley (with 8 subunits). The South Sound Unit (Unit 1) totals 3,763 ac (1,523 ha) and comprises 2,813 ac of Federal ownership and 950 ac of private land. The Washington Coast and Columbia River Unit (Unit 3) totals 3,516 ac (1,423 ha) and comprises 564 ac of Federal ownership, 2,597 ac of State-owned lands, 151 ac of private lands, 182 ac of Tribal lands, and 22 ac of lands owned by a Port, local municipality, or nonprofit conservation organization. The Willamette Valley Unit (4) totals 4,880 ac (1,975 ha) and comprises 1,729 ac of Federal ownership and 3,151 ac of privately owned land.

Streaked horned larks have been documented nesting on all but one of the subunits within the last few years and all subunits are therefore considered occupied at the time of listing, with the exception of Subunit 3–J, Coffeepot Island in the Columbia River, which has not been surveyed recently; streaked horned larks were last detected there in 2004. We, therefore, evaluated Coffeepot Island as if it were unoccupied, and have determined that it is essential for the conservation of the subspecies to provide connectivity between the streaked horned lark populations nesting on Columbia River islands. All of the subunits, both occupied and unoccupied, currently have one or more of the physical or biological features essential to the conservation of the streaked horned lark, and which may require special management considerations or protection.

The critical habitat areas described below constitute our best assessment of areas that meet the definition of critical habitat for the streaked horned lark. The approximate area and landownership of each proposed critical habitat unit and associated subunit is shown in Table 4.

TABLE 4—PROPOSED CRITICAL HABITAT UNITS FOR THE STREAKED HORNED LARK

[Note: Area sizes may not sum due to rounding. Area estimates reflect all land within proposed critical habitat unit boundaries]

	Subunit name	Federal	State	Private	Tribal	Other*
		Ac (Ha)	Ac (Ha)	Ac (Ha)	Ac (Ha)	Ac (Ha)
Unit 1 South Sound						
1–A	Sanderson Field	0	0	0	0	376 (152)
1–B	McChord Airforce Base	759 (307)	0	0	0	0
1–C	Gray Army Airfield	347 (140)	0	0	0	0
1–D	91st Division Prairie	888 (359)	0	0	0	0
1–E	13th Division Prairie	819 (331)	0	0	0	0
1–F	Olympia Airport	0	0	0	0	575 (233)
	Unit 1 Totals	2,813 (1,138)	0	0	0	950 (385)
Unit 3 Washington Coast Columbia River Islands						
3–A	Damon Point	0	456 (185)	24 (10)	0	0
3–B	Midway Beach	0	611 (247)	0	0	0
3–C	Shoalwater Spit	0	377 (152)	102 (41)	182 (74)	0
3–D	Leadbetter Point	564 (228)	101 (41)	0	0	0
3–E	Rice Island	0	224 (91)	0	0	0
3–F	Miller Sands	0	123 (50)	0	0	0
3–G	Pillar Rock/Jim Crow	0	44 (18)	0	0	0
3–H	Welch Island	0	43 (18)	0	0	0
3–I	Tenasillahe Island	0	23 (9)	0	0	0
3–J	Coffeepot Island	0	0	25 (10)	0	0
3–K	Whites/Brown	0	98 (39)	0	0	0
3–L	Wallace Island	0	13 (5)	0	0	0
3–M	Crims Island	0	60 (24)	0	0	0
3–N	Sandy Island	0	37 (15)	0	0	0
3–O	Portland International Airport	0	388 (157)	0	0	22 (9)
	Unit 3 Totals	564 (228)	2,597 (1,050)	151 (61)	182 (74)	22 (9)
Unit 4 Willamette Valley						
4–A	McMinnville Airport	0	0	0	0	600 (243)
4–B	Basket Slough NWR	1,006 (407)	0	0	0	0
4–C	Salem Airport	0	0	0	0	534 (216)
4–D	Ankeny NWR	264 (107)	0	0	0	0
4–E	Corvallis Airport	0	0	0	0	1,103 (447)
4–F	William L Finley NWR	459 (186)	0	0	0	0
4–G	M–DAC Farms	0	0	0	0	601 (243)
4–H	Eugene Airport	0	0	0	0	313 (127)
	Unit 4 Totals	1,729 (700)	0	0	0	3,151 (1,275)
	Grand Total—all Units Streaked Horned Lark.	5,106 (2,066)	2,597 (1,050)	151 (61)	182 (74)	4,123 (1,669)

*Other = Ports, local municipalities, and nonprofit conservation organization.

Unit 1: South Sound—Streaked Horned Lark

In the South Sound Unit, streaked horned larks are found on flat, open sites that are remnants of the original Puget lowland prairies. All of the known currently occupied sites in the South Sound area are associated with airfields or military training grounds. The areas used by streaked horned larks for nesting at all of the airports consist of grass and gravel margins of the runways and taxiways. We are proposing six subunits for a total of 3,764 ac (1,523 ha) in the South Sound Unit. All subunits are occupied and contain the physical or biological features essential to the conservation of the streaked horned lark. Ownership in this unit is by the Department of Defense and local municipalities. The current threats to the essential features in the South Sound Unit include mowing and disturbance from special training events during the nesting season, and loss of habitat from commercial and industrial development. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation on all of these subunits and to minimize nest destruction and disturbance during the breeding season.

Subunit 1–A: Sanderson Field Airport (Mason County, Washington). Sanderson Field Airport is in the town of Shelton and is owned by the Port of Shelton; the subunit contains about 375 ac (152 ha). This subunit is currently occupied and contains the physical or biological features essential to the conservation of the subspecies. The site is bounded on the north and western edges by forest, on the eastern edge by airport buildings (hangars, offices) and US 101 and includes the grass perimeter along the runway on the southern side. Streaked horned larks nest along the southern edge of the airport adjacent to an abandoned or seldom-used runway. The Washington Department of Fish and Wildlife works with Sanderson Field to coordinate mowing schedules to minimize threats to streaked horned larks however, a management plan does not currently exist that specifically addresses conservation or habitat protection for the streaked horned lark. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 1–B: McChord Field (Pierce County, Washington). McChord Field is part of DOD's JBLM; the subunit is about 759 ac (307 ha) in size. This airport is used by large military cargo planes; the subunit includes areas adjacent to the main runway and taxiways. This subunit is currently occupied and contains the physical or biological features essential to the conservation of the subspecies, with most of the documented nesting by streaked horned larks occurring in the northeast portion of the airport. Soils on this site are gravelly and poor, with sparse low grass and bare ground. The site has the both the landscape context and the low vegetative structure that make up the physical or biological features essential to the conservation of the species. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season. This critical habitat subunit (1–B) is being proposed for exemption from designation of critical habitat under section 4(a)(3)(B)(i) of the Act, contingent on our approval of the DOD INRMP for JBLM (see Exemptions).

Subunit 1–C: Gray Army Airfield (Pierce County, Washington). Gray Army Airfield is part of DOD's JBLM; the subunit is about 347 ac (140 ha) in size. This airport is predominantly used by military helicopters, but also supports fixed-wing aircraft. This subunit is currently occupied and contains the physical or biological features essential to the conservation of the subspecies. Streaked horned larks nest in the grassy medians and gravel shoulders along the edge of the runway and taxiways throughout this airport, including gravel areas in paved helicopter parking areas. The site has both the open landscape context and sparse grassy vegetation that make up the physical or biological features essential to the conservation of the species. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season. This critical habitat subunit (1–C) is being proposed for exemption from designation of critical habitat under section 4(a)(3)(B)(i) of the Act, contingent on our approval of the DOD INRMP for JBLM (see Exemptions).

Subunit 1–D: 91st Division Prairie/ Artillery Impact Area (Pierce County, Washington). This site is also part of DOD's JBLM; the subunit contains about 888 ac (359 ha). The boundaries of this subunit are delineated by military access roads and forested areas. This subunit is currently occupied and contains the physical or biological features essential to the conservation of the subspecies. Streaked horned lark nesting has been documented in the eastern half of this large prairie in areas referred to by the army as Range 74–76 and Training Area 6. No surveys are conducted in the center of the Artillery Impact Area. The site has both the open landscape context and early seral vegetation that make up the physical or biological features essential to the conservation of the species; both of the PCEs are maintained by regular ground-disturbing activities such as fires, troop maneuvers and off-road military training exercises. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early-seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season. In addition, special management considerations or protection may be required to address threats specific to the Artillery Impact Area (Range 74–76 and Training Area 6), including explosives and live fire operations, off-road vehicle operations, troop maneuvers, and military training activities. This critical habitat subunit (1–D) is being proposed for exemption from designation of critical habitat under section 4(a)(3)(B)(i) of the Act, contingent on our approval of the DOD INRMP for JBLM (see Exemptions).

Subunit 1–E: 13th Division Prairie (Pierce County, Washington). This site is part of DOD's JBLM; the subunit is about 819 ac (331 ha) in size. This subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. This subunit is largely prairie habitat and includes an infrequently used runway. It is bordered on the northern and eastern edges by Muck Creek and the western and southern edges by military access roads. Streaked horned lark nests have been documented throughout the site, and the site has the both the open landscape context and early seral vegetation that make up the physical or biological features essential to the conservation of the species. The physical or biological features essential to the conservation of the streaked horned lark may require

special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season. Threats at 13th Division Prairie are somewhat less intense than in the Artillery Impact training areas because motorized vehicles are restricted to roads. However, threats to the essential features specific to this site and that may require additional special management considerations or protection include foot traffic and helicopter operations (parachute drops, touch-and-go landings) that are conducted during the summer months. This critical habitat subunit (1–E) is being proposed for exemption from designation of critical habitat under section 4(a)(3)(B)(i) of the Act, contingent on our approval of the DOD INRMP for JBLM (see Exemptions).

Subunit 1–F: Olympia Regional Airport (Thurston County, Washington). This site is owned by the Port of Olympia. The airport is enclosed by a perimeter fence, which restricts access and reduces human disturbance. The subunit contains about 575 ac (233 ha), and is delineated by airport taxiways, trees, buildings, and county roads. This subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. Streaked horned lark nests have been documented throughout the airport grounds, but most recently nests have been found in the central area. The site has both the open landscape context and low vegetation that make up the physical or biological features essential to the conservation of the species. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Unit 3: Washington Coast and Columbia River—Streaked Horned Lark Only

On the Washington coastal sites, streaked horned larks occur on sandy beaches and breed in the sparsely vegetated low dune habitats of the upper beach. We are proposing to designate four subunits and a total of 1,753 ac (708 ha) as critical habitat on the Washington coast. The coastal sites are owned and managed by Federal, State and tribal entities. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to reduce human disturbance during the nesting season and continued encroachment of invasive nonnative plants that requires special management to restore or retain the open habitat preferred by streaked horned larks. Proposed subunits 3–A, 3–B, 3–C, and 3–D overlap areas that are designated as critical habitat for the western snowy plover (*Charadrius alexandrinus nivosus*). The snowy plover nesting areas are posted and monitored during the spring and summer to keep recreational beach users away from the nesting areas; these management actions also benefit streaked horned larks.

In the lower Columbia River, we are proposing ten island subunits and one mainland subunit adjacent to the river at Portland International Airport for a total of 1,785 ac (724 ha). The island subunits are owned by the States of Oregon and Washington and private landowners. On the Columbia River island sites, only a small portion of each island is proposed as critical habitat for the streaked horned lark; most of the areas mapped are used by the U.S. Army Corps of Engineers for dredge material deposition in its channel maintenance program. Within any deposition site, only a portion is likely to be used by streaked horned larks in any year, as the area of habitat shifts within the deposition site over time as new materials are deposited and as older deposition sites become too heavily vegetated for use by streaked horned larks. All of the island subunits are small, but are adjacent to open water, which provides the open landscape context needed by the streaked horned lark. The subunit at Portland International Airport is adjacent to the runways, and on a small public beach; the site is owned by Port of Portland and Metro, the Portland-area regional government.

The main threats to the essential features in the critical habitat subunits proposed on the Columbia River islands are invasive vegetation and direct impacts associated with deposition of dredge material onto streaked horned lark nests during the nesting season. In all subunits, the physical or biological features essential to the conservation of each subspecies may require special management considerations or protection to restore, protect, and maintain the PCEs supported by the subunits. For those threats that are common to all subunits, special management considerations or protections may be required to address direct or indirect habitat loss due to the location and timing of dredge material placement to areas that have become unsuitable for streaked horned lark nesting and wintering habitat. Special management will be needed at Portland International Airport to address mowing during the nesting season, human disturbance, and future development of the site.

Subunit 3–A: Damon Point (Grays Harbor County, Washington). This critical habitat subunit is about 481 ac (194 ha) in size. It extends from the Ocean Shores wastewater treatment plant on the western edge through the Oyhut wildlife management unit and Damon Point spit (also called Protection Island). The area is managed by the State of Washington (Washington State Department of Fish and Wildlife and Parks and Department of Natural Resources). This subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. The site has the both the open landscape context and sparse, low-growing vegetation that make up the physical or biological features essential to the conservation of the species. Streaked horned larks currently nest and winter on Damon Point and have also been documented to nest along the beach just west of the treatment plant. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to reduce human disturbance during the nesting season and encroachment by invasive nonnative plants that render the habitat too dense for use by streaked horned larks.

Subunit 3–B: Midway Beach (Pacific County, Washington). This subunit is about 611 ac (247 ha) in size. The northern edge of the subunit starts at Grayland Beach State Park and extends south to the Warrenton Cannery road. The landward extent is defined by the vegetation line in the mid-dune area. This site is owned by the State of Washington (Washington State Parks and Recreation Department). This subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. Both open landscape context and the sparse, low-growing vegetation that make up the physical or biological features essential to the conservation of the species are present at the site, and Midway Beach is used by streaked horned larks for nesting and wintering. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to reduce human disturbance during the nesting season and encroachment by invasive nonnative plants that render the habitat too dense for use by streaked horned larks.

Subunit 3–C: Shoalwater/Graveyard Spit (Pacific County, Washington). This subunit is about 661 ac (267 ha). The central portion of the proposed subunit (182 ac; 74 ha) is within the Shoalwater Bay Indian Reservation. We are considering the exclusion of these tribal lands from the designation due to the existing high level of protection already provided on the Shoalwater Bay Indian reservation lands that provides conservation, regulations, and management for the streaked horned lark (see Exclusions).

Streaked horned larks have been documented off and on at this site during the breeding season since 2000. Although the site has been unoccupied for the past couple of years, singing male streaked horned larks were documented at this site during early June surveys of 2012, therefore we consider this site to be currently occupied. As with Midway Beach, streaked horned larks use the area for nesting and wintering. The subunit is a dynamic area and has a constantly changing sand spit that supports the essential features for nesting and wintering habitat. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to reduce human disturbance during the nesting season and encroachment by invasive nonnative plants that render the habitat too dense for use by streaked horned larks.

Subunit 3–D: Leadbetter Point (Pacific County, Washington). This subunit contains about 665 ac (269 ha) at the northern tip of the Long Beach Peninsula. This subunit is on the Willapa National Wildlife Refuge and the Seashore Conservation Area (managed by Washington State). This site is occupied and provides the physical or biological features essential to the conservation of the subspecies. Most of the streaked horned larks at this site nest within the habitat restoration area and in ponded swales landward of the restoration area that go dry in the summer (Ritchie 2012, pers. comm.). The site has the open landscape context and sparse, low-growing vegetation that make up the physical or biological features essential to the conservation of the species. The Willapa National Wildlife Refuge completed its Comprehensive Conservation Plan in August 2011 and manages habitat at the tip of Leadbetter Spit for western snowy plovers, streaked horned larks, and other native coastal species. These management activities are compatible with streaked horned lark conservation. As with the other coastal sites, Leadbetter is used by streaked horned larks year-round. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–E: Rice Island (Clatsop County, Oregon, and Wahkiakum County, Washington). This subunit is about 224 ac (91 ha) in size. The island is located at river mile (RM) 21, approximately 7 mi (11 km) upstream of the Astoria-Megler Bridge near the mouth of the Columbia River. Although the island is within the planning boundary of the Julia Butler Hansen National Wildlife Refuge, Rice Island is owned by the Oregon Department of State Lands. A very small portion of the subunit is in Wahkiakum County and on Washington State lands. The U.S. Army Corps of Engineers uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. This subunit is occupied and provides the features essential to the conservation of the subspecies. Streaked horned larks currently nest and winter on Rice Island. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–F: Miller Sands Spit (Clatsop County, Oregon). Miller Sands Spit is across the shipping channel from Rice Island at River Mile (RM) 24. The subunit is a 2-mi-long (1.2-km-long) sand spit about 123 ac (50 ha) in size on the northern shore of the island. The subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies for nesting and wintering habitat. The island is owned by the Oregon Department of State Lands, but is also within the planning unit boundary for the Julia Butler Hansen National Wildlife Refuge. The U.S. Army Corps of Engineers uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–G: Pillar Rock/Jim Crow Sands (Clatsop County, Oregon). This island is located at about RM 27 on the Columbia River. The subunit is about 44 ac (18 ha) in size. Pillar Rock is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. Streaked horned larks nest and winter at the site. The island is owned by the Oregon Department of State Lands and is within the planning unit boundary for the Julia Butler Hansen National Wildlife Refuge. The U.S. Army Corps of Engineers uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–H: Welch Island (Clatsop County, Oregon). This island is at RM 34 and is owned by the Oregon Department of State Lands. The critical habitat subunit is about 43 ac (17 ha) on the northeastern shore of the island. This site is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. The U.S. Army Corps of Engineers uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–I: Tenasillahee Island (Columbia County, Oregon). This island is at RM 38; the subunit is on a small unnamed spit at the southern tip of Tenasillahee Island. The subunit is about 23 ac (9 ha) in size. This site is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. The site is owned by the Oregon Department of State Lands. The U.S. Army Corps of Engineers uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest

destruction and disturbance during the breeding season.

Subunit 3–J: Coffeepot Island (Wahkiakum County, Washington). This small island is at RM 42 in the Columbia River and sits between Puget Island and the Oregon shore; the subunit is 25 ac (10 ha) in size and is privately-owned. There have been no recent detections of streaked horned larks on the site; the most recent records of streaked horned lark occupancy are from 2004. We presume that Coffeepot Island is still occupied by nesting streaked horned larks, as we have no reason to believe they have been extirpated since the last survey attempt. However, as we acknowledge it is uncertain whether the site is currently occupied by the species due to the lack of recent survey effort, we have evaluated Coffeepot Island as if it is unoccupied, and have determined that it is nonetheless essential to the conservation of the species to provide connectivity between nesting populations of streaked horned larks in the Columbia River to insure genetic connectivity. This island is not currently used as a dredge disposal site, although the U.S. Army Corps of Engineers is interested in using it as such, and the island is presently too vegetated to provide the sparse vegetation needed for streaked horned lark nesting. The site will require future restoration management activities to restore and maintain the low vegetative structure required by the streaked horned lark.

Subunit 3–K: Whites/Browns Island (Wahkiakum County, Washington). Whites/Browns Island is connected to the southern end of Puget Island at RM 46 and is owned by the Washington Department of Fish and Wildlife. The subunit is a small spit at the southern end of Whites/Browns Island and is about 98 ac (39 ha) in size. The site is used by the U.S. Army Corps of Engineers for dredge material disposal as part of its maintenance of the Columbia River shipping channel. This site is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. Whites/Browns Island supports one of the largest populations of streaked horned larks in the lower Columbia River islands. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–L: Wallace Island (Columbia County, Oregon). Wallace Island is located across the channel from Whites/Browns Island at RM 47. Streaked horned larks were detected at the site in 2012 in the critical habitat subunit, which is about 13 ac (5 ha) in size. The area is owned by the Oregon Department of State Lands. This site is not a dredge material disposal site. This subunit currently contains the physical or biological features essential to the conservation of the species, but will require special management to maintain the low vegetative structure required by the streaked horned lark.

Subunit 3–M: Crims Island (Columbia County, Oregon). This island is located upstream of Wallace Island at RM 57. The subunit is about 60 ac (24 ha) in size. The subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. The area is owned by the Oregon Department of State Lands, but is also within the planning unit boundary for the Julia Butler Hansen National Wildlife Refuge. Crims Island is an approved U.S. Army Corps of Engineers dredge material disposal site. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–N: Sandy Island (Columbia County, Oregon). This island, at RM 76, is the island farthest upstream that is known to be used by streaked horned larks for nesting. The subunit is about 37 ac (15 ha) in size on the southern end of Sandy Island and is owned by the Oregon Department of State Lands. This subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. The U.S. Army Corps of Engineers uses this site for dredge material disposal as part of its maintenance of the Columbia River shipping channel. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 3–O: Portland International Airport (Multnomah County, Oregon). This subunit is in the city of Portland and is bordered by the Columbia River to the north, NE 33rd Drive to the west and the Broadmoor Golf Course to the south and totals 410 ac (166 ha). This subunit includes the airport's Southwest Quad, the grassy areas at the western end of Runway 10R, and Broughton Beach. The Southwest Quad is an old dredge spoil disposal field located just outside of the perimeter fence at Portland International Airport, south of Runway 10R and west of Runway 3/21. This subunit is currently occupied and provides the physical or biological features essential to the conservation of the subspecies. The habitat is open with a sandy substrate and low-stature vegetation; breeding at the site has been documented. The area around the western end of Runway 10R is flat, low-stature grass fields; streaked horned larks have been seen foraging in this area. The Southwest Quad and Runway 10R are on the grounds of Portland International Airport, which is owned by the Port of Portland.

Broughton Beach is a narrow, sandy beach on the Columbia River and is not within the boundaries of Portland International Airport. Streaked horned lark sightings at Broughton Beach are frequent, and large mixed-subspecies flocks are seen there often during the fall and winter; Broughton Beach is owned by Metro, the regional governing body in the Portland area. Due to the proximity of these sites to active runways, the sites are managed for air traffic safety; preventing the development of dense vegetation and pooling water, which could attract hazardous wildlife. These management activities unintentionally maintain the appropriate habitat characteristics for streaked horned larks. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Unit 4: Willamette Valley—Streaked Horned Lark

In the Willamette Valley, we are proposing to designate eight subunits. Four subunits are on municipal airports, three subunits are on the Willamette Valley National Wildlife Refuge Complex, and one subunit is a private habitat restoration site. The total acreage is 4,880 ac (1,975 ha). All of the subunits were occupied at the time of listing and contain the physical or biological features essential to the conservation of the species that may require special management considerations or protection.

The areas used by streaked horned larks for nesting at all of the airports are grass and gravel margins of the runway

and taxiways. Special Management will be needed to address threats to the essential features at the Willamette Valley airports including development, mowing during the nesting season, and intermittent training activities. All of the airports inadvertently maintain habitat for streaked horned larks as a result of their management to minimize attracting hazardous wildlife. None of the Willamette Valley airports has developed a management plan to address conservation of the streaked horned lark; special management of these sites would require avoidance or minimization of mowing in the streaked horned lark nesting areas during the breeding season.

The three subunits on the Willamette Valley National Wildlife Refuge Complex are managed mainly to provide forage for wintering dusky Canada geese (*Branta canadensis occidentalis*), which is compatible with maintaining the essential features for streaked horned larks. The refuge complex has incorporated management for streaked horned larks into its recently completed Comprehensive Conservation Plan, and streaked horned lark habitat conservation is being implemented in the refuge units.

The one proposed subunit on private land is a large habitat restoration site. Management for native prairies and vernal wetlands at this site provide habitat for streaked horned larks.

Subunit 4–A: McMinnville Municipal Airport (Yamhill County, Oregon). McMinnville Municipal Airport is just south of State Route 18 and west of SE Airport Road in the town of McMinnville. This subunit includes the areas around the runways and an open field to the east. The site is about 600 ac (243 ha). This subunit is currently occupied and contains the physical or biological features essential to the conservation of the subspecies. It has both the open landscape context and the sparse low-growing vegetation required by streaked horned larks, and there have been observations of streaked horned larks along the east runway and in the field to the east of the runways during the breeding season. This small airport is owned by the City of McMinnville. The primary threat to the essential features at this subunit is mowing during the breeding season, which could destroy nests and young; special management is needed to coordinate mowing to minimize impacts to streaked horned larks during the breeding season.

Subunit 4–B: Baskett Slough National Wildlife Refuge (Polk County, Oregon). There are two parts to this critical habitat subunit. Subunit 4–B North is 181 ac (73 ha) and is in the North Morgan Reservoir area of the refuge. Subunit 4–B South is 825 ac (334 ha) and is the South Baskett Slough Agricultural area of the refuge; State Route 22 forms the southeast boundary of the south subunit. Both of the subunits are agricultural fields that are heavily grazed by dusky Canada geese in the winter. This subunit is currently occupied and contains the physical or biological features essential to the conservation of the subspecies. Baskett Slough National Wildlife Refuge has large areas of agricultural lands and restored native prairies, which provides the landscape context and vegetation structure required by the streaked horned lark. The Refuge manages primarily for wintering dusky Canada geese, which also provides suitable management for streaked horned larks. This subunit is consistently used by streaked horned larks in the breeding season. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 4–C: Salem Municipal Airport (Marion County, Oregon). Salem Municipal Airport is south of State Route 99E and bordered on the east by 25th Street SE in Salem. This subunit encompasses the area surrounding the runways, and is approximately 534 ac (216 ha). The subunit is currently occupied (streaked horned larks have been observed at the south end of the runway during the breeding season), and contains the essential features for the conservation of the subspecies, including open landscape context and sparse, open vegetation present at the site. This regional airport is owned by the City of Salem. The primary threat to the essential features at this subunit is mowing during the breeding season, which could destroy nests and young; special management is needed to coordinate mowing to minimize impacts to streaked horned larks during the breeding season.

Subunit 4–D: Ankeny National Wildlife Refuge (Marion County, Oregon). This site is in the middle of the Ankeny Refuge, in the Field 6 Complex; the northeast boundary of the subunit is formed by the Sydney Ditch. The critical habitat subunit is 264 ac (107 ha). The site is composed of agricultural fields that are heavily grazed by dusky Canada geese in the winter. The subunit is currently occupied and has consistent use by streaked horned larks in the breeding season. This subunit contains all of the physical or biological features essential to the conservation of the subspecies. Ankeny National Wildlife Refuge has both agricultural lands and restored native prairies, which provide the landscape context and vegetation structure required by the streaked horned lark. The Refuge manages primarily for wintering dusky Canada geese, which also provides suitable management for streaked horned larks. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 4–E: Corvallis Municipal Airport (Benton County, Oregon). Corvallis Municipal Airport is west of State Route 99W and bordered on the north by SW Airport Avenue, directly south of the City of Corvallis. This subunit includes all the areas surrounding the runways and in adjacent fields owned and managed by the airport. The unit is about 1,103 ac (446 ha) and is owned by the City of Corvallis. This subunit is currently occupied and contains the physical or biological features essential to the conservation of the subspecies. The Corvallis Municipal Airport is home to the largest known breeding population of streaked horned larks; streaked horned larks breed adjacent to runways and in sparse grass fields throughout the airport. Large flocks of mixed subspecies of horned larks also winter at the site. The site provides the open landscape context and low-growing vegetation required by streaked horned larks. As at other airports, the City of Corvallis manages the site to minimize attraction of hazardous wildlife. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to address threats from mowing during the breeding season and police training activities that disrupt nesting behavior. Special management is needed to coordinate mowing and training activities to minimize impacts to streaked horned larks during the breeding season.

Subunit 4–F: William L. Finley National Wildlife Refuge (Benton County, Oregon). This critical habitat subunit is on Fields 11 and 12 in the South Finley Agricultural Lands area of the refuge; Bruce Road bisects the subunit, and McFarland Road forms the southern boundary of the site. The subunit is 459 ac (186 ha) in size. This subunit is currently occupied and

contains the physical or biological features essential to the conservation of the subspecies. The site is composed of agricultural fields that are heavily grazed by dusky Canada geese in the winter, and it has consistent use by streaked horned larks in the breeding season; streaked horned larks also winter at the refuge. Finley National Wildlife Refuge has large areas of agricultural lands and restored native prairies, which provide the landscape context and vegetation structure required by the streaked horned lark. The Refuge manages primarily for wintering dusky Canada geese, which also provides suitable management for streaked horned larks. The physical or biological features essential to the conservation of the streaked horned lark may require special management considerations or protection to maintain the early seral vegetation required by the subspecies and to minimize nest destruction and disturbance during the breeding season.

Subunit 4–G: M–DAC Farms (Linn County, Oregon). This site is a large prairie and wetland habitat restoration project; the subunit is about 601 ac (243 ha) on former agricultural land. The site is located east of the town of Harrisburg, and about a mile east of Interstate Highway 5, and bordered on the south by Diamond Hill Drive. This subunit is currently occupied and contains the physical or biological features essential to the conservation of the subspecies. The second largest known population of streaked horned larks was observed at M–DAC in 2008, the year following initial site preparation. As vegetation at the site has matured, fewer streaked horned larks have used the site, but the large wetlands will likely continue to provide suitable breeding habitat as the mudflats dry in the early summer. Both PCEs are present at the site, although their availability will shift over time as the habitat is managed and the wetlands fill and recede each year. The site is privately owned; the habitat restoration project has been developed with assistance from the Cascade Pacific Resource Conservation and Development Area, USDA's NRCS, the U.S. Fish and Wildlife Service's Partners for Wildlife Program, Oregon Watershed Enhancement Board, and the Oregon Department of Fish and Wildlife. The site will be managed to maintain native prairie and wetland habitats, which will benefit the streaked horned lark; special management will be needed to ensure that management activities are not implemented in the breeding season when streaked horned lark nests and young are vulnerable to destruction.

Subunit 4–H: Eugene Airport (Lane County, Oregon). Eugene Airport is west of the City of Eugene, and about a mile west of State Route 99. This subunit encompasses the grassy areas surrounding the runway, and is approximately 313 ac (126 ha). This subunit is currently occupied and contains the physical or biological features essential to the conservation of the subspecies. It provides the open landscape context and low-growing vegetation required by streaked horned larks. Streaked horned larks have been observed on the east side of the runway during the breeding season. This regional airport is owned by the City of Eugene. The primary threat to the essential features at this subunit is mowing during the breeding season that disrupts nesting behavior. The features essential to the conservation of the species may require special management considerations or protection to coordinate mowing to minimize impacts to streaked horned larks during the breeding season.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service (under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a

reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for Taylor's checkerspot butterfly or the streaked horned lark. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may affect the physical or biological features of critical habitat, or destroy or adversely modify critical habitat.

Under section 7(a)(2) of the Act, activities that may affect critical habitat for the Taylor's checkerspot butterfly or streaked horned lark, when carried out, funded, or authorized by a Federal agency, require consultation. These activities may include, but are not limited to:

(1) Actions that restore, alter, or degrade habitat features through development, agricultural activities, burning, mowing, herbicide use or other means in suitable habitat for Taylor's checkerspot butterflies and streaked horned larks.

(2) Actions that would alter the physical or biological features of critical habitat including modification of soil profiles or the composition and structure of vegetation in suitable habitat for Taylor's checkerspot butterflies and streaked horned larks. Such activities could include, but are not limited to, construction, grading or other development, mowing, conversion of habitat, or use of herbicides to remove vegetation (military training on DOD lands, recreational use, off road vehicles on Federal, State, private, or Tribal lands). These activities may affect the physical or biological features of critical habitat for the Taylor's checkerspot butterflies and streaked horned larks, by removing sources of food, shelter, nesting or oviposition sites, or otherwise impacting habitat essential for completion of life history.

(3) Actions that would reduce the open landscape context required by streaked horned larks, such as construction of buildings or planting tall trees adjacent to a suitable site.

(4) Deposition of dredge materials on occupied streaked horned lark habitats during the breeding season.

(5) Installation of shoreline stabilization structures or modification of beaches and open shorelines in critical habitat.

(6) Activities (pedestrians, motor vehicles, people with pets, etc.) within or adjacent to critical habitat that result in disturbance of Taylor's checkerspot butterflies and streaked horned larks, that affect or degrade the conservation value or function of the physical or biological features of critical habitat.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for Taylor's checkerspot butterfly and streaked horned lark to determine if they are exempt under section 4(a)(3) of the Act. The following areas are Department of Defense lands within the proposed critical habitat designation: (1) 91st Division Prairie, (2) Thirteenth Division Prairie. (3) TA7S, (4) Marion Prairie, (5) portions of Tenalquot Prairie, (6) McChord AFB, and (7) Gray Airfield. All of these areas are part of JBLM in Washington, except for the portion of Tenalquot Prairie known as the Morgan property.

Joint Base Lewis-McChord, Washington

Joint Base Lewis-McChord (formerly known as Fort Lewis and McChord Air Force Base) is an 86,000 ac (34,800 ha) military complex in western Washington. JBLM has an approved Integrated Natural Resource Management Plan (INRMP) in place, dated July 2006, that covers the years 2006 through 2010. This INRMP is being updated and a revision will be submitted to the Service in 2012 (Steucke 2008, pers. comm.). JBLM is composed of both native and degraded grasslands; shrub-dominated vegetation; conifer, conifer-oak, oak-savannah, oak woodland and pine woodland/savannah forests; riverine, lacustrine, and palustrine wetlands; ponds and lakes; as well as other unique habitat, such as mima mounds. Portions of JBLM are currently occupied by the streaked horned lark and Taylor's checkerspot butterfly. Actions on this property

include military training, recreation, transportation, utilities (including dedicated corridors), and land use.

The mission of JBLM is to maintain trained and ready forces for Army commanders worldwide, by providing them with training support and infrastructure. This includes a land base capable of supporting current and future training needs through good stewardship of the Installation's natural and cultural resources, as directed by Federal statutes, Department of Defense directives, directives and programs such as ACUB (Area Compatible Use Buffer Program), and Army and JBLM regulations.

Although only military actions occur on JBLM, several additional actions could pose substantial threats to the Taylor's checkerspot butterfly and streaked horned larks, and are restricted to a few grassland properties (e.g., dog trials, model airplanes, recreational activities). Many of the avoidance measures for military training action subgroups are implemented through environmental review and permitting programs related to a specific action. Timing of actions and education of users are important avoidance measures for the other activities.

Joint Base Lewis-McChord actively manages prairie habitat as part of Fort Lewis' Integrated Natural Resources Management Plan (INRMP 2006). The purpose of the plan is to ''provide guidance for effective and efficient management of the prairie landscape to meet military training and ecological conservation goals.'' There are three overall goals including: (1) No net loss of open landscapes for military training; (2) no net reduction in the quantity or quality of moderate- and high-quality grassland; and (3) viable populations of all prairie-dependent and prairie-associated species.

Joint Base Lewis-McChord has a stewardship responsibility that includes actions to help recover threatened and endangered species under the Act. It is Army policy to consider candidate species when making decisions that may affect them, to avoid taking actions that may cause them to be listed, and to take affirmative actions that can preclude the need to list (AR 200–3).

Under this mandate, JBLM is currently restoring and enhancing habitat conditions for the Taylor's checkerspot in potential habitat. JBLM has restored habitat on one Training Area and one Range (TA 14 and Range 50) that have received captive-bred and translocated butterflies. These actions are occurring primarily in areas in which the butterfly could coexist with the existing land-use designations. Currently, the only populations of this species on JBLM are within the Artillery Impact Area (Range 76 and Range 50 on the 91st Division Prairie), and at this time, we have JBLM's commitment (Garrison Commander Thomas Brittain, Colonel, 13 May 2010) specifying ''no off road vehicle zone and foot traffic zone'' only within TA 76.

The primary concern for streaked horned larks is to protect nesting populations from disturbance and direct mortality due to human activities. Currently, there are four areas on the installation that have nesting populations of this species. Timing of mowing at McChord and Gray Army Airfields are concerns, as are recreational activities and military training on the 13th Division Prairie and military training and wildfires in the Artillery Impact Area. Presently, there are restrictions on mowing activities on the airfield: Minimum mowing for airfield safety during the primary nesting period (April to July) and no mowing at any time around known nest locations. In the training areas, Land Rehabilitation and Maintenance does not mow during the breeding season in occupied streaked horned lark habitat. There also are restrictions on recreational activities in Thirteenth Division Prairie during the streaked horned lark nesting period (April to August).

Two regional programs managed under the INRMP and funded by the DOD are currently underway on many of the lands where the Taylor's checkerspot butterfly and streaked horned lark occur. The Fort Lewis Army Compatible Use Buffer (ACUB) program is a proactive effort to prevent ''encroachment'' at military installations. Encroachment includes current or potential future restrictions on military training associated with currently listed and candidate species under the Endangered Species Act. The Fort Lewis ACUB program focuses on management of non-Federal conservation lands in the vicinity of Fort Lewis that contain, or can be restored to, native prairie. Some of the ACUB efforts include improving the habitat on JBLM property, such as the prescribed fire program, and the streaked horned lark genetic rescue project. It is implemented by means of a cooperative agreement between the Army and The Nature Conservancy (now Center for Natural Lands Management), and includes WDFW and WDNR as partners. To date, a total of $8.23 million has been allocated to this program (Anderson 2012, pers. comm). This funds conservation actions such as invasive plant control, butterfly monitoring, butterfly habitat enhancement on occupied sites and the restoration of unoccupied lands for butterflies. Taylor's checkerspot and mardon skipper (*Polites mardon*) butterfly captive rearing and translocation, native seed (forb and grass) production and native plant establishment are several currently (2012) ongoing projects (Foster 2005, entire; The Nature Conservancy 2007; entire).

The JBLM Legacy program is dedicated to ''protecting, enhancing, and conserving natural and cultural resources on DOD lands through stewardship, leadership, and partnership.'' Legacy supports conservation actions that have regional or DOD-wide significance, and that support military training or fulfill legal obligations (DOD 2011, p. 2). In recent years, substantial effort and funding have gone toward projects, both on and off JBLM, related to the Taylor's checkerspot butterfly and streaked horned lark.

Although JBLM's INRMP has the potential to provide a conservation benefit to the Taylor's checkerspot butterfly and streaked horned lark, it does not currently. Since their INRMP is currently undergoing revision and is subject to change, we are reserving judgment on whether management under the new INRMP will meet our criteria for exemption from critical habitat at this time. In accordance with section 4(a)(3)(B)(i) of the Act, if we determine prior to our final rulemaking that conservation efforts identified in the newly revised INRMP will provide a conservation benefit to the species identified previously, we may at that time exempt the identified lands from the final designation of critical habitat.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the

legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

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

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

The Secretary can consider the existence of conservation agreements and other land management plans with Federal, private, State, and Indian entities when making decisions under section 4(b)(2) of the Act. The Secretary may also consider relationships with landowners, voluntary partnerships, and conservation plans, and weigh the implementation and effectiveness of these against that of designation to determine which provides the greatest conservation value to the listed species. Consideration of relevant impacts of designation or exclusion under section 4(b)(2) may include, but is not limited to, any of the following factors:

(1) Whether the plan provides specific information on how it protects the species and the physical and biological features, and whether the plan is at a geographical scope commensurate with the species;

(2) Whether the plan is complete and will be effective at conserving and protecting the physical and biological features;

(3) Whether a reasonable expectation exists that conservation management strategies and actions will be implemented, that those responsible for implementing the plan are capable of achieving the objectives, that an implementation schedule exists, and that adequate funding exists;

(4) Whether the plan provides assurances that the conservation strategies and measures will be effective (i.e., identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan);

(5) Whether the plan has a monitoring program or adaptive management to ensure that the conservation measures are effective;

(6) The degree to which the record supports a conclusion that a critical habitat designation would impair the benefits of the plan;

(7) The extent of public participation;

(8) Demonstrated track record of implementation success;

(9) Level of public benefits derived from encouraging collaborative efforts and encouraging private and local conservation efforts; and

(10) The effect designation would have on partnerships.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will evaluate whether certain lands in proposed critical habitat are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

Under section 4(b)(2) of the Act, we must consider all relevant impacts of the designation of critical habitat, including economic impacts. In addition to economic impacts (discussed in the Economics Analysis section, below), we consider a number of factors in a 4(b)(2) analysis. For example, we consider whether there are lands owned by the Department of Defense (DoD) where a national security impact might exist. We also consider whether Federal or private landowners or other public agencies have developed management plans or habitat conservation plans (HCPs) for the area or whether there are conservation partnerships or other conservation benefits that would be encouraged or discouraged by designation of, or exclusion from, critical habitat in an area. In addition, we look at the presence of Indian lands or Indian trust resources that might be affected, and consider the government-to-government relationship of the United States with Indian entities. We also consider any other relevant impacts that might occur because of the designation. To ensure that our final determination is based on the best available information, we are inviting comments on any foreseeable economic, national security, or other potential impacts resulting from this proposed designation of critical habitat from governmental, business, or private interests and, in particular, any potential impacts on small businesses.

For the reasons discussed above, if the Secretary decides to exercise his discretion under section 4(b)(2) of the Act, we have identified certain areas that we are considering for exclusion from the final critical habitat designation for Taylor's checkerspot butterfly, and streaked horned lark. However, we solicit comments on the inclusion or exclusion of such particular areas, as well as any other areas identified in the proposed rule (see Public Comments section). During the development of the final designation, we will consider economic impacts, public comments, and other new information. However, the Secretary's decision as to which, if any, areas may be excluded from the final designation is not limited to these lands. Additional particular areas, in addition to those identified below for potential exclusion in this proposed rule, may be excluded from the final critical habitat designation under section 4(b)(2) of the Act. In other words, potential exclusions are not limited to those areas specifically identified in this proposed rule.

However, we specifically solicit comments on the inclusion or exclusion of such areas. In the paragraphs below, we provide a detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related

factors. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Washington Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. The U.S. Army's Joint Base Lewis-McChord Military Reservation (JBLM) is the only DOD land included within the proposed designation of critical habitat. As described above, in preparing this proposal, we are considering JBLM for exemption from the designation of critical habitat under section 4(a)(3) of the Act, pending our evaluation of their revised INRMP, scheduled for completion in 2012, to determine whether it provides a conservation benefit to the species under consideration in this proposed rule. We have determined that the remaining lands within the proposed designation of critical habitat for the species are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not intending to exert his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts to national security, of specifying any particular area as critical habitat. We consider a number of factors, including whether landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships or relationships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any other relevant impacts that might occur because of the designation. Our weighing of the benefits of inclusion versus exclusion considers all relevant factors in making a final determination as to what will result in the greatest conservation benefit to the listed species. Depending on the specifics of each situation, there may be cases where the designation of critical habitat will not necessarily provide enhanced protection, and may actually lead to a net loss of conservation benefit. Here we present a brief description of three general areas considered for exclusion from the final designations of critical habitat for the subspecies.

We are considering the exclusion of private lands associated with the Scatter Creek Wildlife Area and Rock Prairie (Unit 1, subunits 1–H and 1–I for Taylor's checkerspot butterfly), both within Thurston County, and the private land site at Sequim (Taylor's checkerspot butterfly subunit 2–D), in the Strait of Juan de Fuca, located in Clallam County, Washington.

The first proposed exclusion is located in the south Puget Sound region, in the Scatter Creek subunit of Unit 1, the South Sound Unit (this is subunit 1–H for Taylor's checkerspot butterfly). We are considering excluding the combined area of private lands in this unit totaling 98 ac (40 ha) based on the benefits of partnerships and other conservation agreements. The South Puget Sound Prairie Landscape Working Group is an informal, voluntary group that meets regularly, and discusses local conservation issues and planning. Members of the group are tasked to implement prairie conservation and best management practices (BMPs) with their landowner contacts. The Service and WDFW are members of this working group. WDFW worked with the private landowner in subunit 1–H to develop a management plan which includes a commitment from the landowner that the parcel will be managed in such a manner to support native prairie species (composition and structure), consistent with the adjacent WDFW State wildlife area. This management plan is currently active and in effect through 2014 with plans to renew the management plan prior to the end in 2014.

The second area is located in the south Puget Sound, in the Rock Prairie subunit also in Unit 1, the South Sound Unit. This is subunit 1–I for Taylor's checkerspot butterfly. In this subunit, 379 ac (153 ha) is considered for exclusion as it is managed under a permanent conservation easement and a Grassland Reserve Program Management Plan agreement with NRCS; which is also an active member of the South Puget Sound Prairie Landscape Working Group. The management plan is modified regularly as new information becomes available regarding BMPs for prairie ecosystems. The private landowner in subunit 1–I is committed through the management plan to maintaining more than 300 ac (122 ha) of native prairie.

The third location is a 150-ac (61-ha) active farm in Unit 2, Strait of Juan de Fuca Unit, in subunit 2–D, the Sequim subunit. The Service has worked with the landowner in this subunit, which has restored Taylor's checkerspot butterfly habitat, and a portion of this site is being managed for the long-term conservation of the species which they are incorporating under a management plan developed in coordination with the WDFW. The landowner has shown a track record of conservation of coastal grassland species, including Taylor's checkerspot butterfly. For instance, native plants have been planted on the property for Taylor's checkerspot butterfly and the landowner has stopped driving along one farm road to encourage the reestablishment of native larval host plants for the Taylor's checkerspot butterfly. As a result, larval host plants have become more abundant as a result of this voluntary management action.

Each area contains one landholding that is under a conservation easement for agriculture and open space protection, species conservation, and/or prairie conservation. We are considering the exclusion of these privately-owned lands (subunit 1–H, 1–I for the Taylor's checkerspot butterfly, and subunit 2–D for Taylor's checkerspot butterfly in the Strait of Juan de Fuca Unit) based on the partnerships that have been developed for the conservation of the Taylor's checkerspot butterfly as evidenced by the management plan and conservation easement on those private lands as well as the conservation benefit to the subspecies from the management plan.

We request public comments on the relative benefits of inclusion or exclusion of these areas from the designation of critical habitat. At present, we seek public comment on the general benefits of including or excluding private lands in this area (see Public Comments).

TABLE 5—LANDS PROPOSED OR THAT MAY BE CONSIDERED FOR EXCLUSION FROM THE FINAL RULE TO DESIGNATE CRITICAL HABITAT FOR SEVERAL PUGET SOUND SPECIES

Type of agreement	Critical habitat unit name	State	Name of agreement/entity	Acres	Hectares
Habitat Conservation Plans—proposed for exclusion.	Unit 1—South Sound; Subunits TCB: 1–F & 1–J: 1–D.	WA	Washington Department of Natural Resources State Lands Habitat Conservation Plan.	658	267
	Unit 4—Willamette Valley; Subunits TCB: 4A,B & C.	OR	Benton County Habitat Conservation Plan.	108	44
Conservation Agreements, Other agreements or Partnerships—proposed for exclusion.	Unit 1—South Sound; Subunit TCB: 1–H.	WA	Scatter Creek Wildlife Area Private Landowner Management Plan.	98	40
	Unit 1—South Sound; Subunit TCB: 1–I.	WA	Rock Prairie Grassland Easement and Private Landowner Partnership.	379	153
	Unit 2—Strait of Juan De Fuca; Subunit TCB: 2–D.	WA	Sequim Private Landowner Partnership.	151	61
Total Proposed				1,394	565
Tribal	Unit 3—WA Coast and Columbia River; Subunit SHL: 3–C.	WA	Shoalwater Tribal Management Plan.	182	73

Benefits of Excluding Lands With Habitat Conservation Plans

Habitat Conservation Plans (HCPs) are planning documents required as part of an application for an ''incidental take'' permit. They describe the anticipated effects of the proposed taking; how those impacts will be minimized, or mitigated; and how the HCP is to be funded. HCPs can apply to both listed and nonlisted species, including those that are candidates or have been proposed for listing. Anyone whose otherwise-lawful activities will result in the ''incidental take'' of a listed wildlife species needs a permit. The Act defines ''take'' as ''* * * to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' ''Harm'' includes significant habitat modification that actually kills or injures a listed species through impairing essential behavior such as breeding, feeding, or sheltering. Section 9 of the Act prohibits the take of endangered and threatened species. The purpose of the incidental take permit is to exempt non-Federal permit-holders—such as States and private landowners—from the prohibitions of section 9, not to authorize the activities that result in take.

In developing HCPs, people applying for incidental take permits describe measures designed to minimize and mitigate the effects of their actions— to ensure that species will be conserved and to contribute to their recovery. Habitat Conservation Plans are required to meet the permit issuance criteria of section 10(a)(2)(B) of the Act:

- Taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking;
- The applicant will ensure that adequate funding for the plan will be provided;
- Taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- Other measures, as required by the Secretary, will be met.

The benefits of excluding lands with approved HCPs from critical habitat designation may include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed as a result of the critical habitat designation. Many HCPs take years to develop and, upon completion, are consistent with the recovery objectives for listed species covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species.

A related benefit of excluding lands covered by approved HCPs from critical habitat designation is that it can make it easier for us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. HCPs often cover a wide range of species, including species that are not State and federally listed and would otherwise receive little protection from development. By excluding these lands, we preserve our current partnerships and encourage additional future conservation actions.

We also note that permit issuance in association with HCP applications requires consultation under section 7(a)(2) of the Act, which would include the review of the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possible significant habitat modification in accordance with the definition of harm referenced above.

We consider a current HCP to be appropriate for consideration for exclusion from a final critical habitat designation under section 4(b)(2) of the Act if:

(1) It provides for the conservation of the essential physical and biological features or areas otherwise determined to be essential;

(2) There is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future;

(3) The conservation strategies in the HCP are likely to be effective; and

(4) The HCP contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

Below is a brief description of each HCP and the lands proposed as critical habitat covered by each plan that we are proposing to exclude under section 4(b)(2) of the Act from the final designation of critical habitat .

State of Oregon

Benton County HCP

The Service coordinated with Benton County, the Xerces Society, and the Institute for Applied Ecology in Oregon to include the Taylor's checkerspot

butterfly in the Benton County HCP (Benton County 2010, p. 24). In addition to the Benton County HCP, a Prairie Conservation Strategy (2010) was developed for all species covered by the HCP, including Taylor's checkerspot butterfly. The strategy is stratified by the level of protection afforded to the various covered species, including permanent protection, limited protection, and opportunity areas for unoccupied but suitable habitat for species that may be conserved in new areas through assisted migration, or translocation efforts. A draft Management Plan for Taylor's checkerspot Butterfly was completed by Ross (2008), and was finalized and incorporated into the HCP as Appendix N (Benton County 2010). The guidelines set forth in the management plan will assist Benton County in managing their lands in a way that is consistent with protection and conservation of the species. The Benton County HCP Prairie Management Plan meets the Taylor's checkerspot butterfly needs by conserving occupied prairie habitat by implementing measures to restore, and manage for its long-term conservation. The plan's goals have been implemented by Benton County Parks and Recreation department and they plan to continue these actions in support of the butterfly. The plan meets the needs of the Taylor's checkerspot butterfly by controlling invasive, nonnative shrubs (Scot's broom), reduces the cover of tall, invasive pasture grasses, reduces the cover of encroaching trees, and to augment through planting and seeding the larval and adult food resources and native grass species that form the low-statured structure of the habitat required by the butterfly. The streaked horned lark was considered but not included in the HCP (Benton County 2010, p. 142).

We propose to exclude lands managed under the Benton County Prairie Species Habitat Conservation Plan from the final critical habitat designation for Taylor's checkerspot butterfly. The permit issued under this HCP (notice October 1, 2010 (75 FR 60802), and issued January 14, 2011) has a term of 50 years and addresses 18,908 ac (7,652 ha) of prairie habitat. The HCP includes over 500 ac (200 ha) of prairie conservation areas to be managed for conservation purposes and where habitat restoration and enhancement activities are planned to occur. Specifically, they have identified 152 ac (61 ha) that will be managed for Taylor's checkerspot butterflies. These lands are located in Fort Hoskins Historic Park subunit 4–A, Beazell Memorial Forest (subunit 4–B, and Fitton Green Natural Area (subunit 4–C). The HCP has guidelines for management of sites currently with and currently without Taylor's checkerspot butterflies. These guidelines are intended to both avoid adverse impacts as well as to improve habitat conditions and increase the distribution of the Taylor's checkerspot butterfly in Oregon. As indicated above, among the management recommendations are restoration activities to improve habitat and the planting of larval host and adult nectar plant species. The guidelines also include adaptive management provisions to assess the success of the enacted management as well as population monitoring.

State of Washington

Washington State Department of Natural Resources State Lands Habitat Conservation Plan

We are proposing to exclude lands managed under the Washington State Department of Natural Resources (WDNR) State Lands HCP in multiple critical habitat units in Washington from the final critical habitat designation for Taylor's checkerspot butterfly. The WDNR State Trust Lands HCP covers approximately 1.6 million ac (730,000 ha) of State forest lands. The majority of the area covered by the HCP is west of the Cascade Crest including the Olympic Peninsula. The permit associated with this HCP, issued January 30, 1997, was published in the **Federal Register** on April 5, 1996 (61 FR 15297), has a term of 70 to 100 years, and covers activities primarily associated with commercial forest management, but also includes limited, non-timber activities such as some recreational activities. The HCP covers all federally listed species in Washington that use the types of habitats provided by covered lands at the time the HCP was approved, and those species that have similar habitat affinities and become listed after the HCP was approved and an incidental take permit (ITP) was issued. If listed, the Taylor's checkerspot butterfly would be added to the WDNR ITP per Section 7 and 12.6 of the Implementing Agreement (Appendix B of the HCP).

The HCP addressed multiple species through a combination of strategies. The main focus of these strategies is the riparian ecosystems (salmonids), northern spotted owl, and the marbled murrelet. The main objective of these strategies was to maintain and promote late successional forest habitats along riparian corridors and in uplands locations that would benefit spotted owls and marbled murrelets. It was envisioned that the conservation strategies for salmonids, spotted owls, and marbled murrelets would serve to reduce the risk of extinction for the other wildlife species covered by the HCP. In addition, a fourth emphasis of the HCP was to provide protection for species that relied on uncommon or unique habitats. For these species, additional measures were developed to meet the conservation objectives of the HCP. These measures specifically address the protection of talus, caves, cliffs, balds, oak woodlands, mineral springs, large snags, and large, structurally unique trees because these features are difficult to restore or recreate. In addition, as noted in the HCP, at the time a new species is proposed for listing, DNR provides a written request to add that species to its ITP and evaluates and considers additional protection measures such as seasonal restrictions and protection of nesting/denning sites.

The WDNR has developed a site specific management plan for Taylor's checkerspot butterfly for DNR managed lands located in the Olympic Region. This management plan, which is a voluntary plan for landowners, is based on ''*Guidelines for Protecting Taylor's Checkerspot and its Habitat*'' (WDFW 2008 entire), and would fulfill the motion approved by the Forestry Practices Board on September 11, 2007. This plan, and all plans developed to protect Taylor's checkerspot butterflies, will allow maximum flexibility to plan and implement activities that minimize and mitigate impacts to the Taylor's checkerspot butterfly.

The WDNR also manages approximately 66,000 ac (26,710 ha) of non-trust lands as Natural Area Preserves (NAP). While not specifically a part of the HCP, the Service recognizes the habitat contributions provided by these lands in terms of meeting the conservation goals and objectives of the HCP. NAPs provide the highest level of protection for excellent examples of unique or typical land features in Washington State. Some of these protected lands currently provide habitat in areas identified as ''critical'' for Taylor's checkerspot butterfly, the Bald Hills, Mima Mounds NAPs, and the Rocky Prairie NAP. Details of the WDNR HCP are available at *http://www.dnr.wa.gov/researchscience/topics/trustlandshcp/Pages/Home.aspx.*

Federal Lands

As noted above, Federal agencies have an independent responsibility under section 7(a)(1) of the Act to use their programs in furtherance of the Act and

to utilize their authorities to carry out programs for the conservation of endangered and threatened species. We consider the development and implementation of land management plans by Federal agencies to be consistent with this statutory obligation under section 7(a)(1) of the Act. Therefore, Federal land management plans, in and of themselves, are generally not an appropriate basis for exclusion from critical habitat. The Secretary is not intending to exercise his discretion to exclude any Federal lands from the designation of critical habitat.

Consideration of Indian Lands

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (November 6, 2000, and as reaffirmed November 5, 2009); and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on Indian lands may be better managed under Indian authorities, policies, and programs than through Federal regulation where Indian management addresses the conservation needs of listed species. In addition, such designation may be viewed by tribes as unwarranted and an unwanted intrusion into Indian self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

In developing proposed critical habitat for the Taylor's checkerspot butterfly and streaked horned lark, we considered inclusion of some Indian lands as essential. Indian lands are those defined in Secretarial Order 3206 ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997), as: (1) Lands held in trust by the United States for the benefit of any Indian tribe or individual; and (2) lands held by any Indian Tribe or individual subject to restrictions by the United States against alienation. In evaluating Indian lands under consideration as potential critical habitat for the Taylor's checkerspot butterfly and streaked horned lark, we further considered the directive of Secretarial Order 3206 that stipulates ''Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.''

The Shoalwater Bay Tribe in Washington is the only Tribe with lands identified as critical habitat in this proposed rule. Approximately 182 ac (73 ha) of Tribal lands within subunit 3–C of the Washington Coast and Columbia River Islands Unit (Unit 3) is proposed as critical habitat for the streaked horned lark. We are considering the exclusion of these lands from the final designation of critical habitat for the streaked horned lark. The Service has entered into discussion with the Tribe regarding the proposed designation in preparation of this rule. The Shoalwater Bay Tribe is working with the Service on the development of a formal agreement for management and protection of habitat for the western snowy plover, streaked horned lark, and other native coastal species of cultural significance on lands under Tribal ownership and management.

The Tribe has stated that they are committed to continue with their efforts to manage their lands to benefit the western snowy plover and streaked horned lark, and are asking that their lands be excluded from the final designation. Existing tribal regulations, including the 2001 Tribal Environmental Codes that protect the saltmarsh and sand spit as natural areas, will ensure any land use actions, including those funded, authorized, or carried out by Federal agencies, are not likely to result in the destruction or adverse modification of all lands considered for exclusion. The Service is also coordinating with the Tribe and the USACE on the planting/vegetation management plan. We are currently working on a memorandum of understanding with the Tribe regarding protection or shorebirds on reservation lands. Any potential impacts to the streaked horned lark from future proposed activities on the tribal lands will be addressed through a section 7 consultation using the jeopardy standard, and such activities would also be subject to the take prohibitions in section 9 of the Act.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions regarding the proposal to list Taylor's checkerspot butterfly and the streaked horned lark, and our proposed critical habitat for these subspecies as well as our other determinations.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **ADDRESSES** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed

this rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies which are not by definition small business entities. And as such, certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use as these species and proposed critical habitat do not appear to overlap with these areas. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

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

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

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

Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments. Government lands being proposed for critical habitat designation are owned by Washington State Department of Fish and Wildlife, Washington Department of Natural Resources, Department of Defense (Army), the U.S. Forest Service, and Thurston County Parks and Recreation, in Washington, None of these government entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Taylor's checkerspot butterfly and streaked horned lark in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for Taylor's checkerspot butterfly and streaked horned lark does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Washington and Oregon. The designation of critical habitat in areas currently occupied by the Taylor's checkerspot butterfly and streaked horned lark imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the Taylor's checkerspot butterfly and streaked horned lark within the proposed designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as endangered or threatened under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the

Federal Register on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).]

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We have determined that there are no tribal lands occupied by the Taylor's checkerspot butterfly that contain the physical or biological features essential to conservation of the species, and no tribal lands unoccupied by the species that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for the Taylor's checkerspot butterfly on tribal lands. The Shoalwater Bay Tribe in Washington is the only Tribe with lands proposed for designation in this proposed critical habitat rule. Approximately 182 ac (74 ha) of Tribal lands within subunit 3–C, of the Washington Coast and Columbia River Islands Unit could be designated as critical habitat for the streaked horned lark. The Service has entered into discussion with the Tribe regarding the proposed designation in preparation of this rule. The Shoalwater Bay Tribe is providing information regarding the status of streaked horned lark on lands under tribal ownership and management. The Tribe has stated that they are committed to continue with their efforts to manage their lands to benefit the streaked horned lark, and is asking that their lands be excluded from designation.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Washington Fish and Wildlife Office, Lacey, Washington, and the Oregon Fish and Wildlife Office, Portland, Oregon.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as follows:

a. By adding an entry for ''Lark, streaked horned (*Eremophila alpestris strigata*)'' in alphabetical order under Birds, to read as set forth below; and

b. By adding an entry for ''Butterfly, Taylor's checkerspot (*Euphydryas editha taylori*)'' in alphabetical order under Insects, to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Lark, streaked horned.	*Eremophila alpestris strigata.*	U.S.A. (BC, WA, OR).	U.S.A. (WA)	T		17.95(b)	17.41(a)
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Butterfly, Taylor's checkerspot.	*Euphydryas editha taylori.*	U.S.A. (WA, OR)	U.S.A. (WA)	E		17.95(i)	NA
*	*	*	*	*	*		*

3. Amend § 17.41 by adding paragraph (a) to read as follows:

§ 17.41 Special rules—birds.

(a) Streaked horned lark (*Eremophila alpestris strigata*).

(1) *Which populations of the streaked horned lark are covered by this special rule?* This rule covers the rangewide distribution of this bird.

(2) *What activities are prohibited?* Except as noted in paragraphs (a)(3) and (a)(4) of this section, all prohibitions of § 17.31 apply to the streaked horned lark.

(3) *What agricultural activities are allowed on non-Federal land?* Incidental take of the streaked horned lark will not be a violation of section 9 of the Act, if the incidental take results from routine agricultural or ranching activities located on non-Federal lands. Routine agricultural and ranching activities are limited to the following:

(i) Planting, harvesting, rotation, mowing, tilling, discing, and herbicide application of crops;

(ii) Repair and maintenance of unimproved farm roads (this exemption does not include improvement or construction of new roads) and graveled margins of rural roads;

(iii) Livestock grazing according to normally acceptable and established levels of intensity in terms of the number of head of livestock per acre of rangeland;

(iv) Routine management and maintenance of stock ponds and berms to maintain livestock water supplies;

(v) Routine maintenance or construction of fences for grazing management;

(vi) Placement of mineral supplements; and

(vii) Irrigation of agricultural crops, fields, and livestock pastures.

(4) *What activities are allowed on airports on non-Federal lands?* Incidental take of the streaked horned lark will not be a violation of section 9 of the Act, if the incidental take results from routine management activities associated with airport operations to minimize hazardous wildlife. Hazardous wildlife is defined by the Federal Aviation Administration as species of wildlife, including feral animals and domesticated animals not under control, that are associated with aircraft strike problems, are capable of causing structural damage to airport facilities, or act as attractants to other wildlife that pose a strike hazard. Routine management activities include, but are not limited to, the following:

(i) Routine management, repair, and maintenance of roads and runways (does not include upgrades or construction of new roads or runways);

(ii) Control and management of vegetation (grass, weeds, shrubs, and trees) through mowing, discing, herbicide application, or burning consistent with State Agency recommendations;

(iii) Hazing of hazardous wildlife; and

(iv) Management of sources of forage, water, and shelter to reduce the attractiveness of the area around the airport for hazardous wildlife.

* * * * *

3. Amend § 17.95 by:

(a) In paragraph (b), adding an entry for ''Streaked horned lark (*Eremophila alpestris strigata)*'' in the same order that this species appears in the table in § 17.11(h) to read as follows; and

(b) In paragraph (i), by adding an entry for ''Taylor's checkerspot butterfly *(Euphydryas editha taylori)*'' in the same order that this species appears in the table in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Streaked Horned Lark (*Eremophila alpestris strigata*)

(1) Critical habitat units are depicted for Mason, Pierce, Thurson, Grays Harbor, Pacific Wahkiakum, and Cowlitz Counties in Washington and Clatsop, Columbia, Multhomah, Yamhill, Polk, Marion, Linn, and Lane Counties in Oregon, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the streaked horned lark consist of areas having a minimum of 16 percent bare ground that have sparse, low-stature vegetation comprising primarily grasses and forbs less than 13 in (33 cm) in height found in:

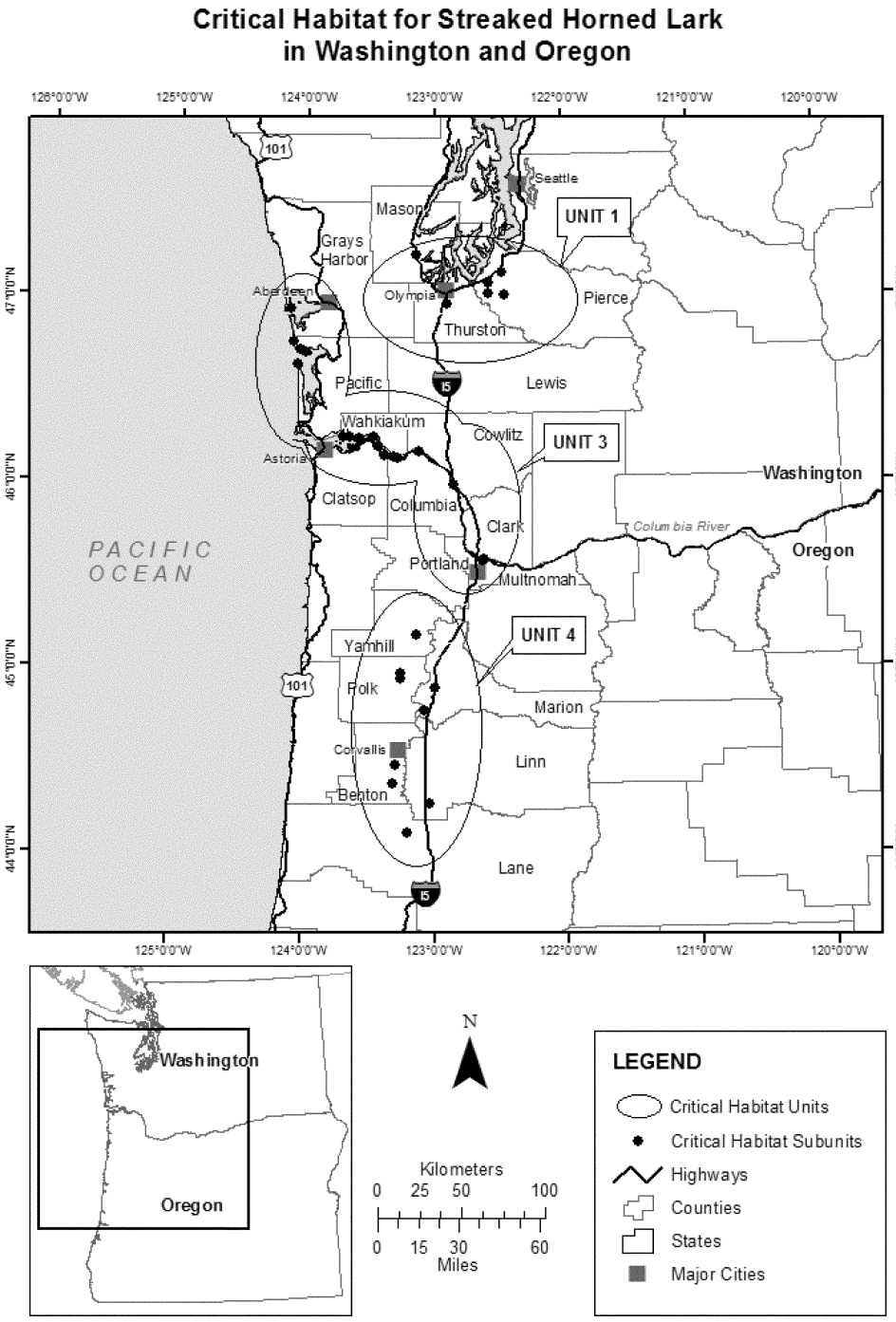
(i) Large (300-ac (120-ha)), flat (0–5 percent slope) areas within a landscape context that provides visual access to open areas such as open water or fields, or

(ii) Areas smaller than described in paragraph (2)(i) of this entry, but that provide visual access to open areas such as open water or fields.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE].

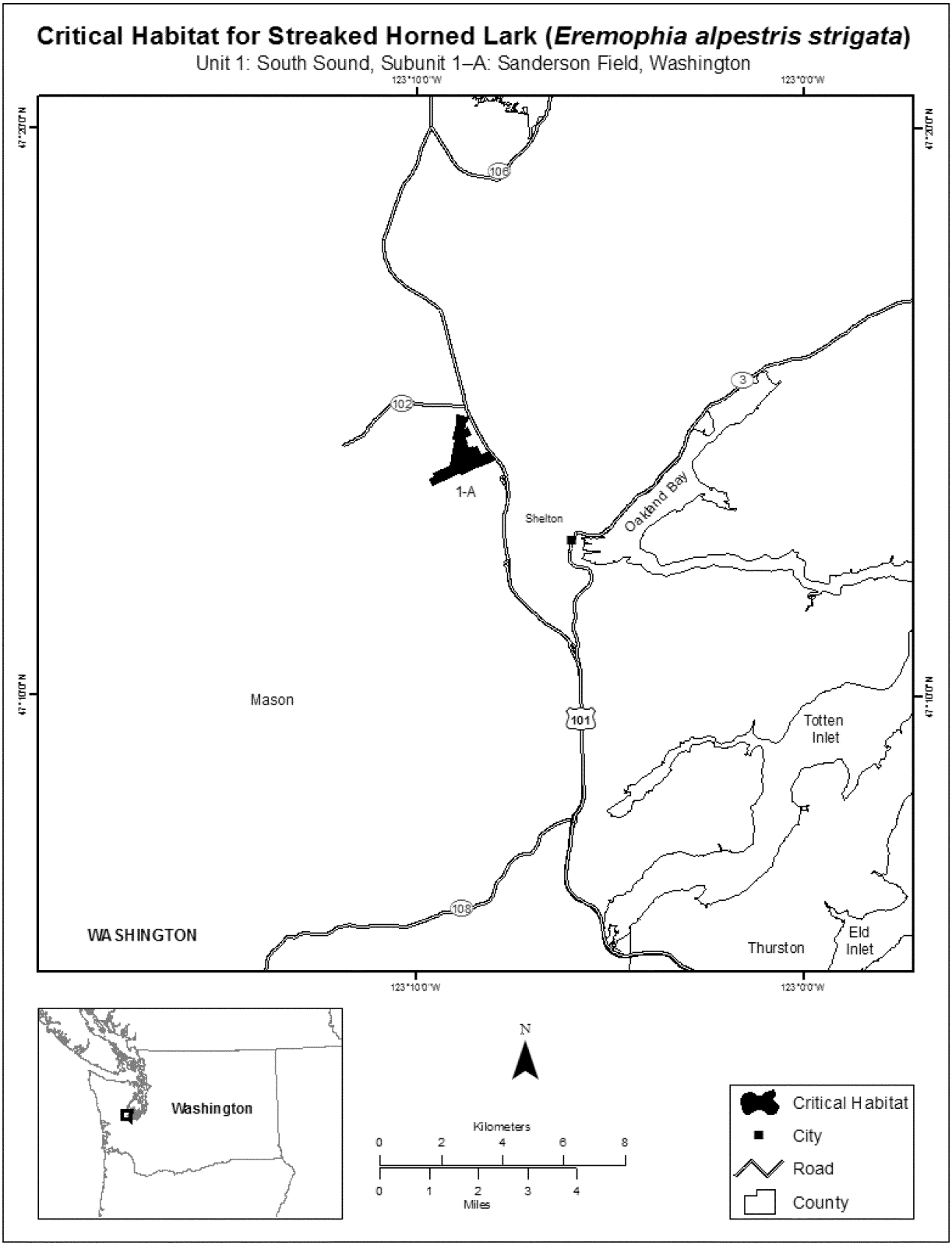
(4) *Critical habitat map units.* Data layers defining the map unit were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, (*http://www.fws.gov/wafwo/*), Regulations.gov (*http://www.regulations.gov* at Docket No. FWS–R1–ES–2012–0080) and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) **Note:** Index map follows:

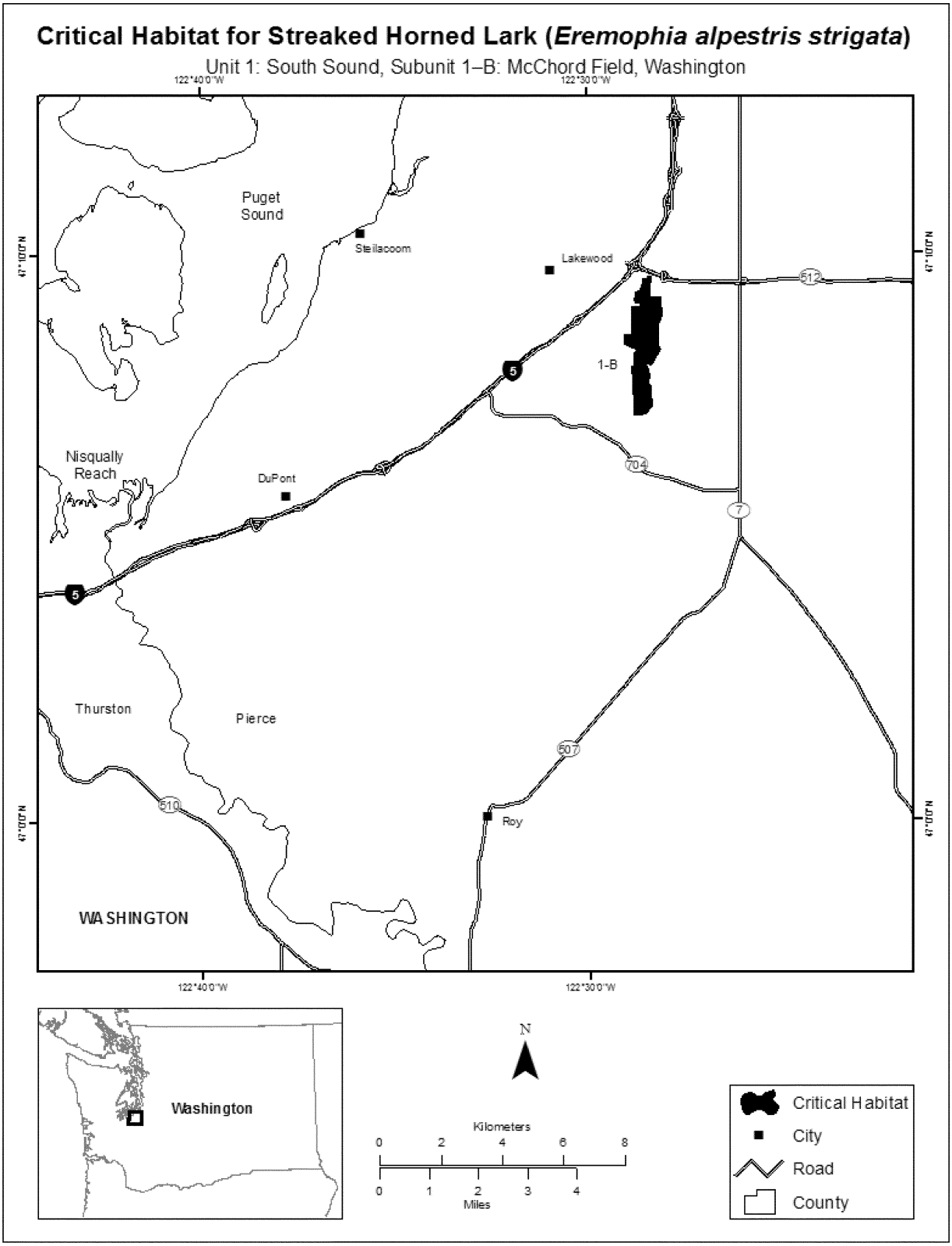


BILLING CODE 4310–55–P

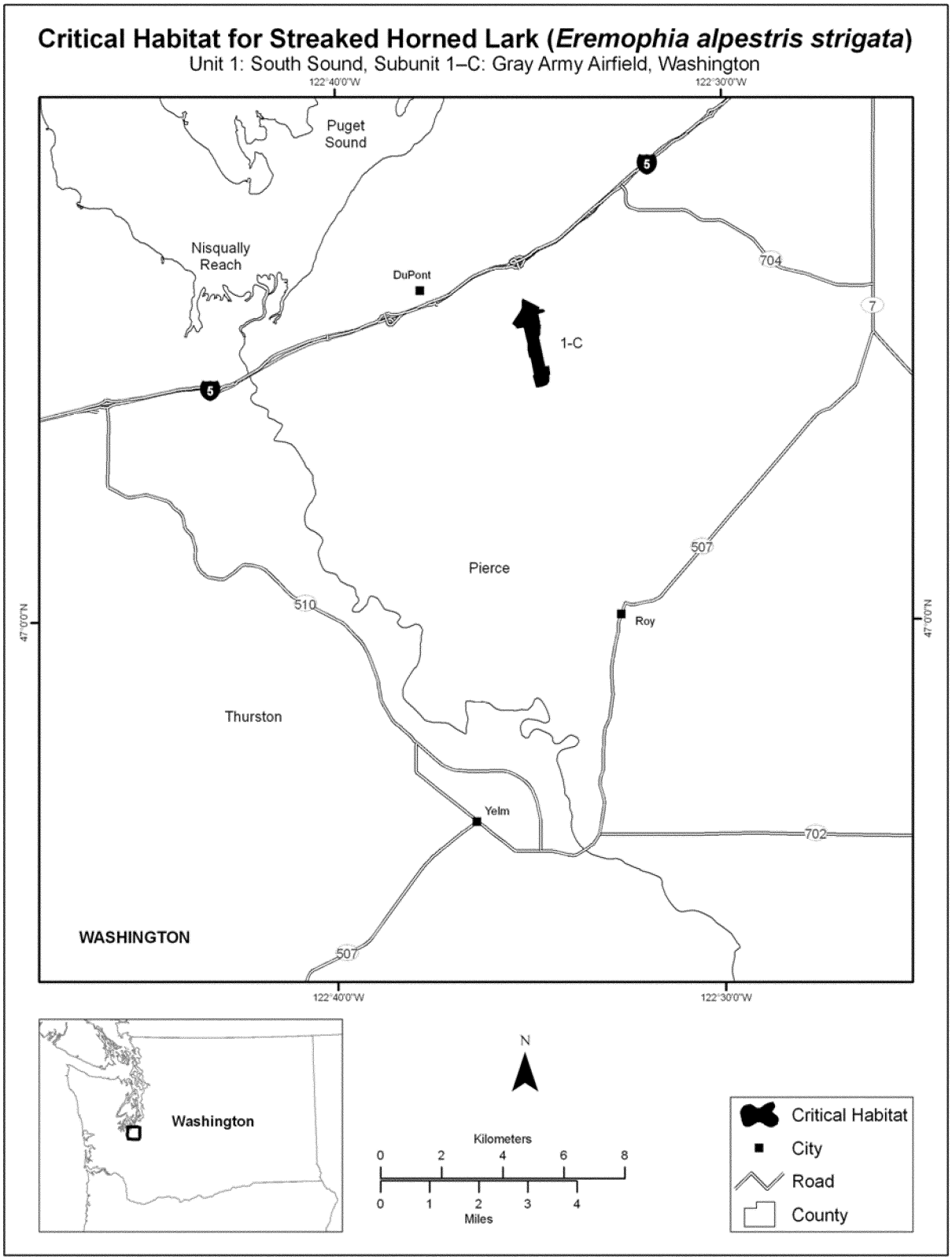
(6) Unit 1—South Sound, Subunit 1–A: Sanderson Field, Mason County, Washington. Map of Unit 1, Subunit 1–A, follows:



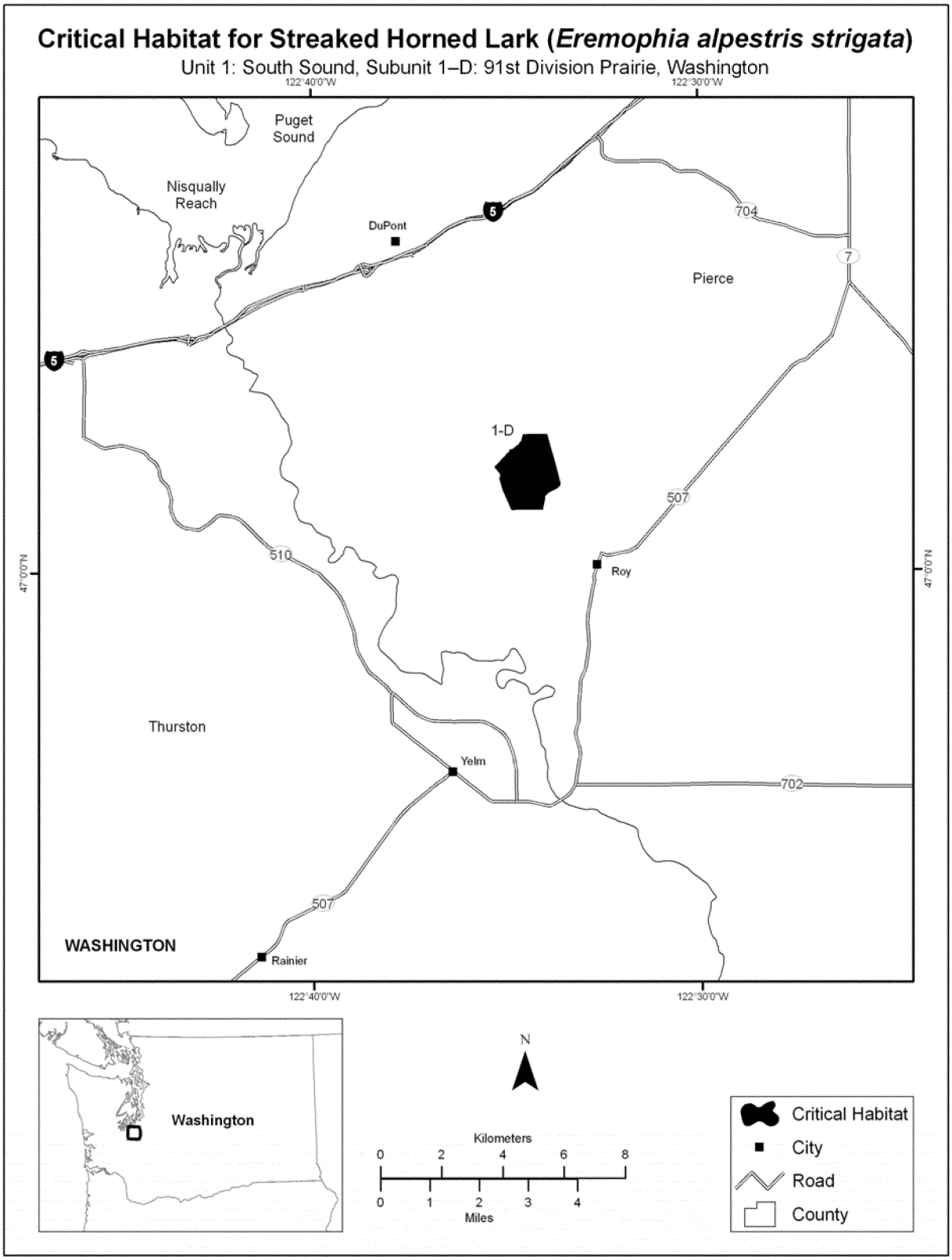
(7) Unit 1—South Sound, Subunit 1–B: McChord Field, Pierce County, Washington. Map of Unit 1, Subunit 1–B: follows:



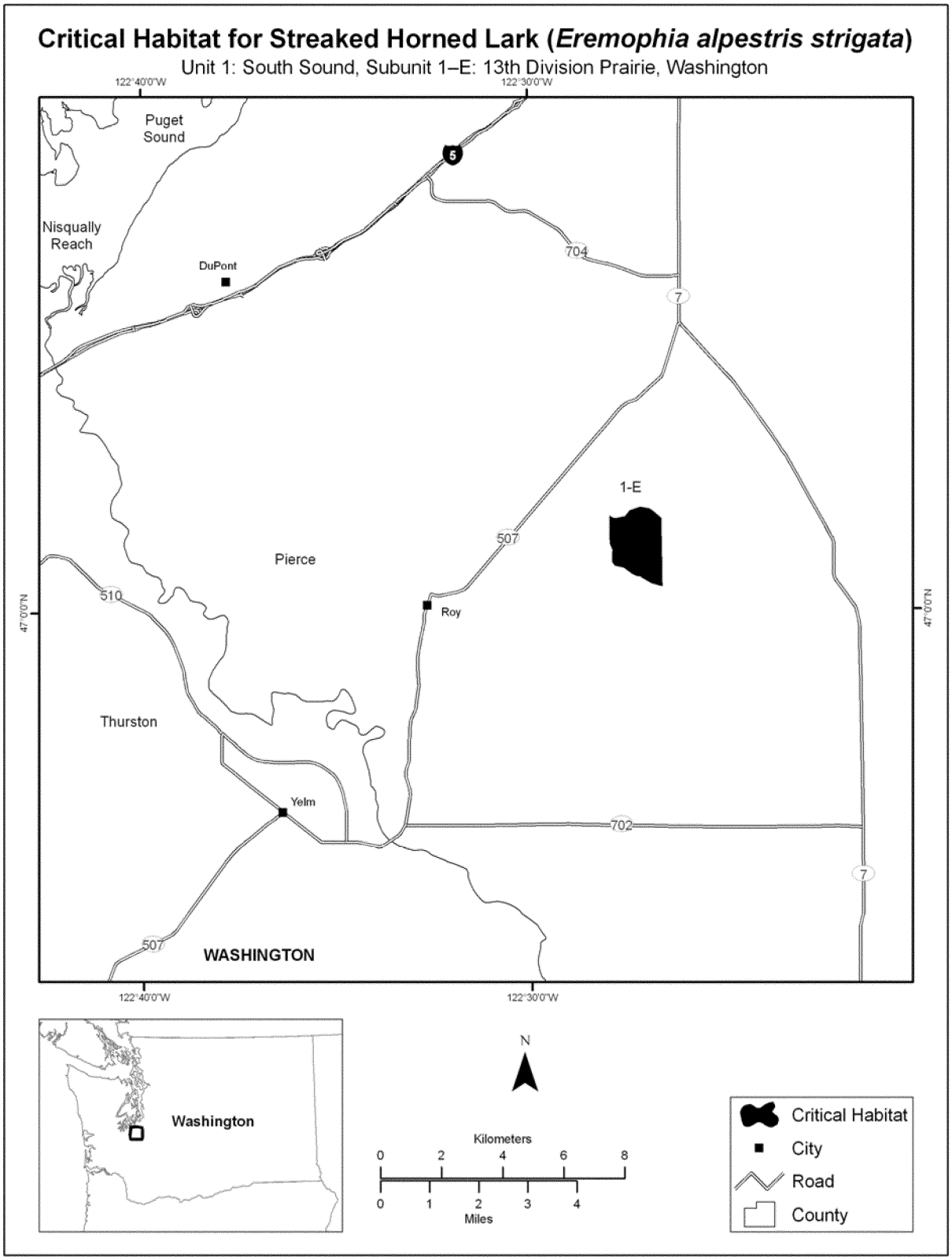
(8) Unit 1—South Sound, Subunit 1–C: Gray Army Airfield, Pierce County, Washington. Map of Unit 1, Subunit 1–C follows:



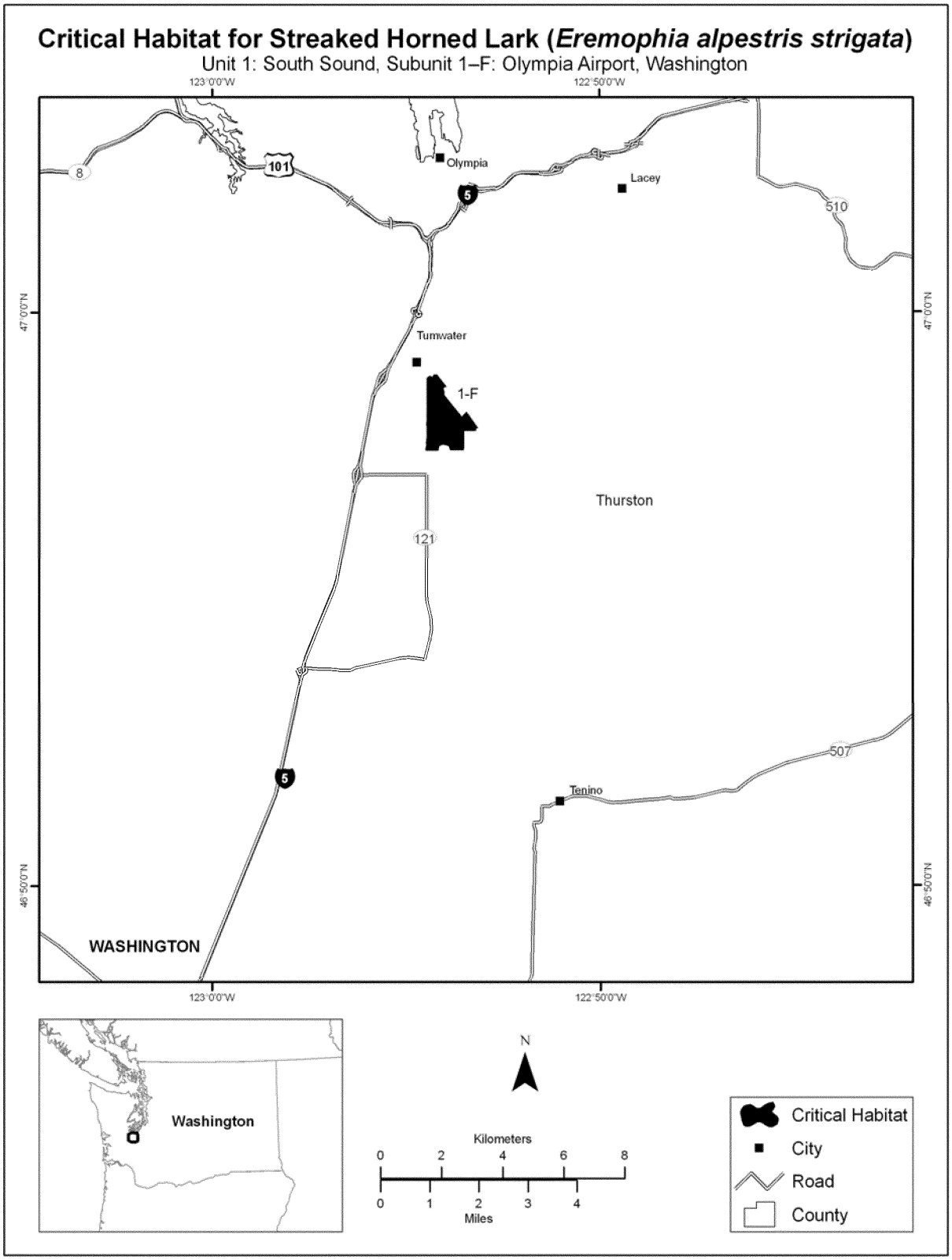
(9) Unit 1—South Sound, Subunit 1–D: 91st Division Prairie, Pierce County, Washington. Map of Unit 1, Subunit 1–D follows:



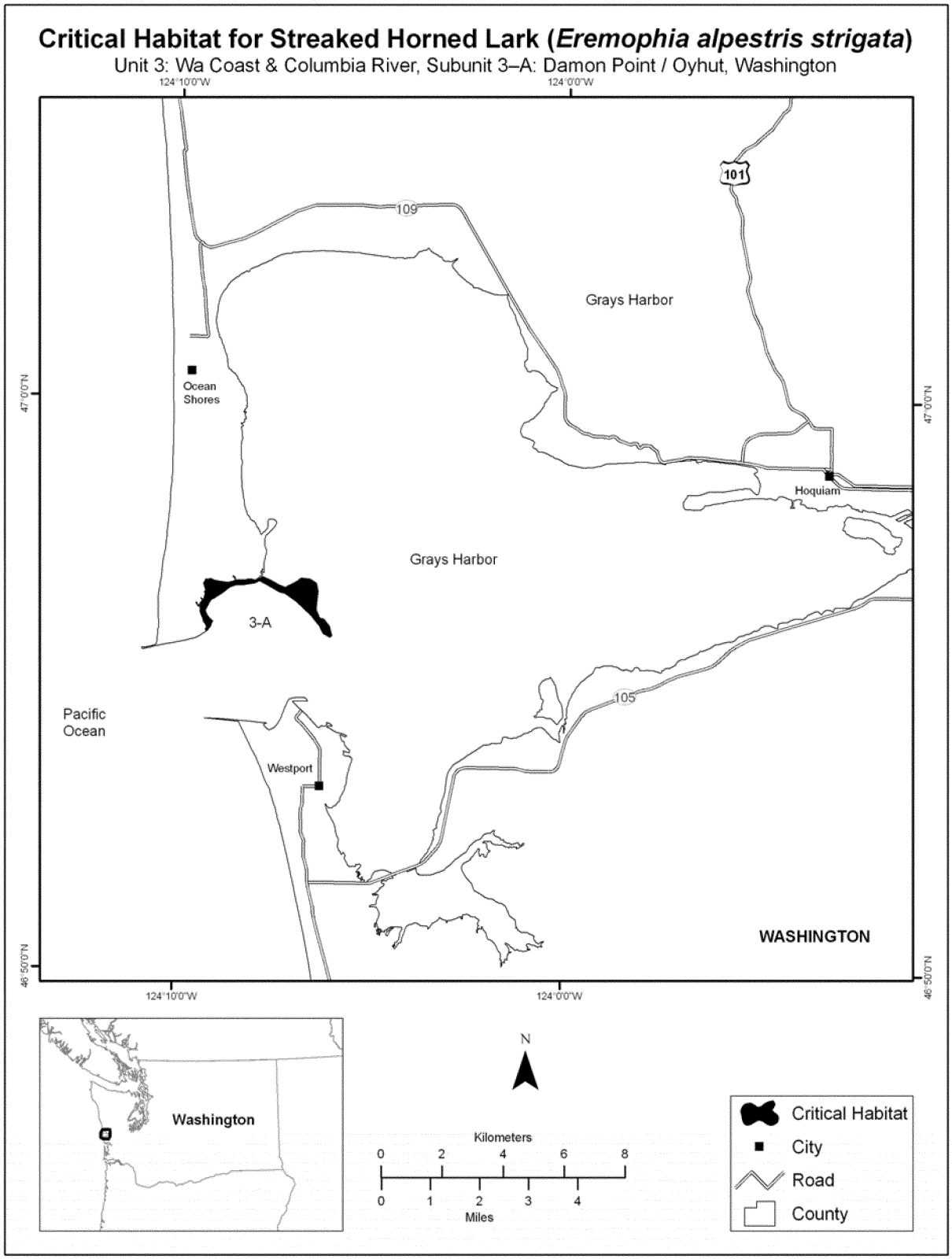
(10) Unit 1—South Sound, Subunit 1–E: 13th Division Prairie, Pierce County, Washington. Map of Unit 1, Subunit 1–E follows:



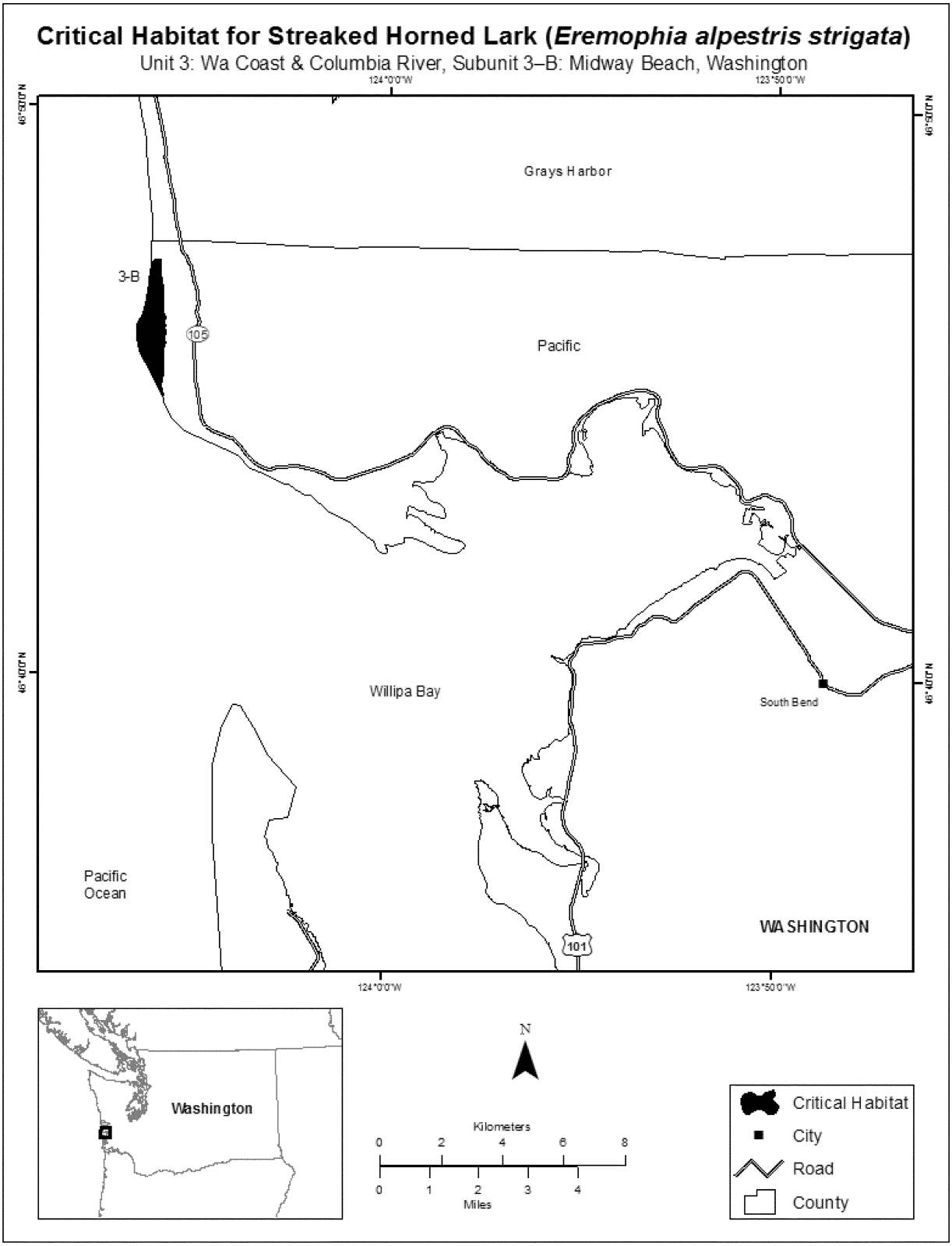
(11) Unit 1—South Sound, Subunit 1–F: Olympia Airport, Thurston County, Washington. Map of Unit 1, Subunit 1–F follows:



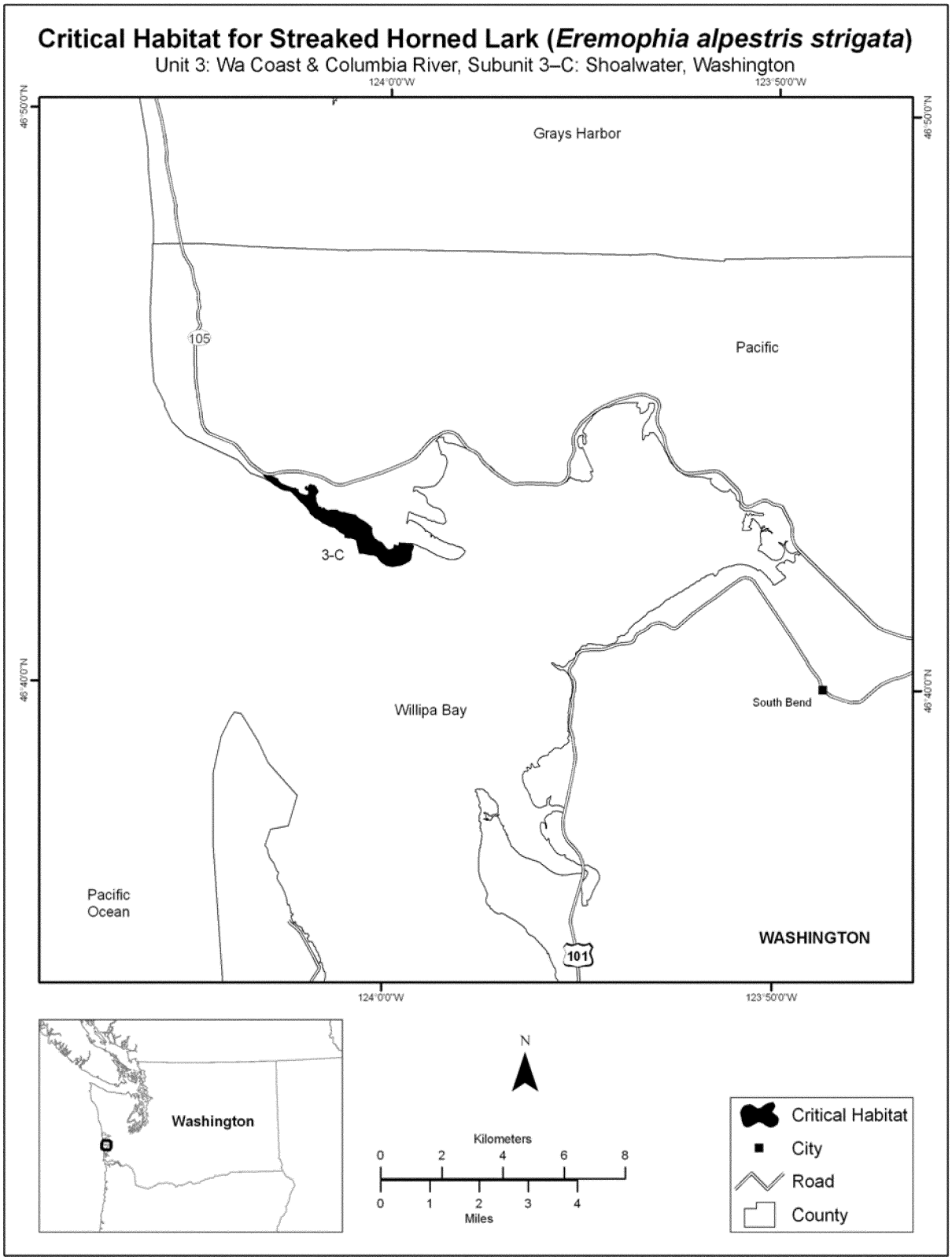
(12) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–A: Damon Point, Grays Harbor County, Washington. Map of Unit 3, Subunit 3–A follows:



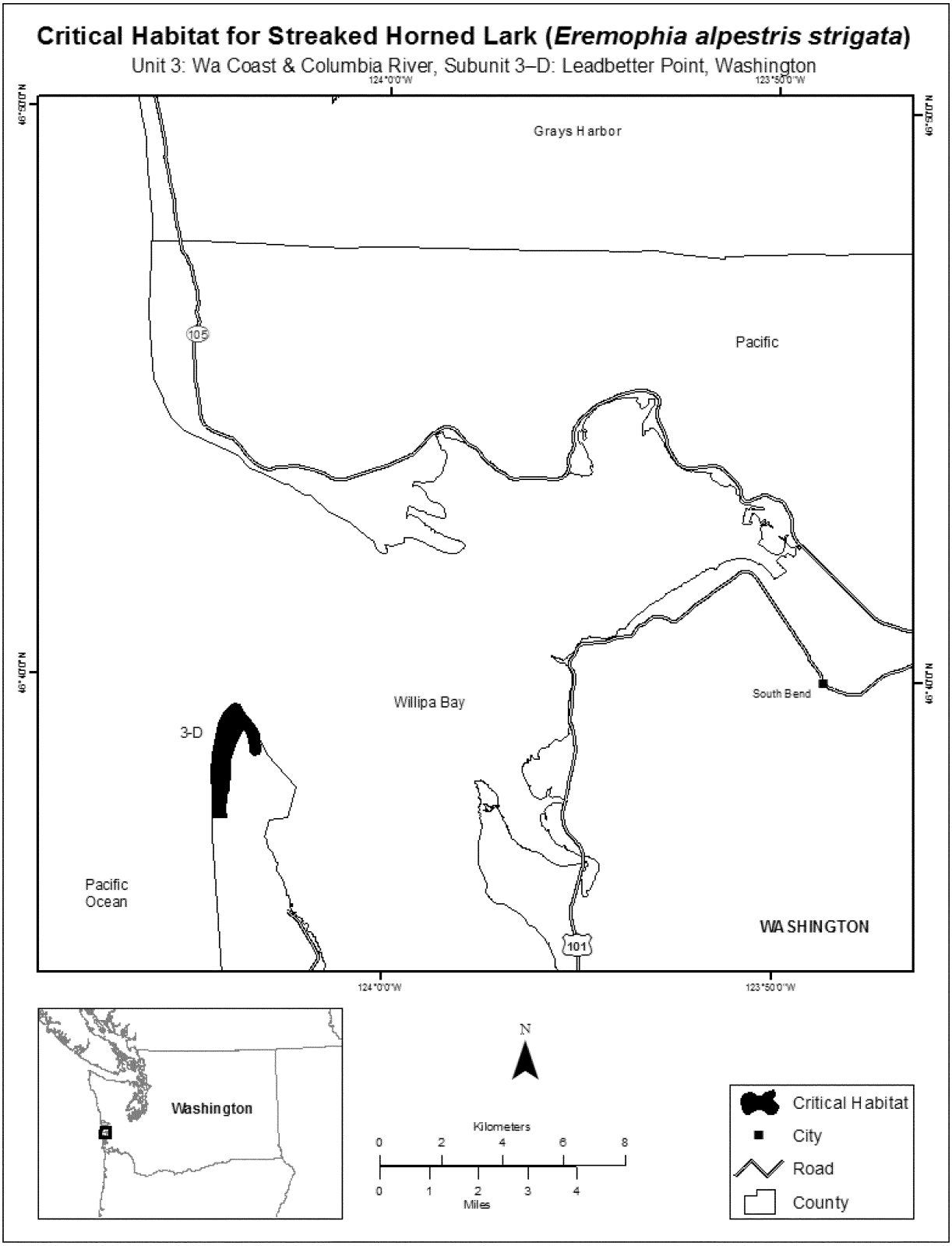
(13) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–B: Midway Beach, Pacific County, Washington. Map of Unit 3, Subunit 3–B follows:



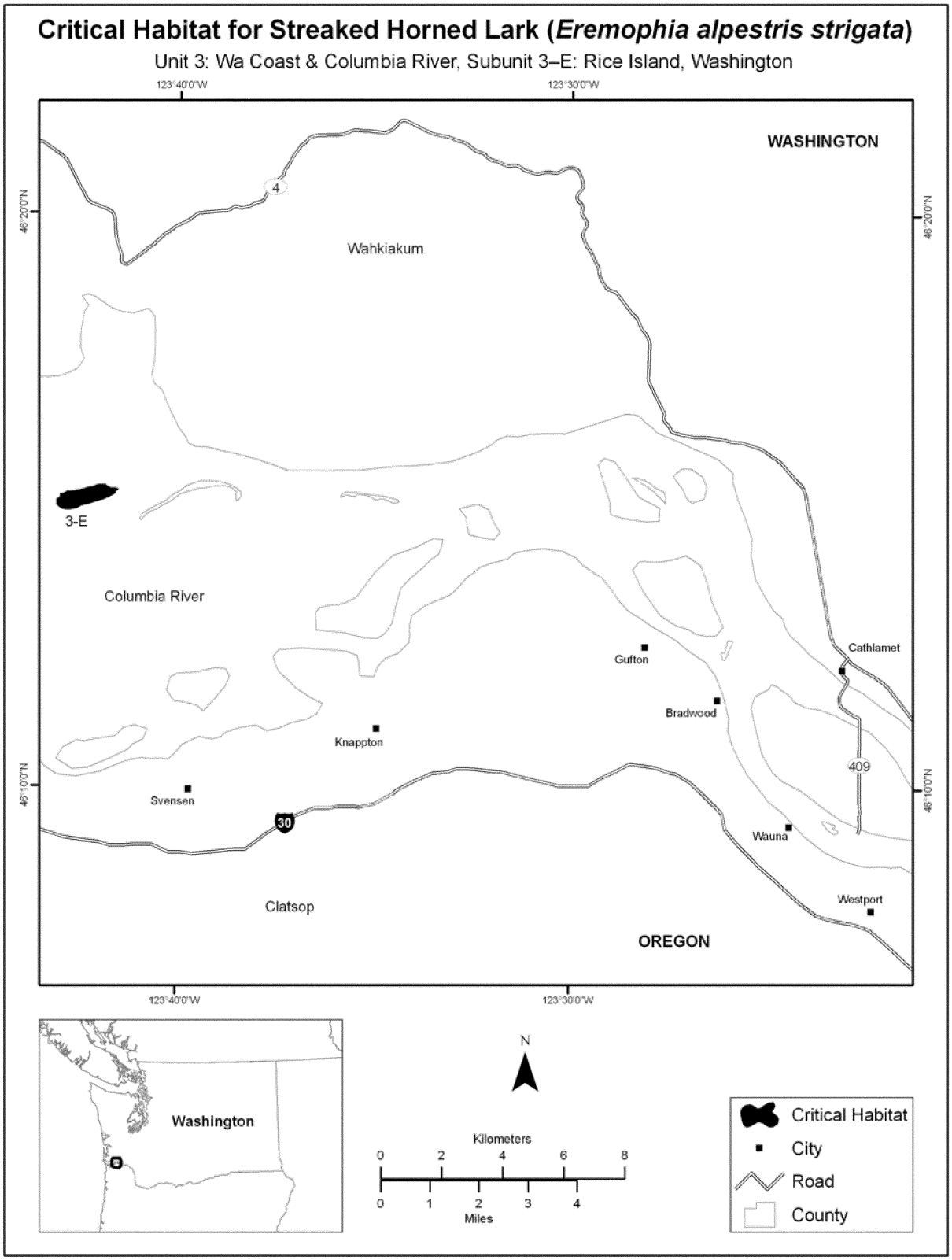
(14) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–C: Shoalwater, Pacific County, Washington. Map of Unit 3, Subunit 3–C follows:



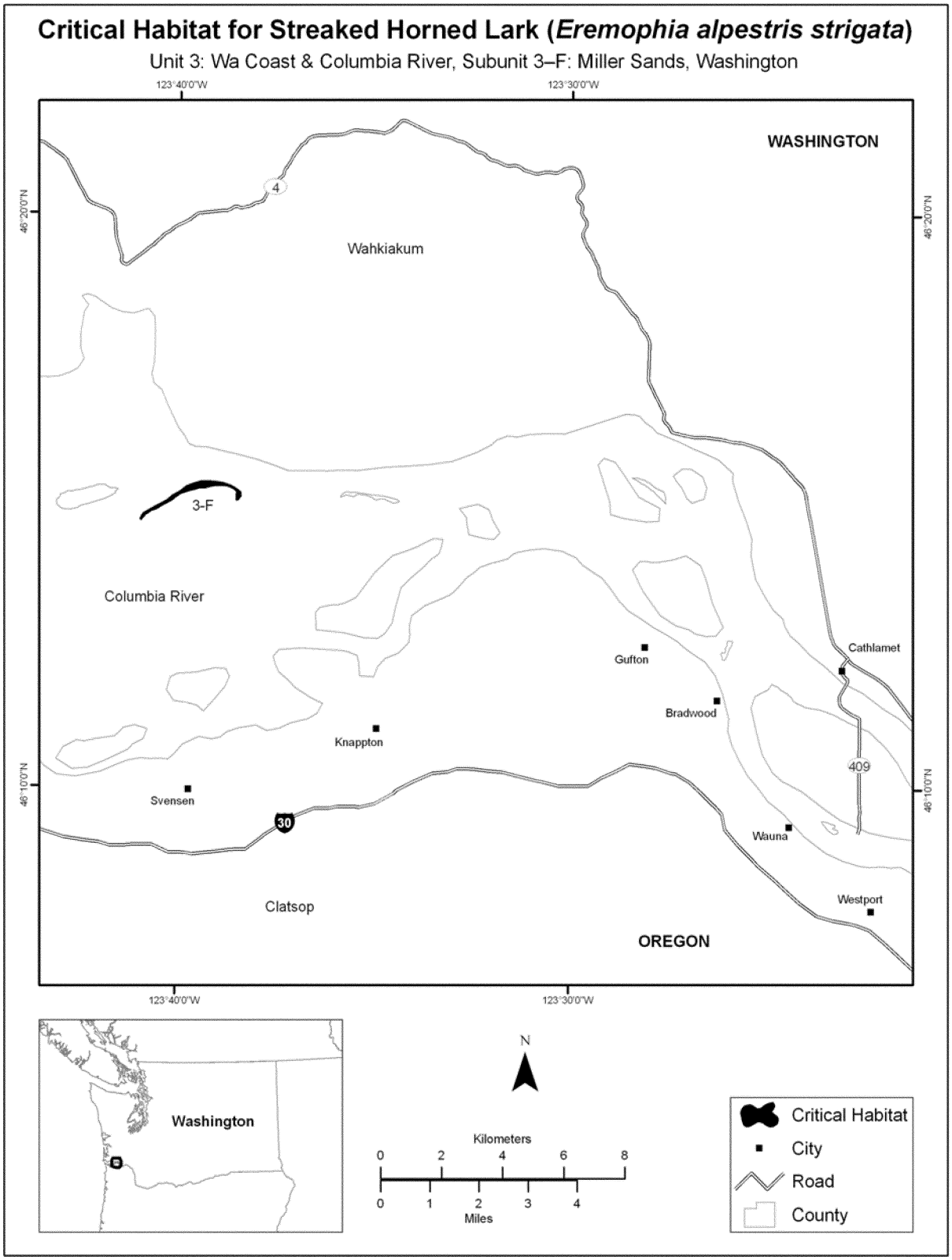
(15) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–D: Leadbetter Point, Pacific County, Washington. Map of Unit 3, Subunit 3–D follows:



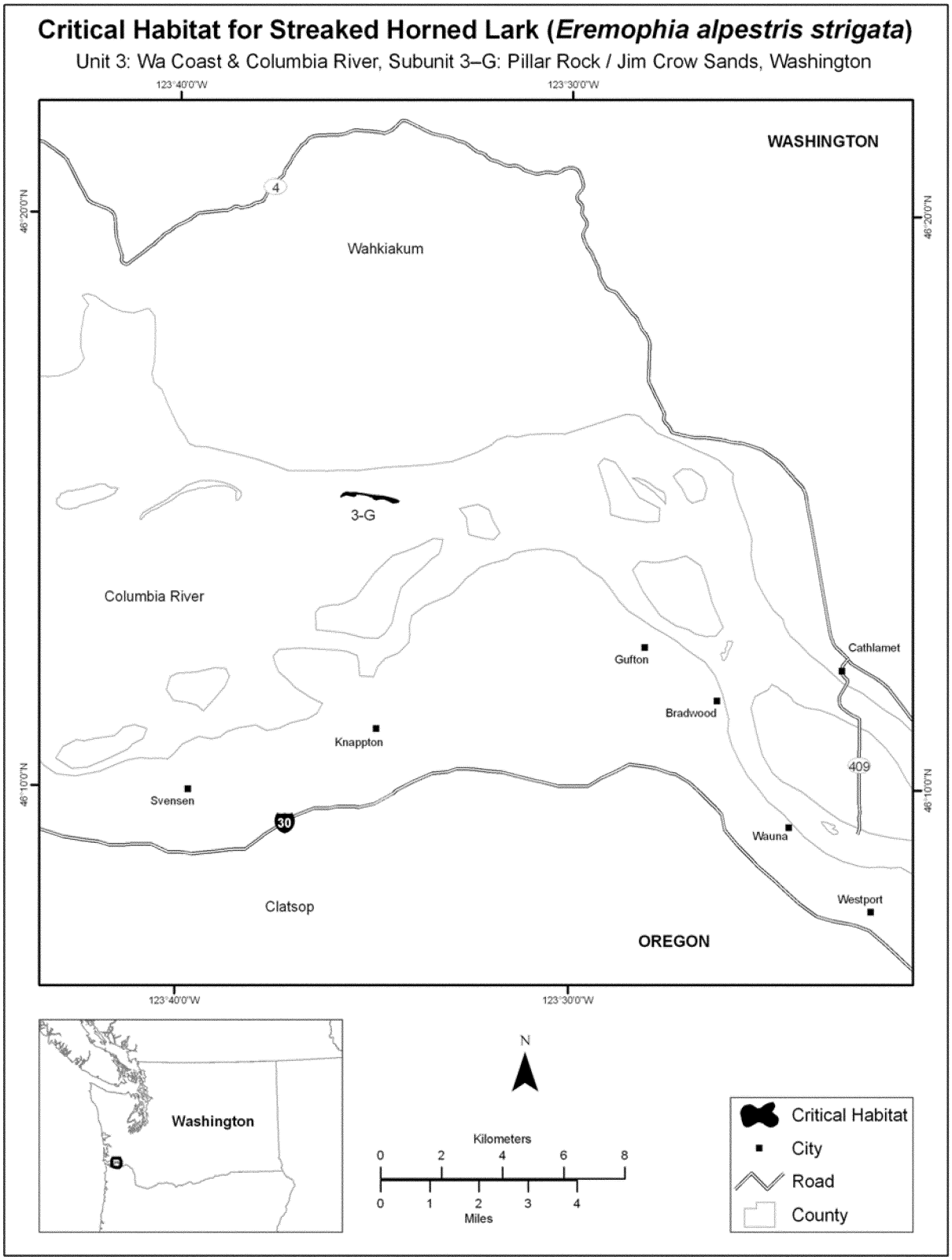
(16) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–E: Rice Island, Clatsop County, Oregon. Map of Unit 3, Subunit 3–E follows:



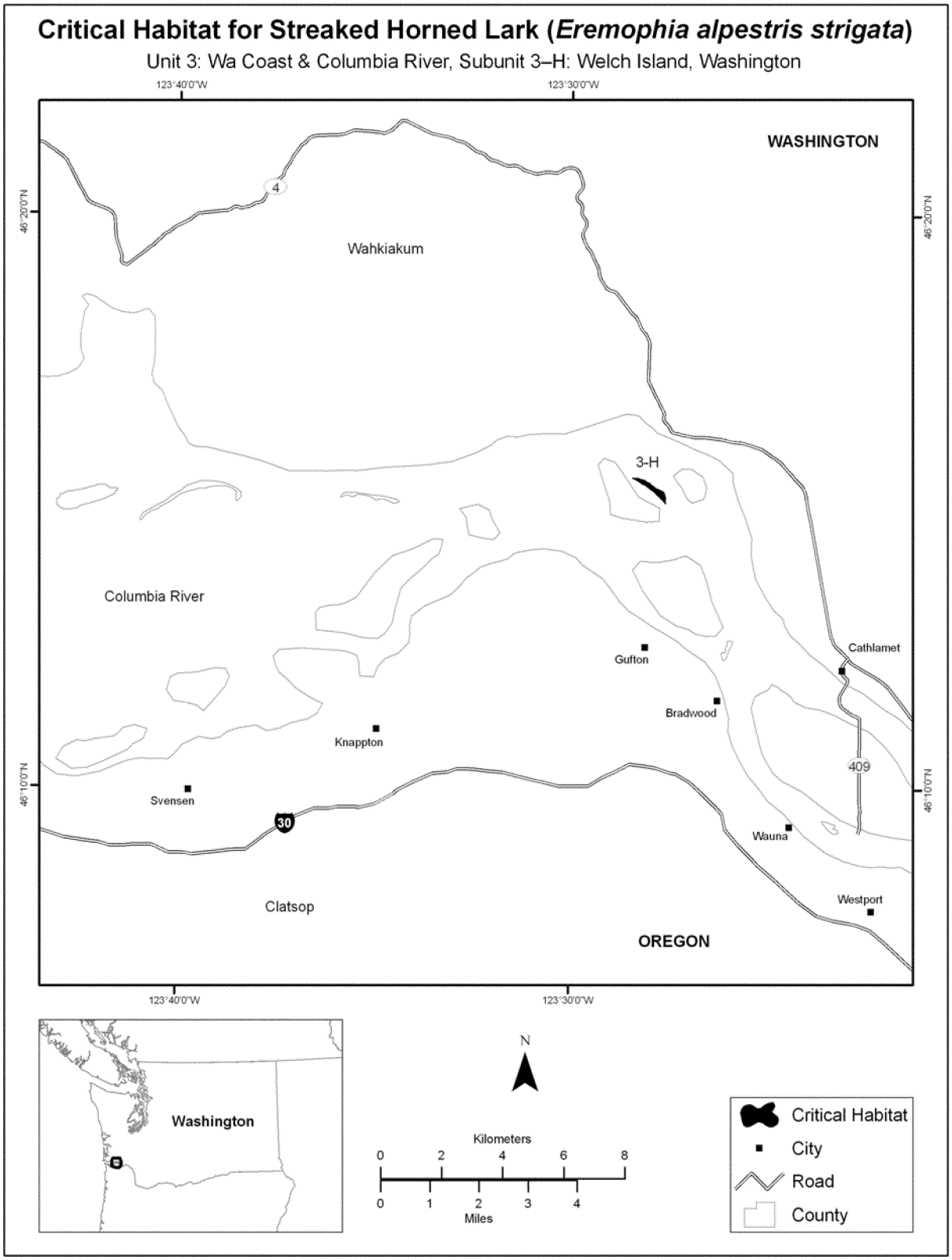
(17) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–F: Miller Sands Spit, Clatsop County, Oregon. Map of Unit 3, Subunit 3–F follows:



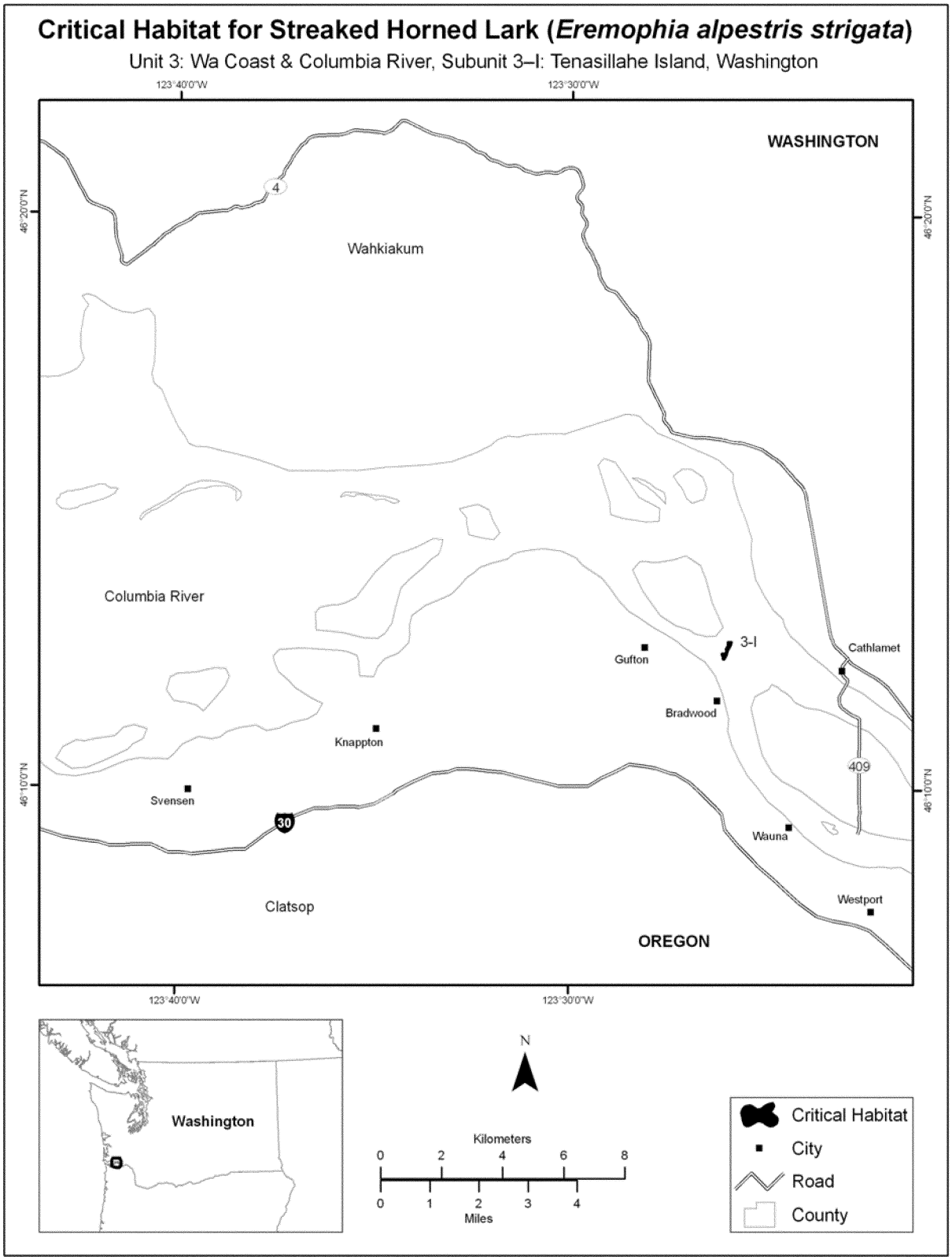
(18) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–G: Pillar Rock/Jim Crow Sands, Clatsop County, Oregon. Map of Unit 3, Subunit 3–G follows:



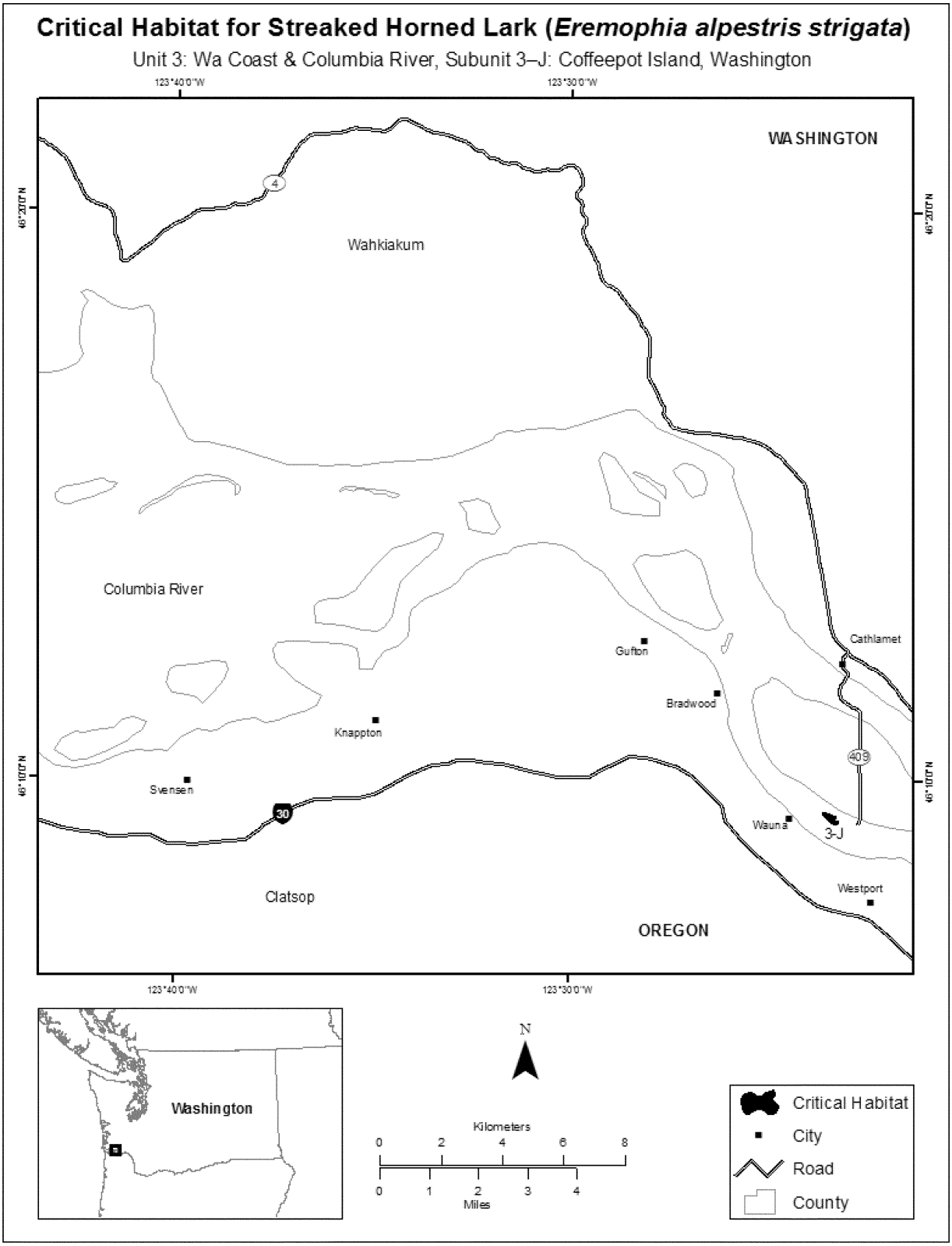
(19) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–H: Welch Island, Clatsop County, Oregon. Map of Unit 3, Subunit 3–H follows:



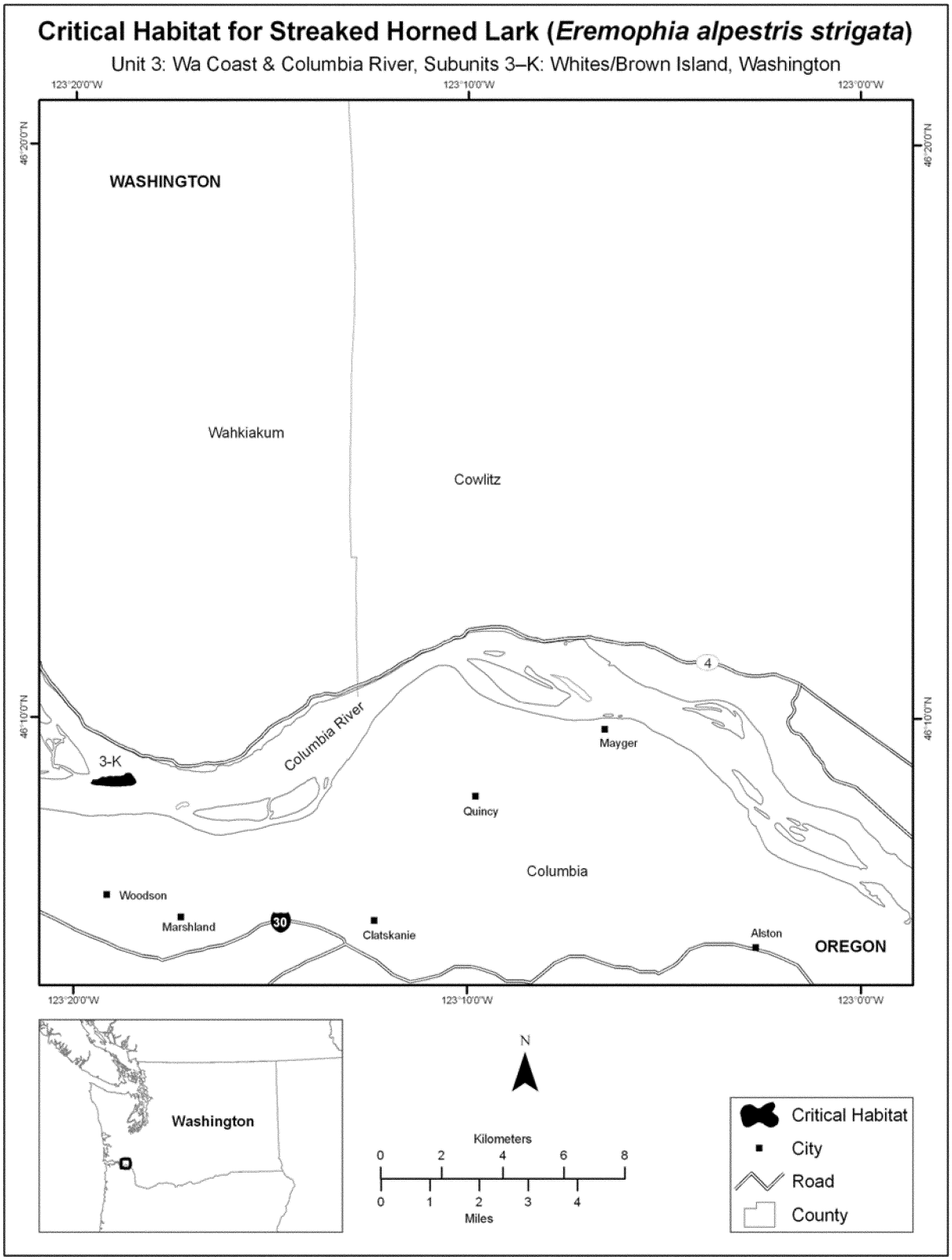
(20) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–I: Tenasillahe Island, Columbia County, Oregon. Map of Unit 3, Subunit 3–I follows:



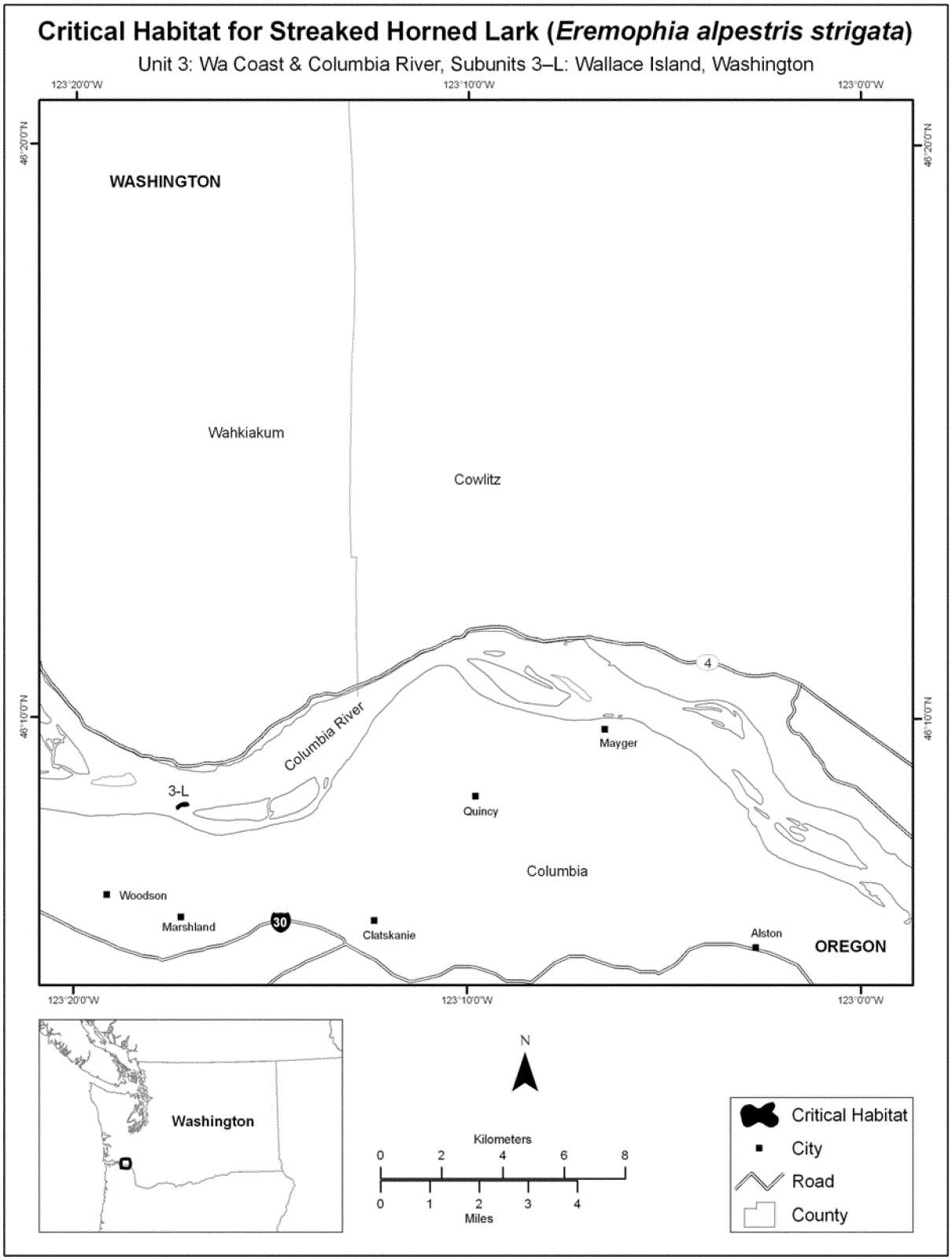
(21) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–J: Coffeepot Island, Wahkiakum County, Washington. Map of Unit 3, Subunit 3–J follows:



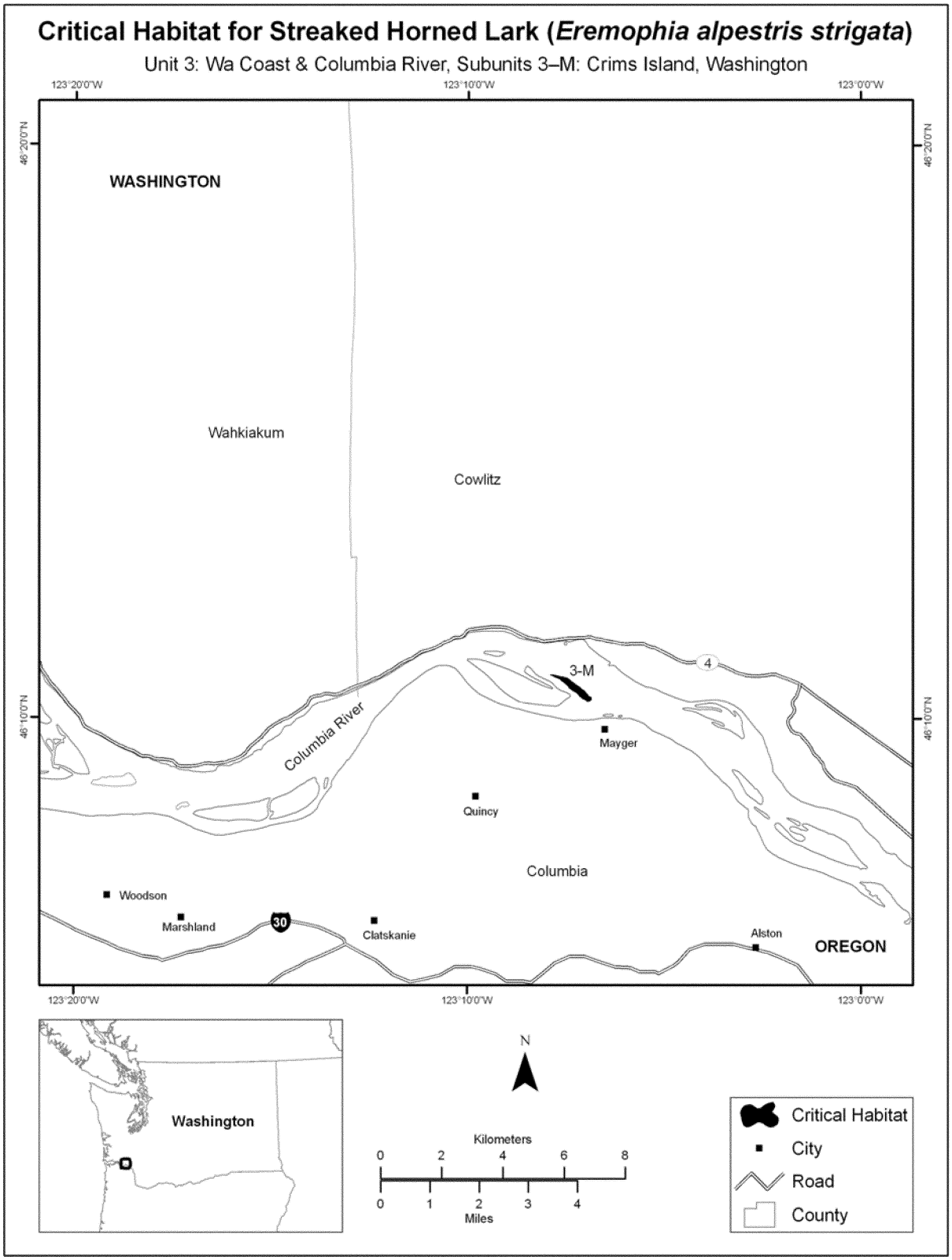
(22) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–K: Whites/Brown Island, Wahkiakum County, Washington. Map of Unit 3, Subunit 3–K follows:



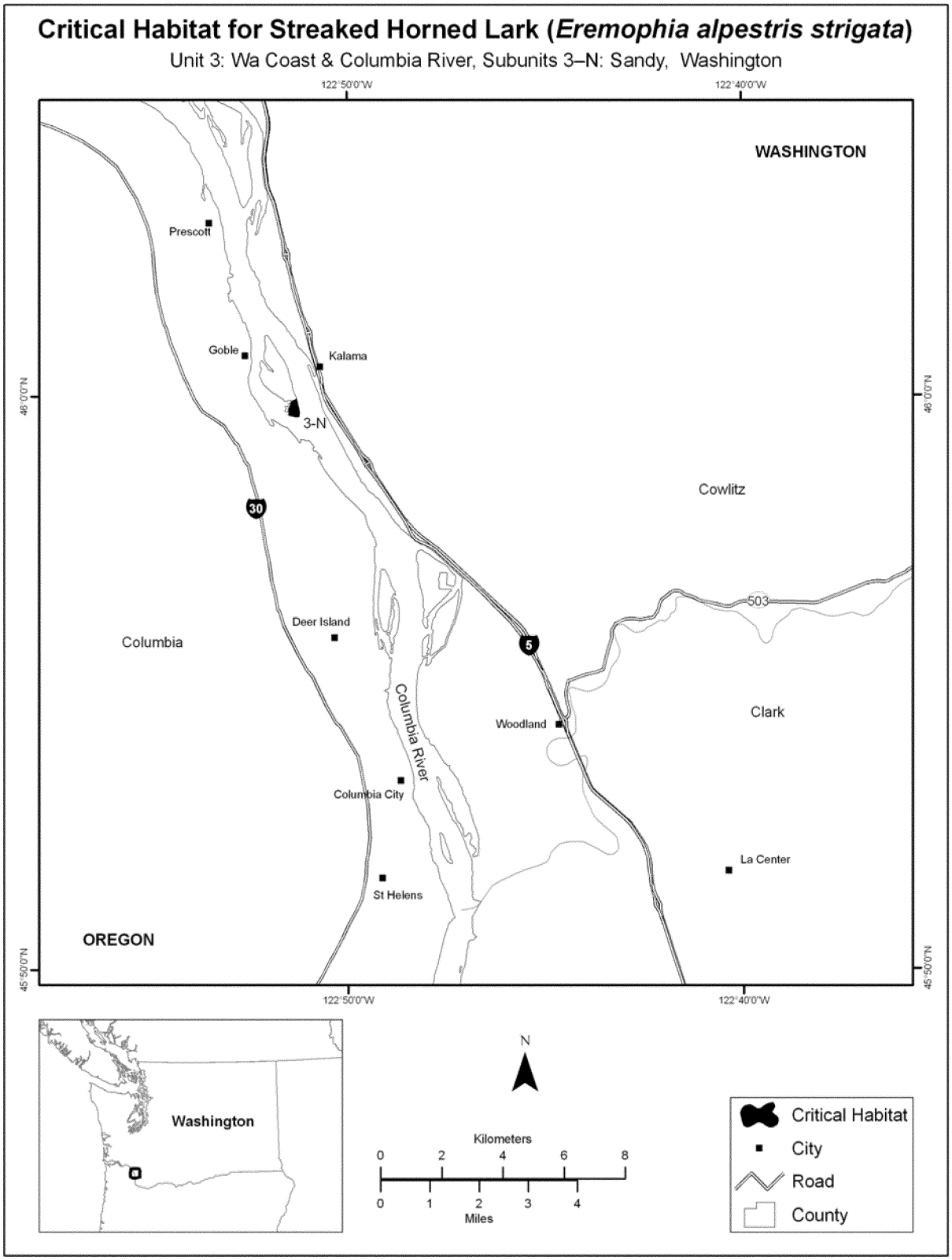
(23) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–L: Wallace Island, Columbia County, Oregon. Map of Unit 3, Subunit 3–L follows:



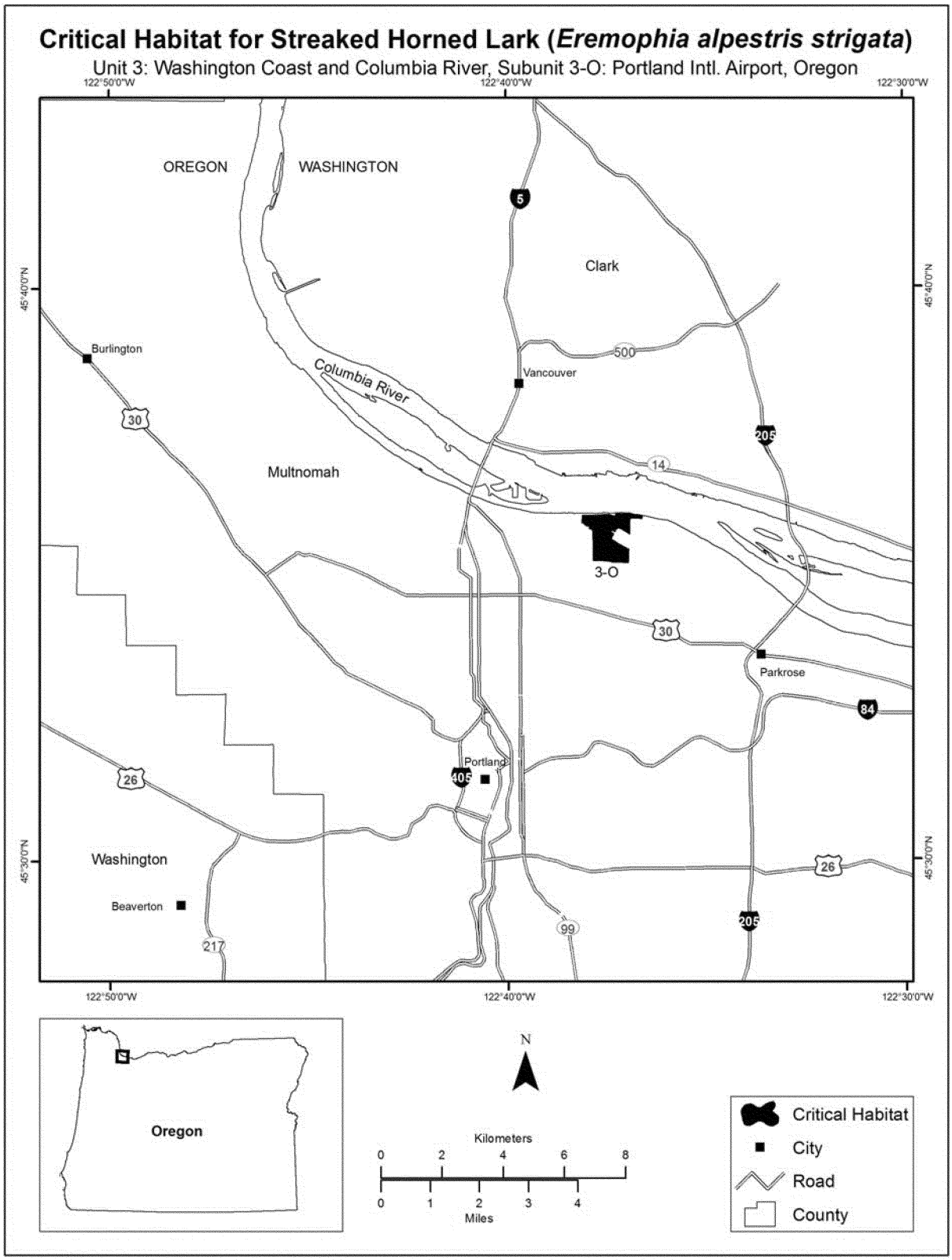
(24) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–M: Crims Island, Columbia County, Oregon. Map of Unit 3, Subunit 3–M follows:



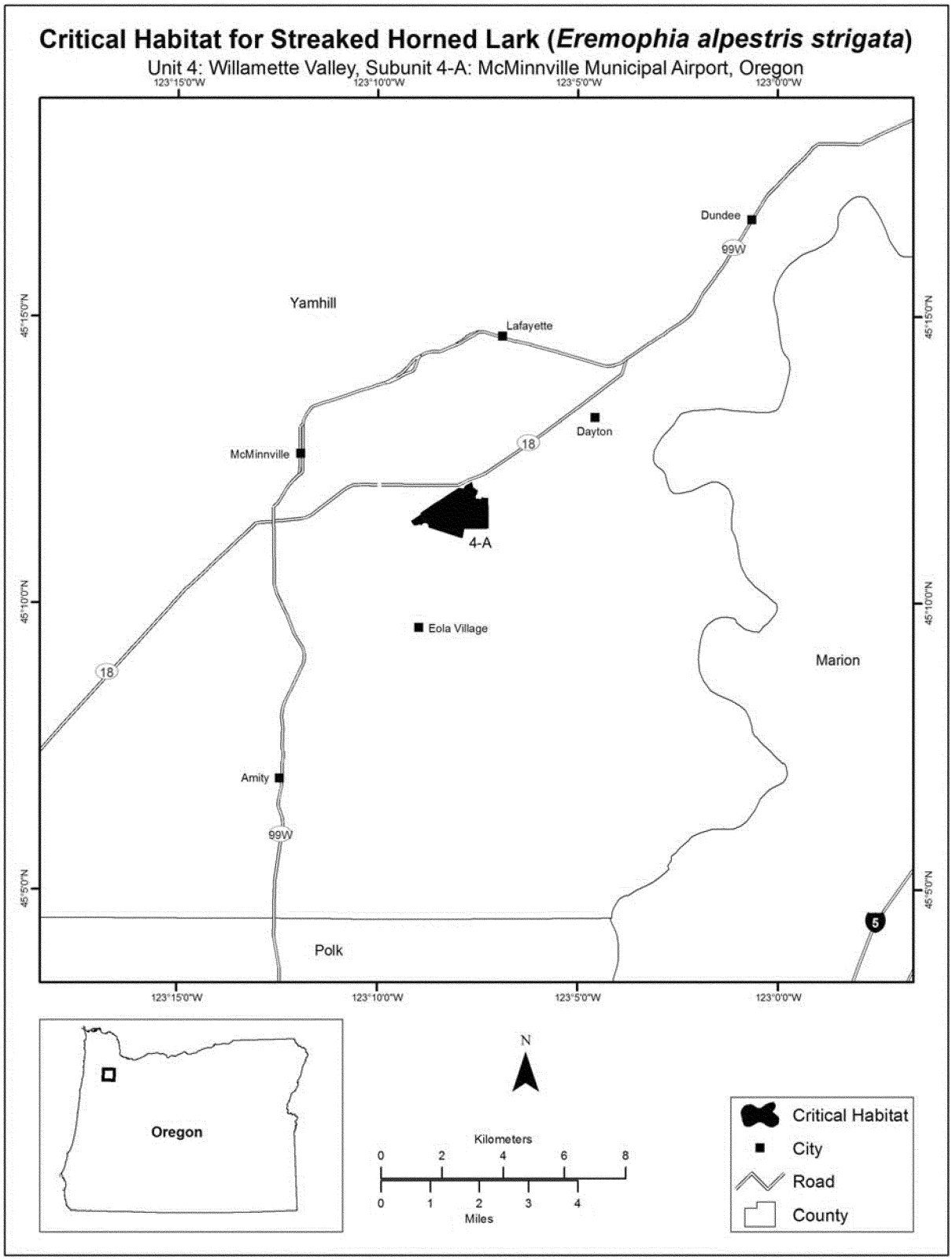
(25) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–N: Sandy Island, Columbia County, Oregon. Map of Unit 3, Subunit 3–N follows:



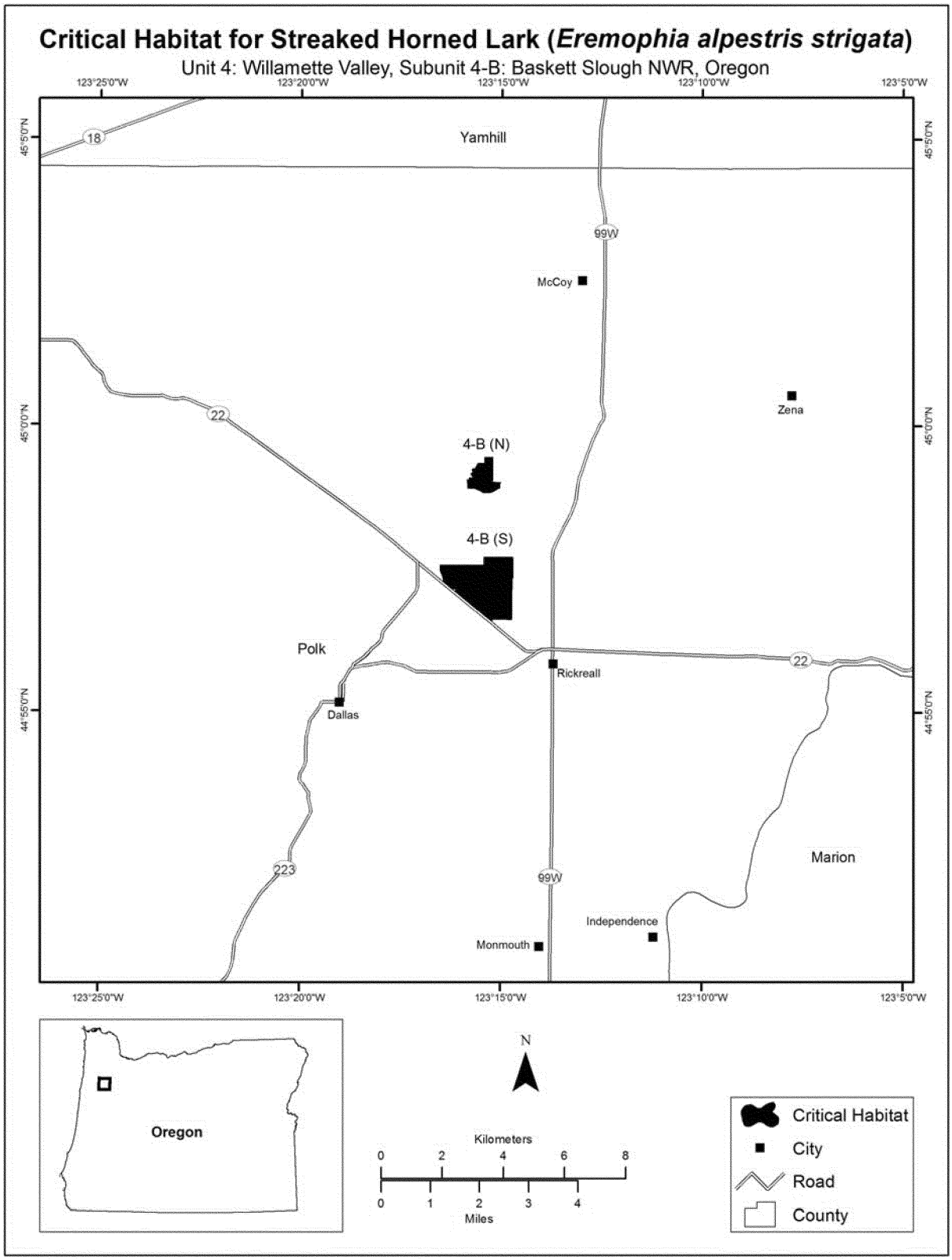
(26) Unit 3—Washington Coast and Columbia River Islands, Subunit 3–O: Portland International Airport, Multnomah County, Washington. Map of Unit 3, Subunit 3–O follows:



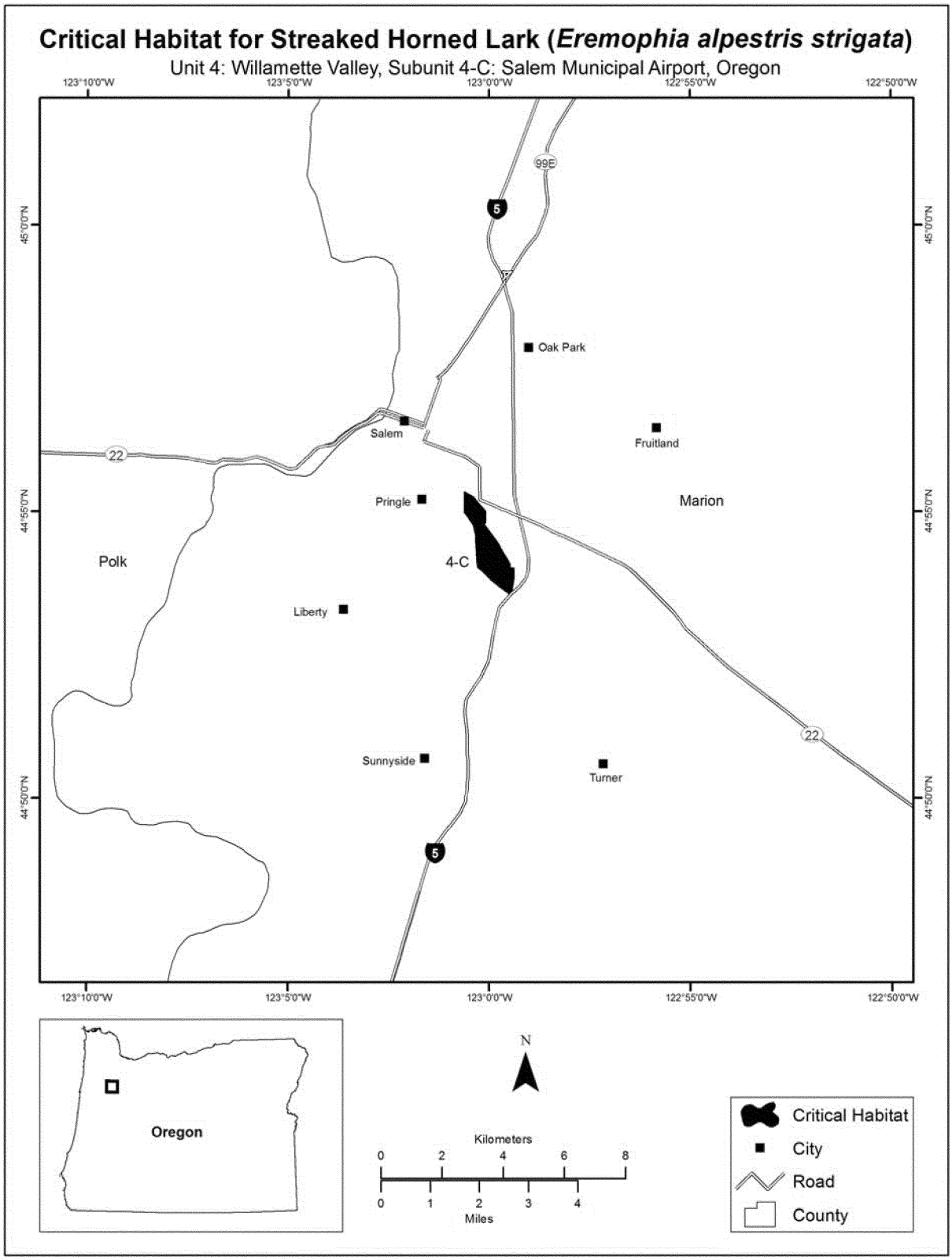
(27) Unit 4—Willamette Valley, Subunit 4–A: McMinnville Municipal Airport, Yamhill County, Oregon. Map of Unit 4, Subunit 4–A follows:



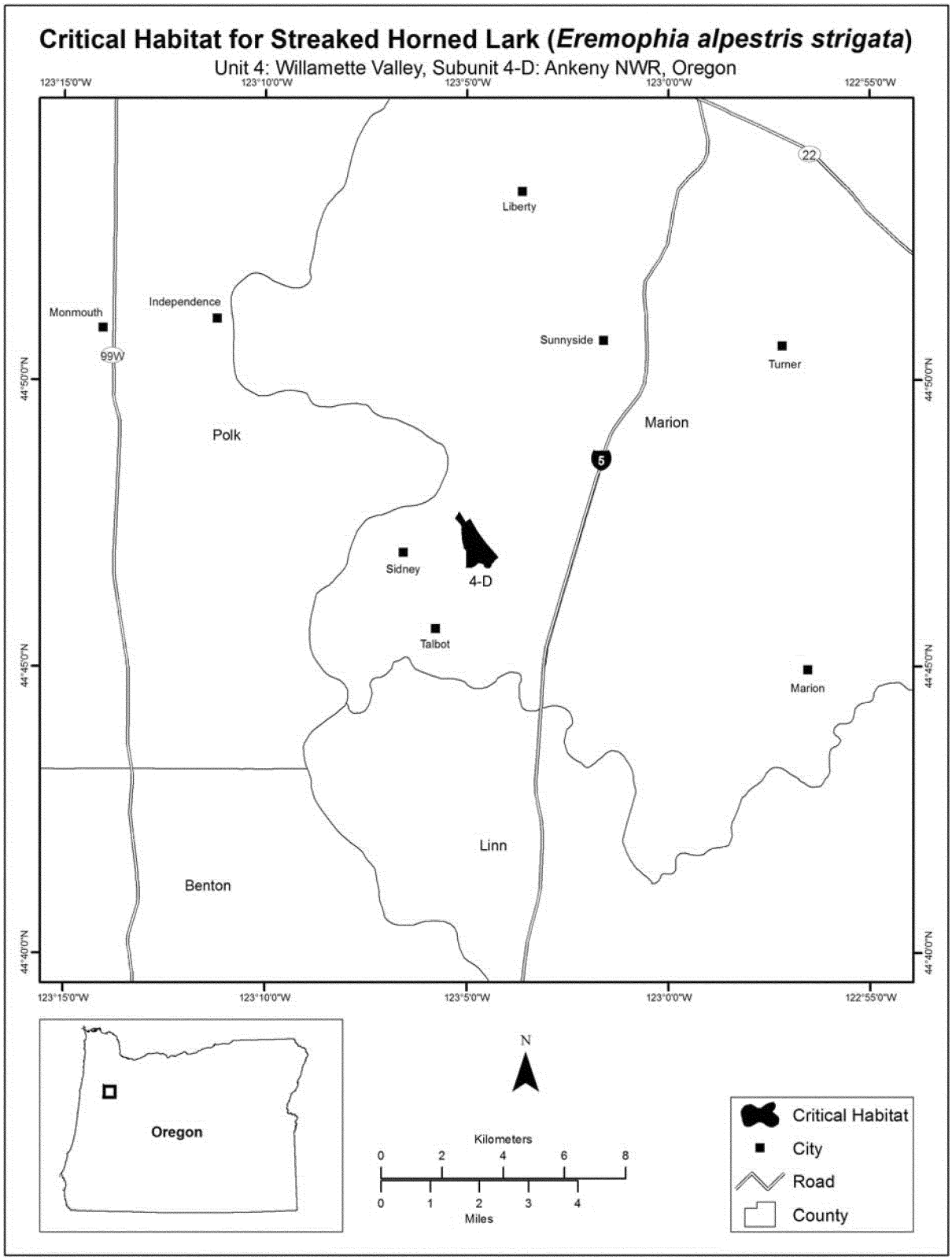
(28) Unit 4—Willamette Valley, Subunit 4–B: Basket Slough National Wildlife Refuge, Polk County, Oregon. Map of Unit 4, Subunit 4–B follows:



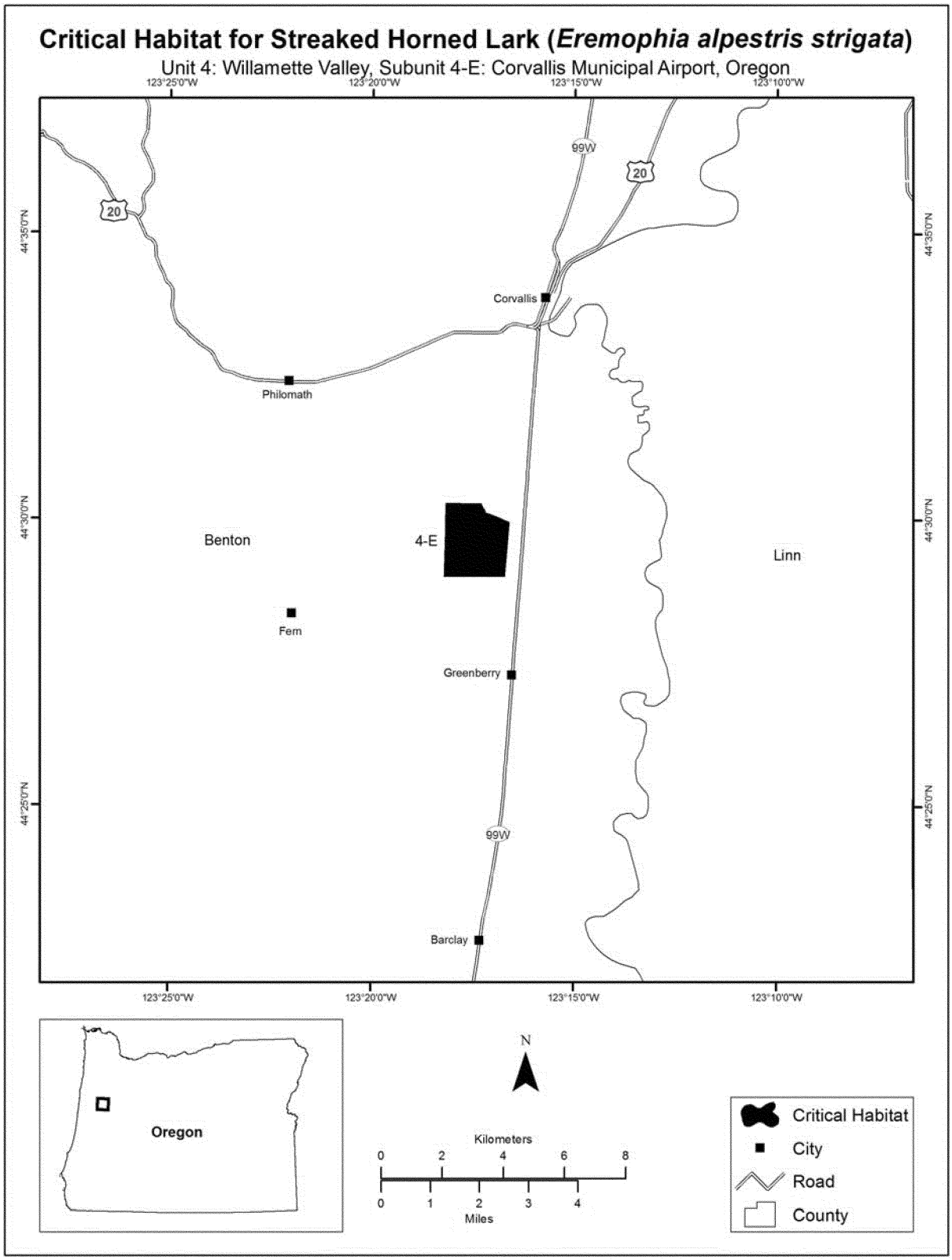
(29) Unit 4—Willamette Valley, Subunit 4–C: Salem Municipal Airport, Marion County, Oregon. Map of Unit 4, Subunit 4–C follows:



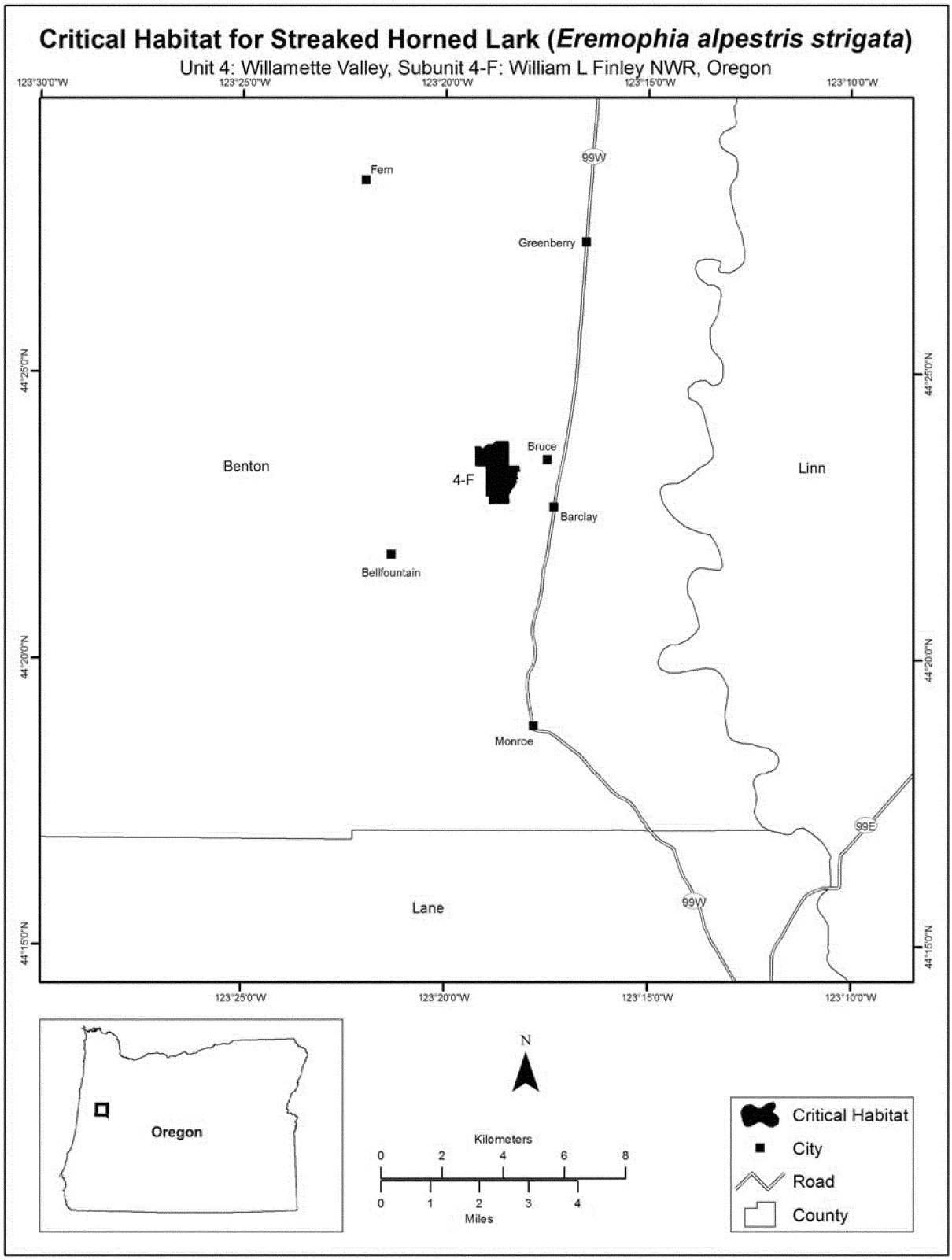
(30) Unit 4—Willamette Valley, Subunit 4–D: Ankeny National Wildlife Refuge, Marion County, Oregon. Map of Unit 4, Subunit 4–D follows:



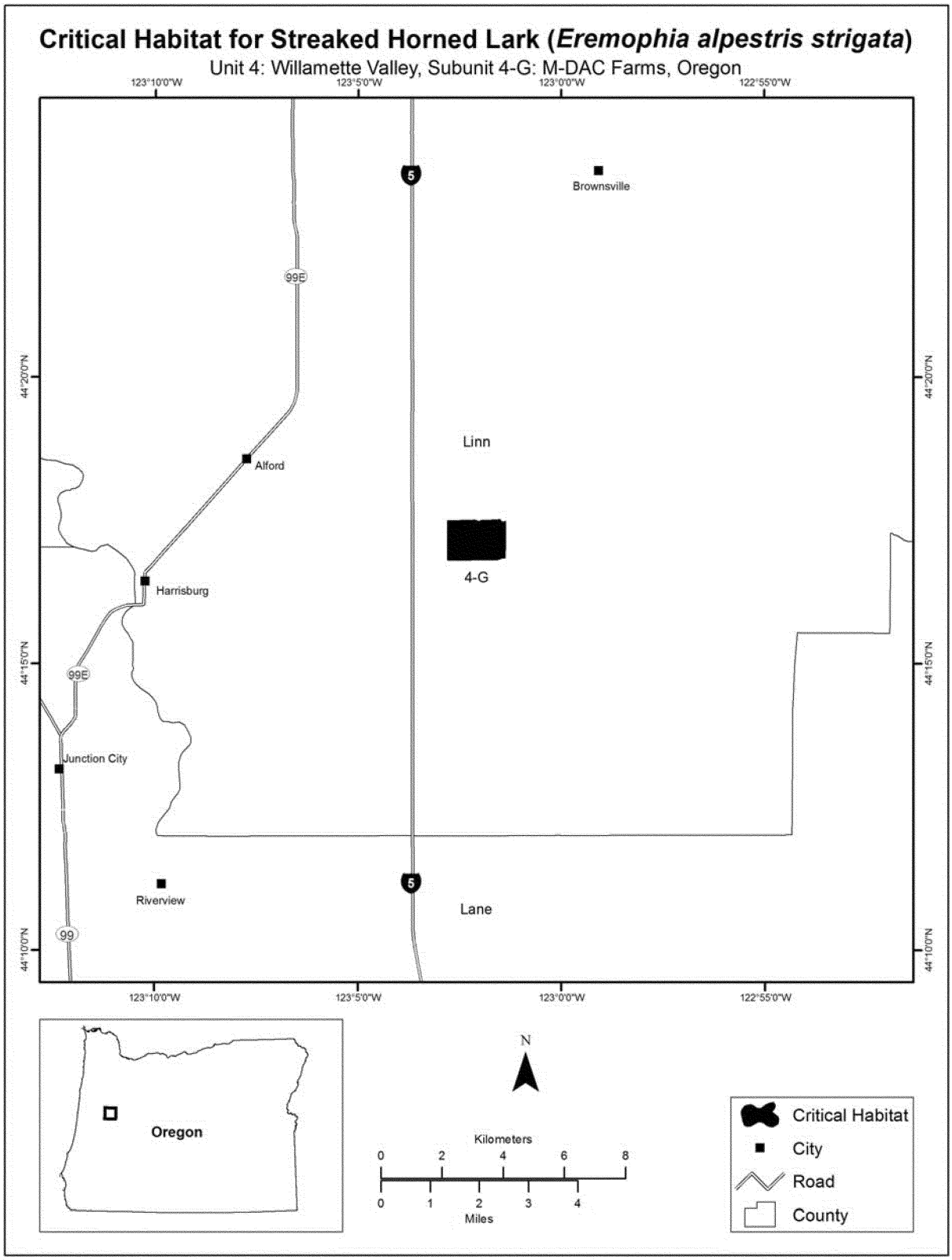
(31) Unit 4—Willamette Valley, Subunit 4–E: Corvallis Municipal Airport, Benton County, Oregon. Map of Unit 4, Subunit 4–E follows:



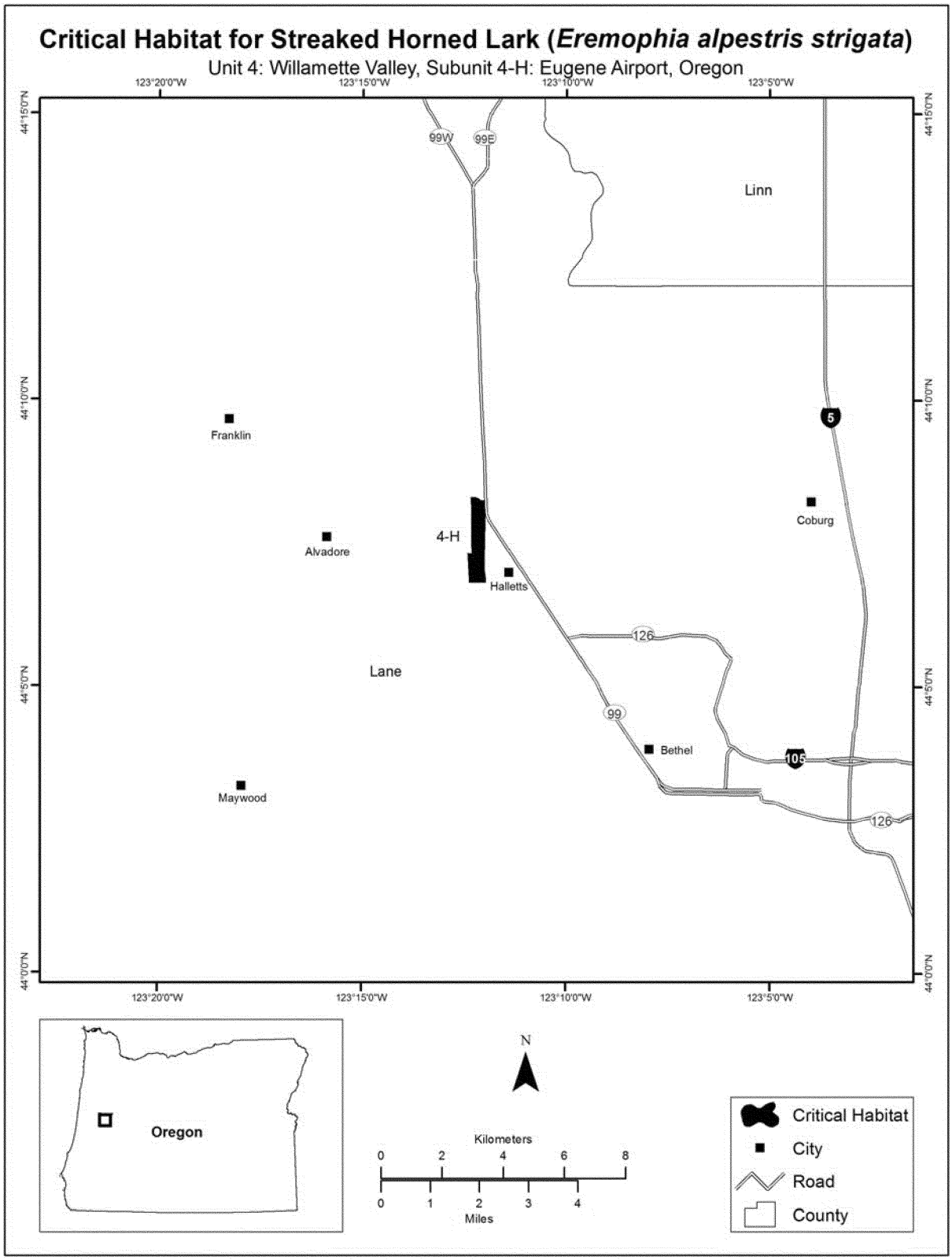
(32) Unit 4—Willamette Valley, Subunit 4–F: William L. Finley National Wildlife Refuge, Benton County, Oregon. Map of Unit 4, Subunit 4–F follows:



(33) Unit 4—Willamette Valley, Subunit 4–G: M–DAC Farms, Linn County, Oregon. Map of Unit 4, Subunit 4–G follows:



(34) Unit 4—Willamette Valley, Subunit 4–H: Eugene Airport, Lane County, Oregon. Map of Unit 4, Subunit 4–H follows:



* * * * *

(i) *Insects.*

* * * * *

Taylor's checkerspot butterfly (*Euphydryas editha taylori)*

(1) Critical habitat units are depicted for Thurston, Pierce, Island, Clallam Counties in Washington, and Benton County, Oregon, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Euphydryas editha taylori* consist of:

(i) Patches of early seral, short-statured, perennial bunchgrass plant communities composed of native grass

and forb species in a diverse topographic landscape ranging in size from less than 1 ac up to 100 ac (0.4 to 40 ha) with little or no overstory forest vegetation that have areas of bare soil for basking that contain:

(A) In Washington and Oregon, common bunchgrass species found on northwest grasslands include *Festuca roemeri* (Roemer's fescue), *Danthonia californica* (California oat grass), *Koeleria cristata* (prairie Junegrass), *Elymus glaucus* (blue wild rye), *Agrostis scabra* (rough bentgrass), and on cooler, high-elevation sites typical of coastal bluffs and balds, *Festuca rubra* (red fescue).

(B) On moist grasslands found near the coast and in the Willamette Valley, there may be *Bromus sitchensis* (Sitka brome) and *Deschampsia cespitosa* (tufted hairgrass) in the mix of prairie grasses. Less abundant forbs found on the grasslands include, but are not limited to, *Trifolium* spp. (true clovers), narrow-leaved plantain, harsh paintbrush, Puget balsam root, woolly sunshine, nine-leaved desert parsley, fine-leaved desert parsley, common camas, showy fleabane, Canada thistle, common yarrow, prairie lupine, and sickle-keeled lupine.

(ii) Primary larval host plants (narrow-leaved plantain and harsh paintbrush) and at least one of the secondary annual larval host plants (blue-eyed Mary, sea blush, or dwarf owl-clover) or one of several species of speedwell (marsh speedwell, American speedwell, or thymeleaf speedwell).

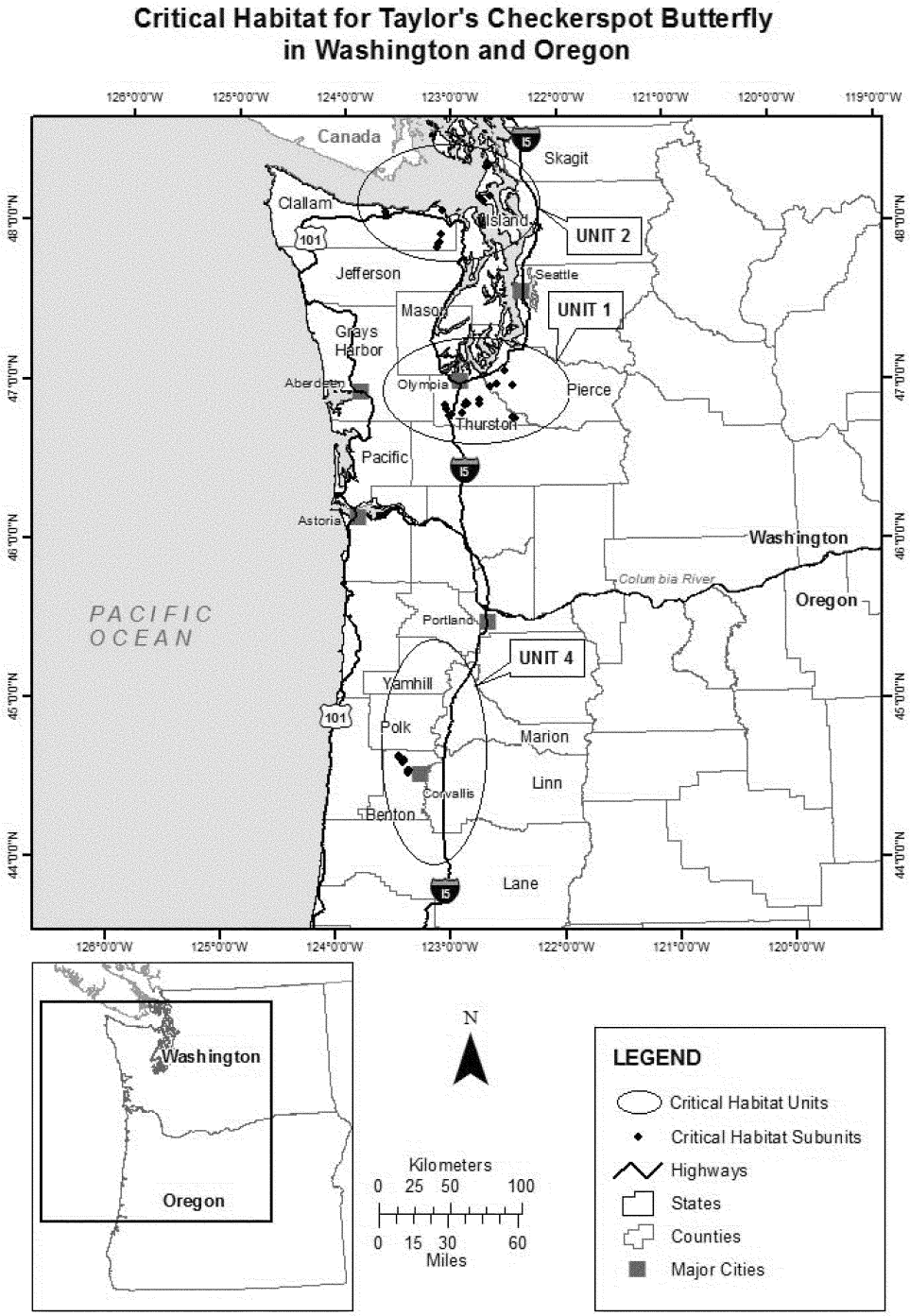
(iii) Adult nectar sources for feeding that include several species found as part of the native (and one nonnative) species mix on northwest grasslands, including: narrow-leaved plantain; harsh paintbrush; Puget balsam root; wooly sunshine; nine-leaved desert parsley; fine-leaved desert parsley or spring gold; common camas; showy fleabane; Canada thistle; common yarrow; prairie lupine; and sickle-keeled lupine.

(iv) Aquatic features such as wetlands, springs, seeps, streams, ponds, lakes, and puddles that provide moisture during periods of drought, particularly late in the spring and early summer. These features can be permanent, seasonal, or ephemeral.

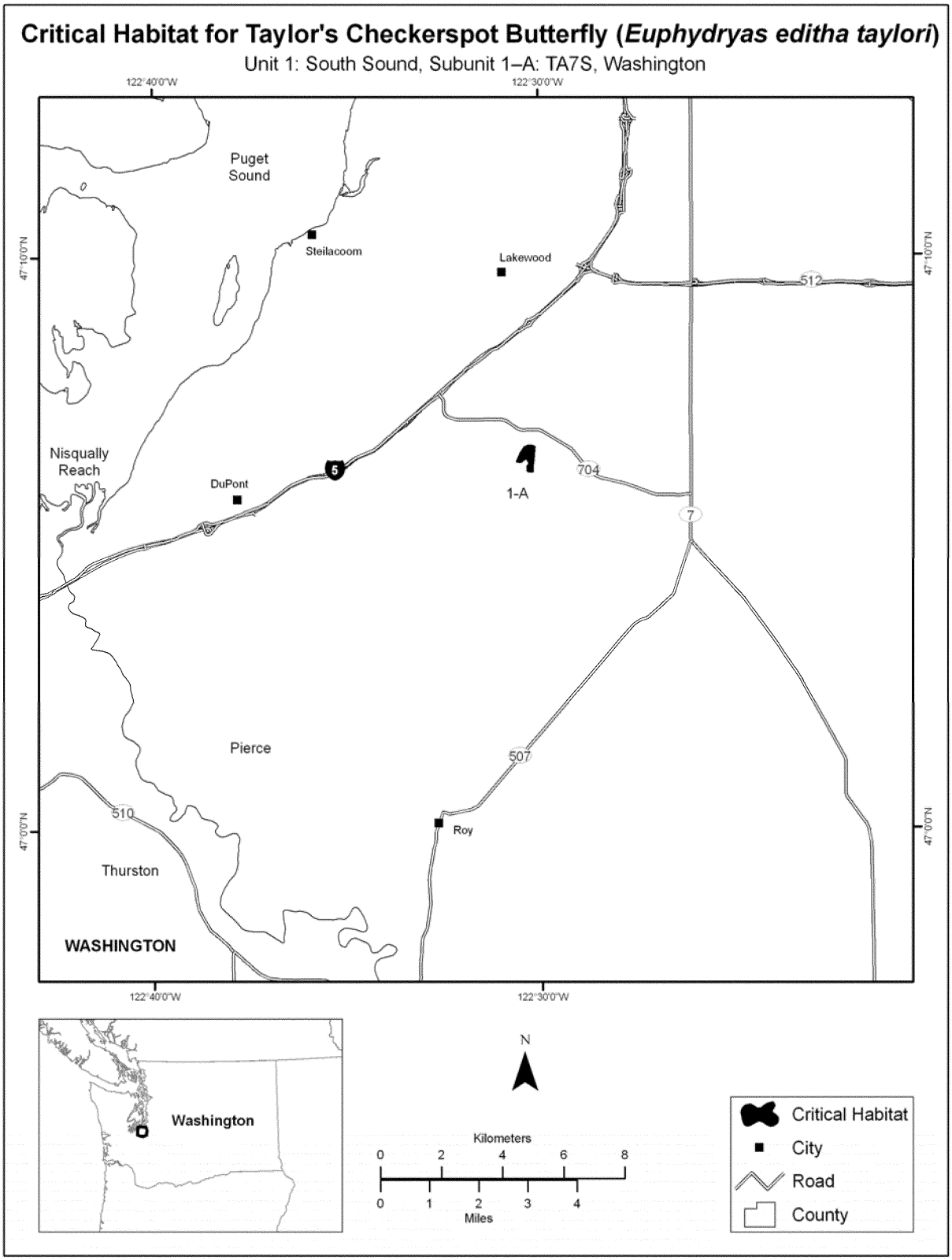
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE].

(4) *Critical habitat map units.* Data layers defining the map unit were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, (*http://www.fws.gov/wafwo/*), the Federal eRulemaking portal (*http://www.regulations.gov* at Docket No. FWS–R1–ES–2012–0080), and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

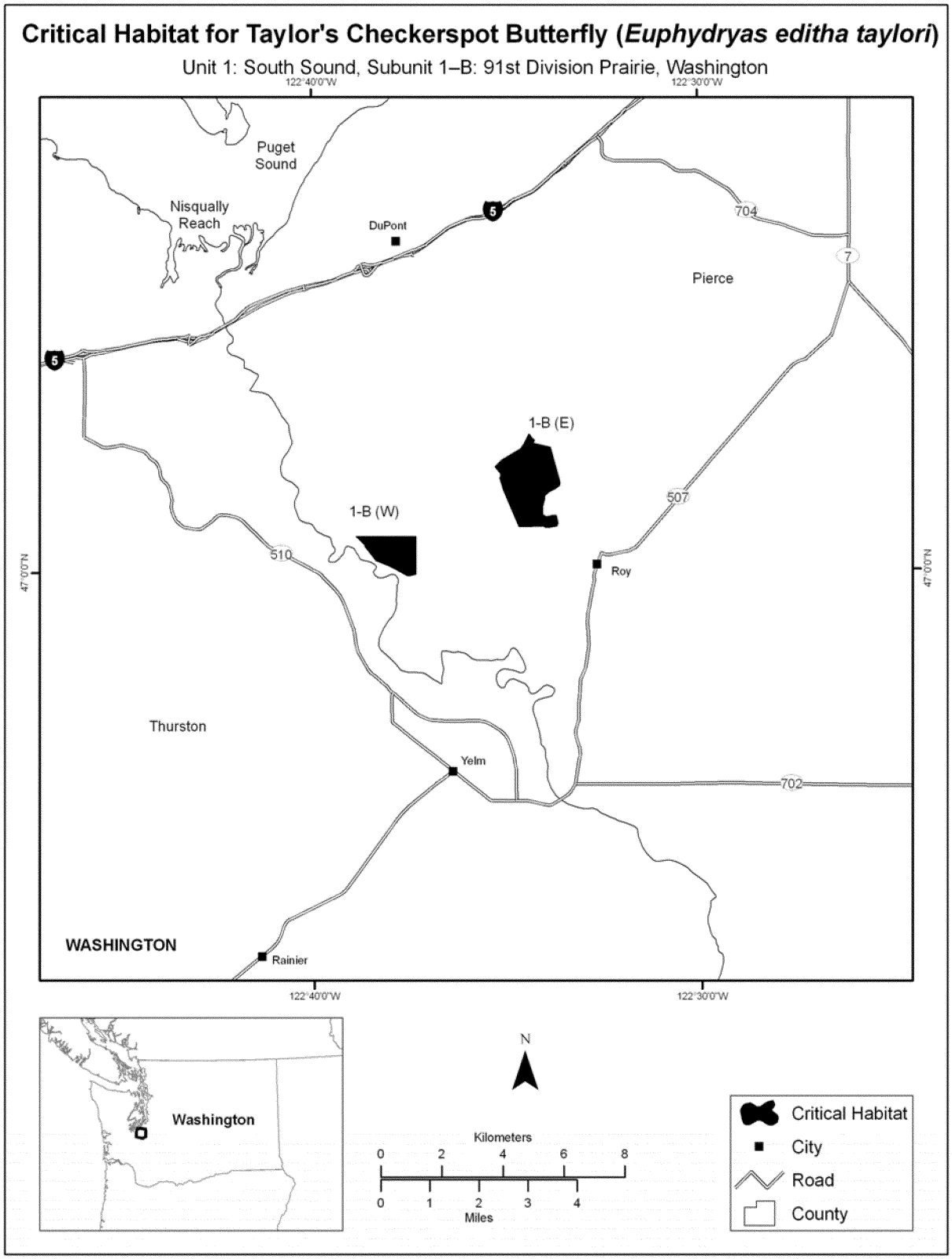
(5) **Note:** Index map follows:



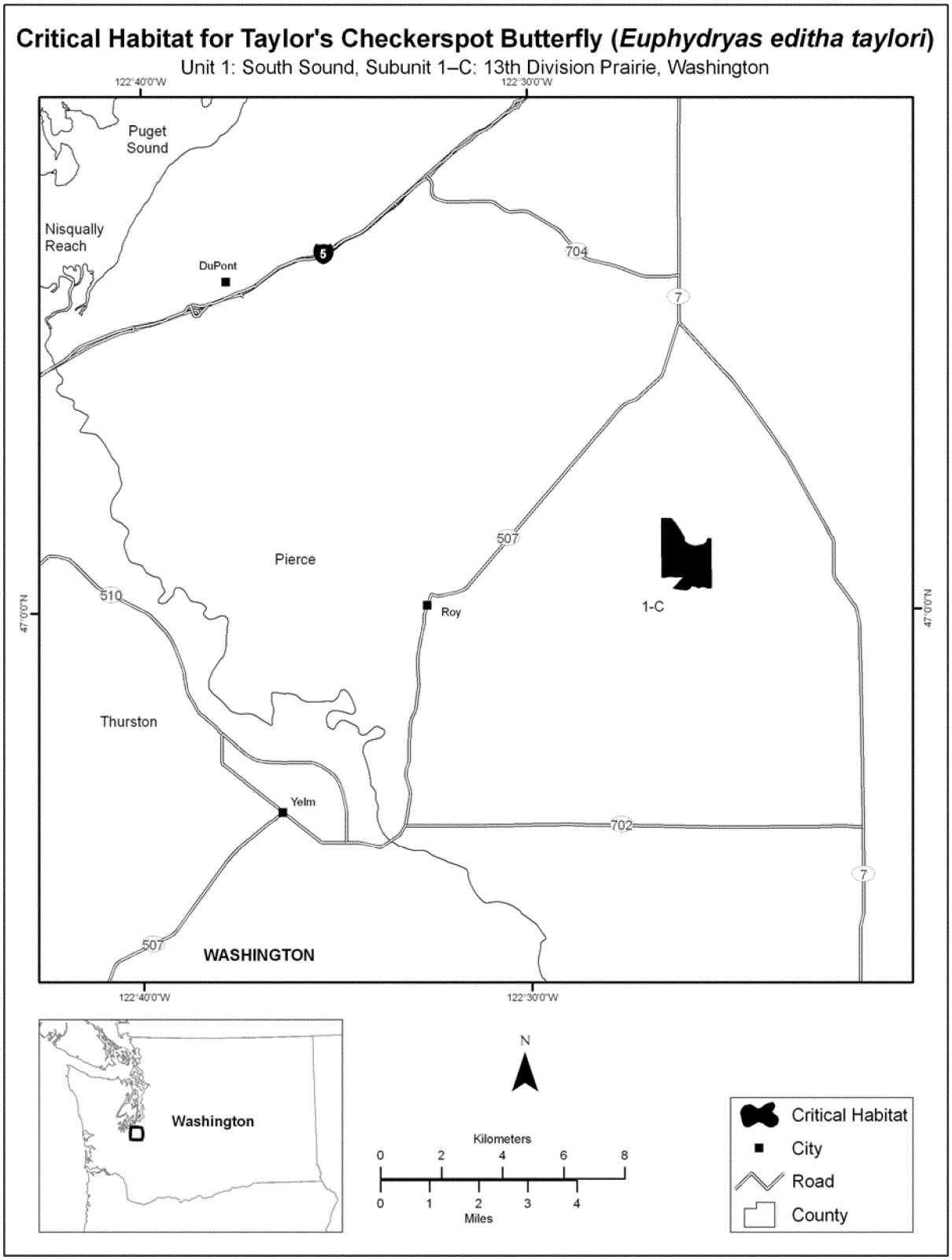
(6) Unit 1—South Sound, Subunit 1–A: TA7S, Pierce County, Washington. Map of Unit 1, Subunit 1–A follows:



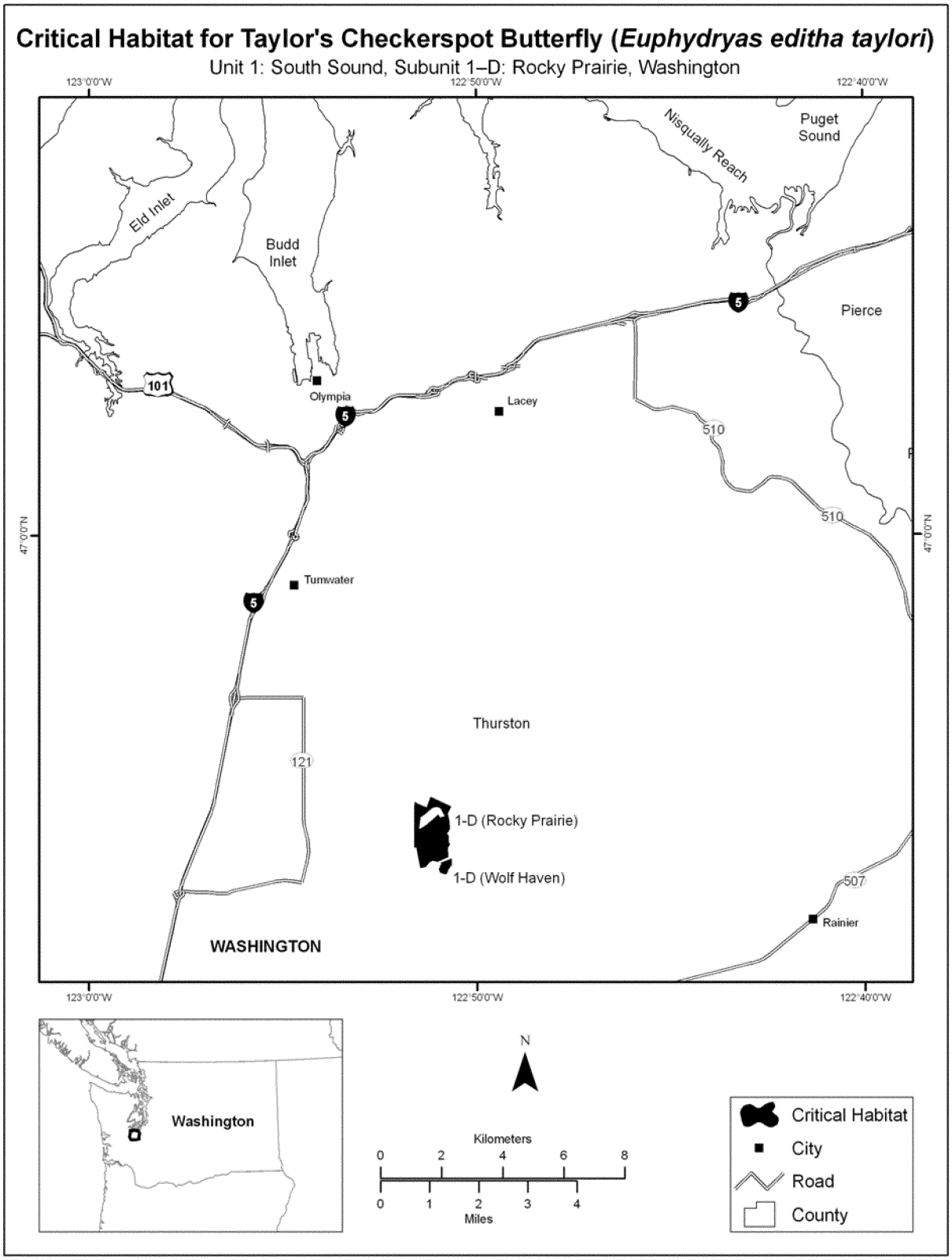
(7) Unit 1—South Sound, Subunit 1–B: 91st Division Prairie, Pierce County, Washington. Map of Unit 1, Subunit 1–B follows:



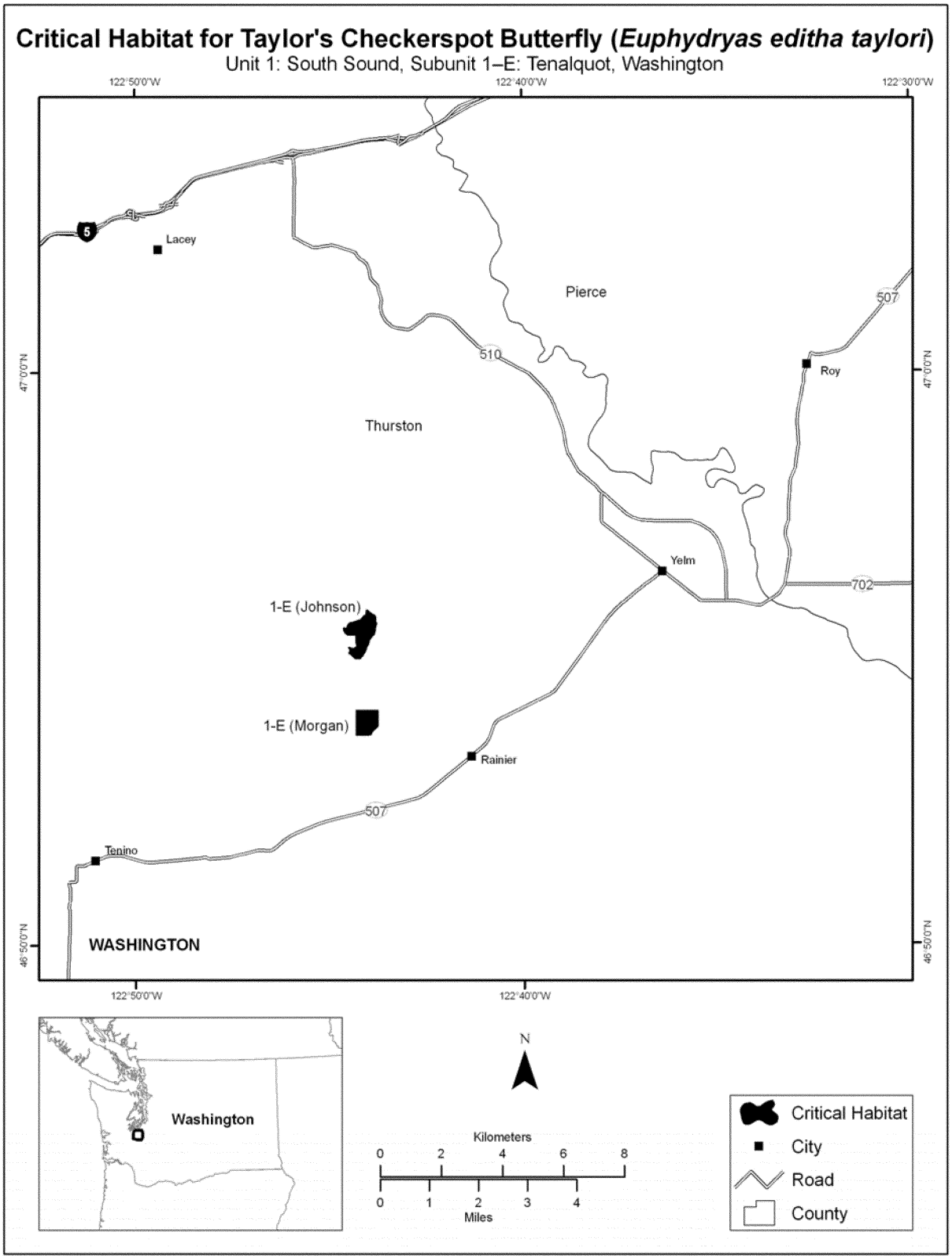
(8) Unit 1—South Sound, Subunit 1–C: 13th Division Prairie, Pierce County, Washington. Map of Unit 1, Subunit 1–C follows.



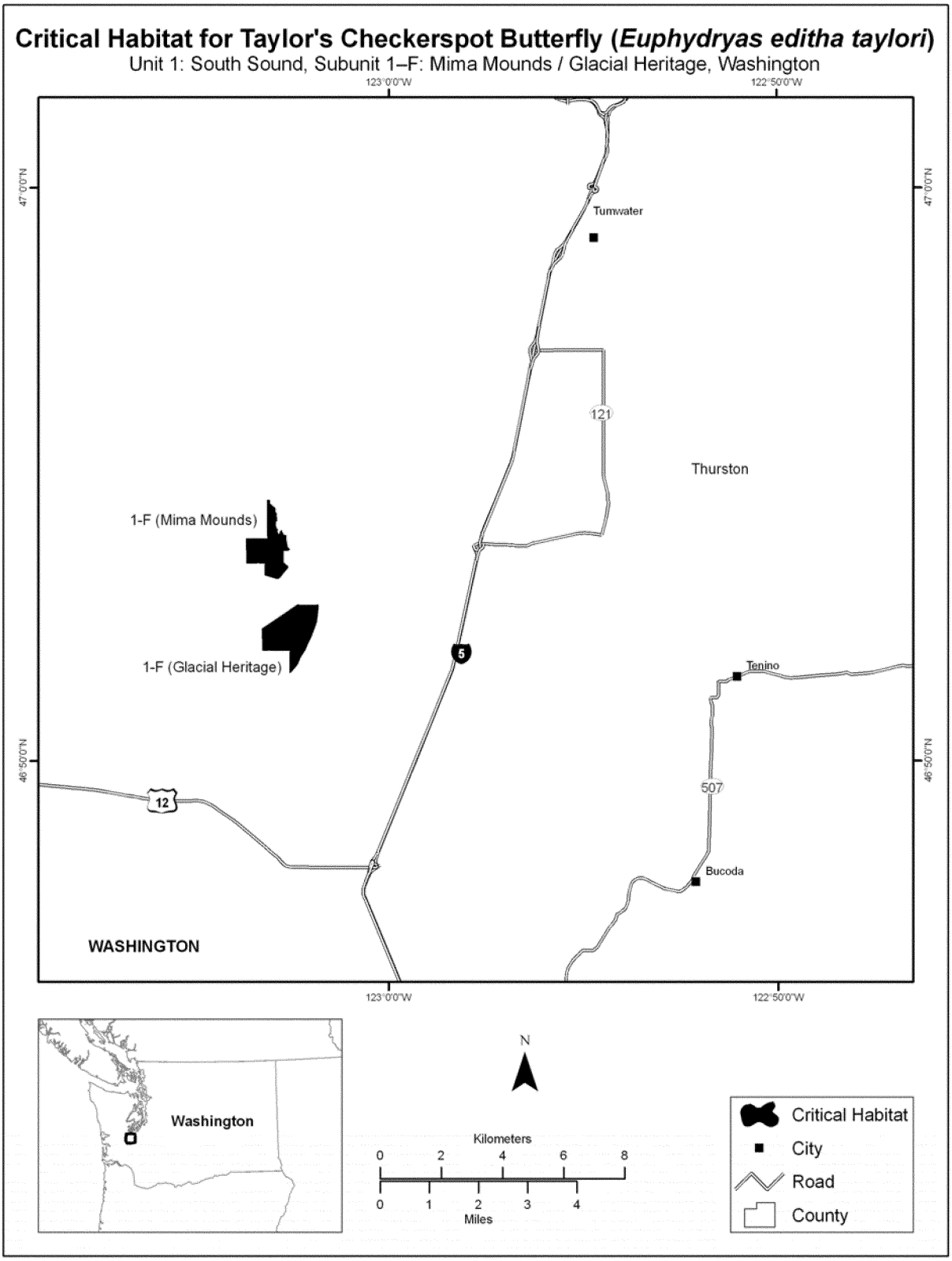
(9) Unit 1—South Sound, Subunit 1–D: Rocky Prairie, Thurston County, Washington. Map of Unit 1, Subunit 1–D follows:



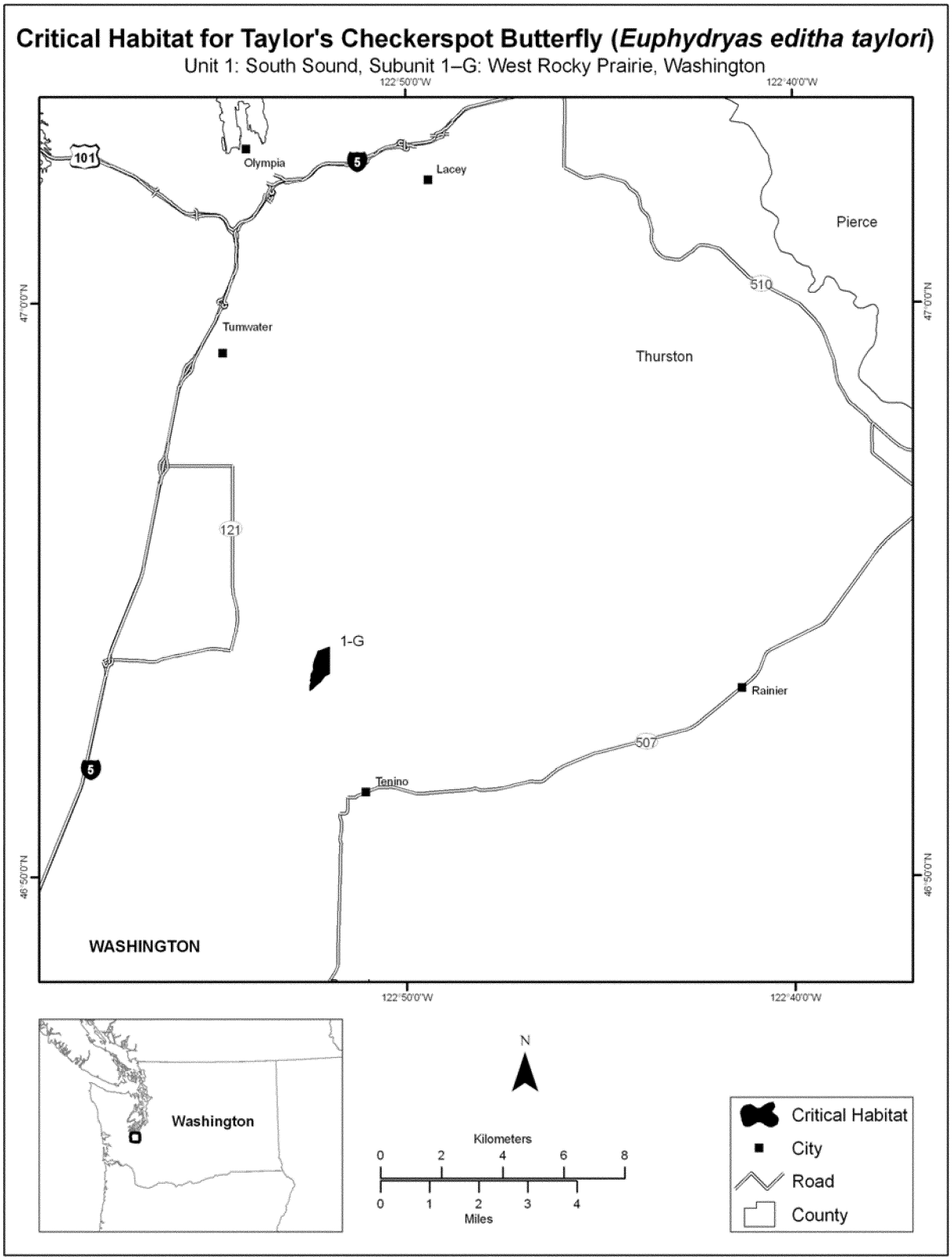
(10) Unit 1—South Sound, Subunit 1–E; Tenalquot, Thurston County, Washington. Map of Unit 1, South Sound, Subunit 1–E follows:



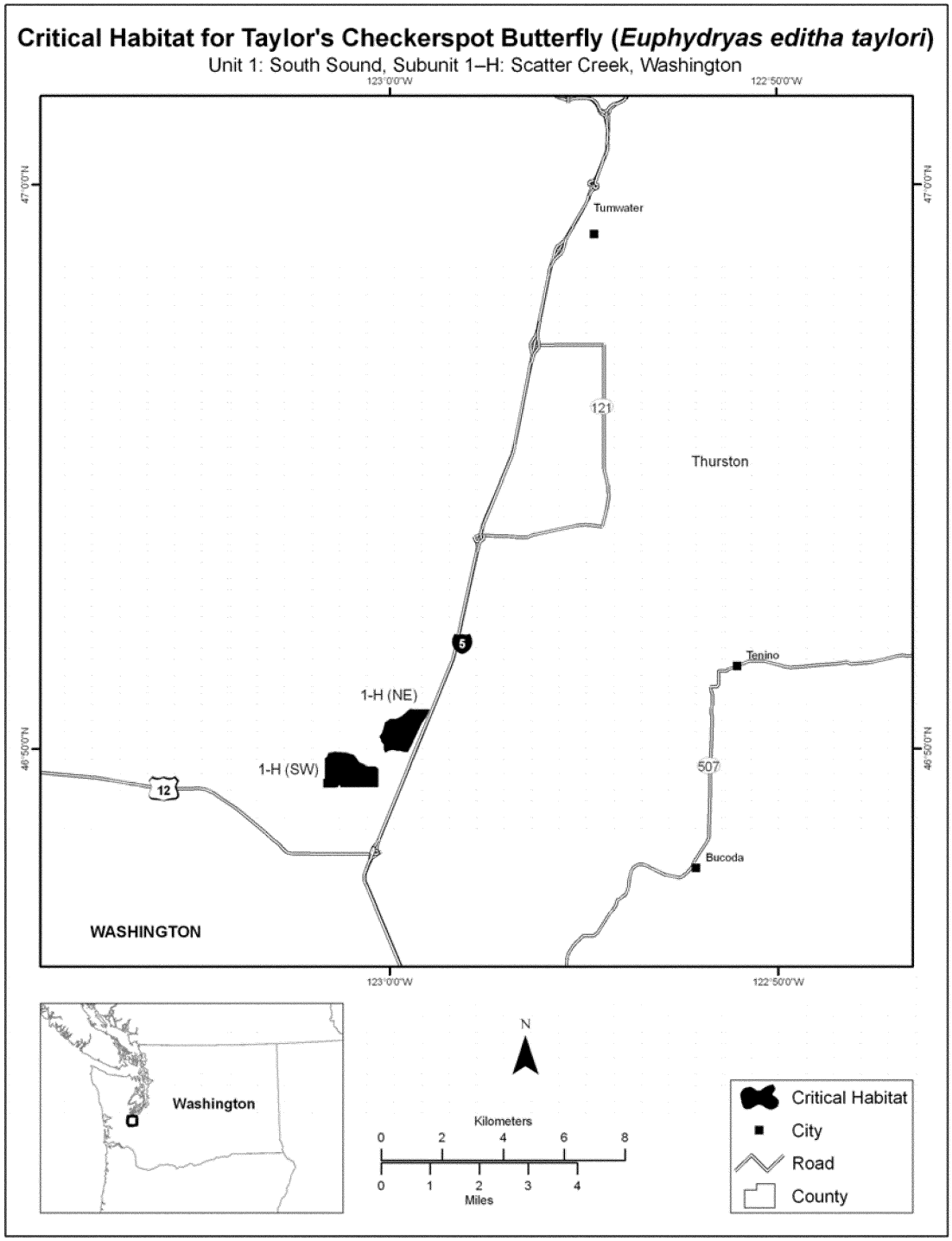
(11) Unit 1—South Sound, Subunit 1–F: Mima Mounds/Glacial Heritage, Thurston County, Washington. Map of Unit 1, Subunit 1–F follows.



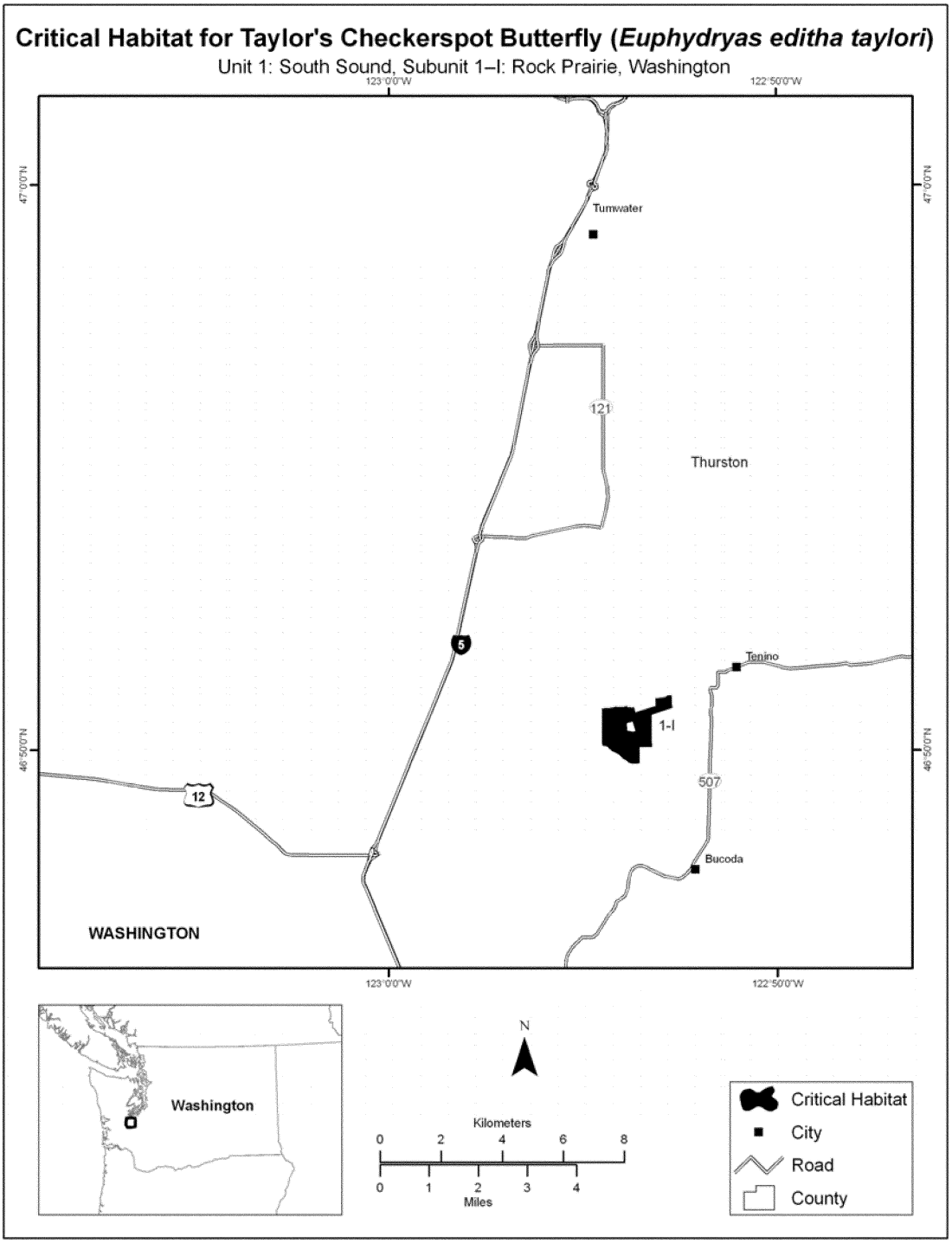
(12) Unit 1—South Sound, Subunit 1–G: West Rocky Prairie, Thurston County, Washington. Map of Unit 1, Subunit 1–G follows.



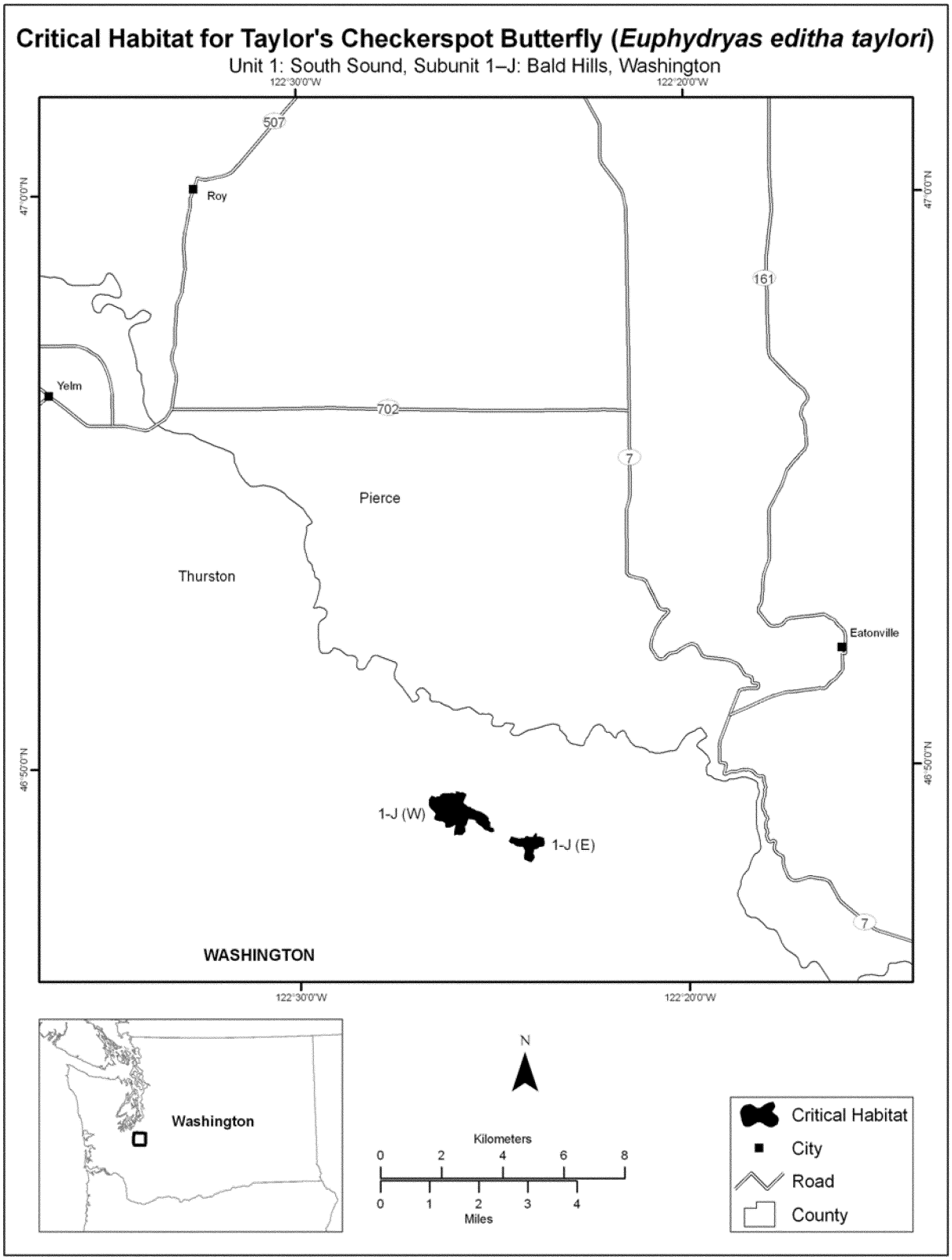
(13) Unit 1—South Sound, Subunit 1–H: Scatter Creek, Thurston County, Washington. Map of Unit 1, Subunit 1–H follows:



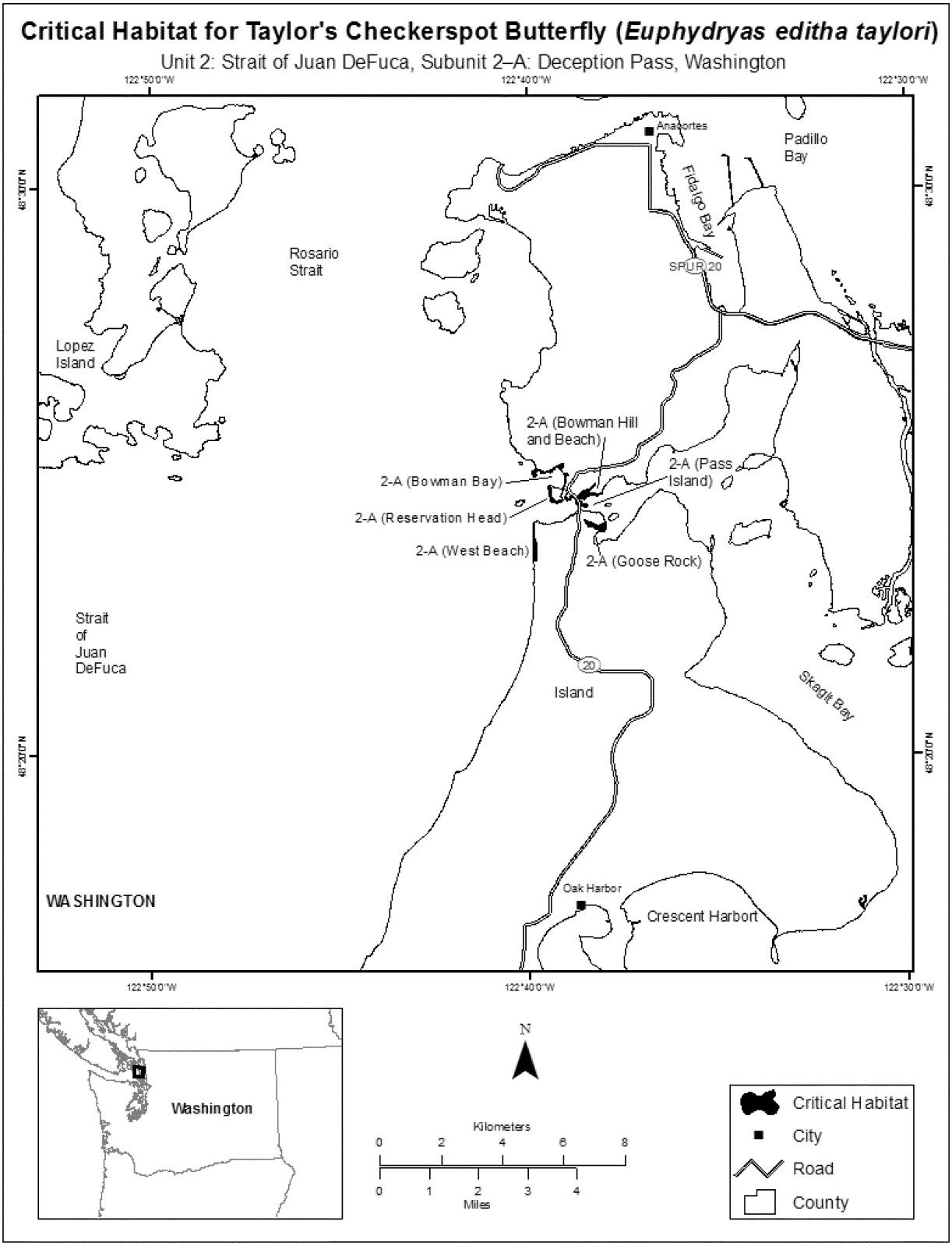
(14) Unit 1—South Sound, Subunit 1–I: Rock Prairie, Thurston County, Washington. Map of Unit 1, Subunit 1–I follows:



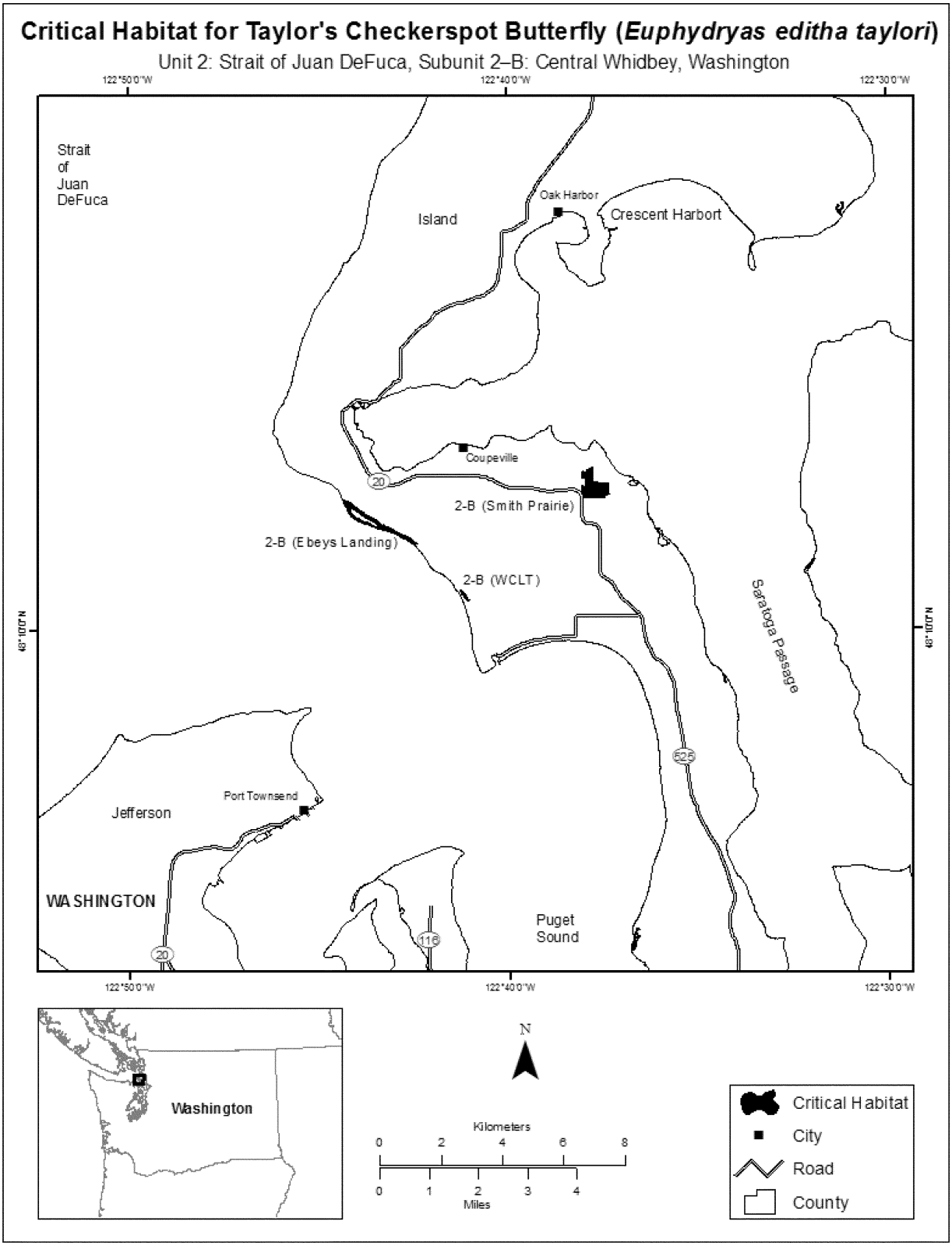
(15) Unit 1—South Sound, Subunit 1–J: Bald Hills, Thurston County, Washington. Map of Unit 1, Subunit 1–J follows:



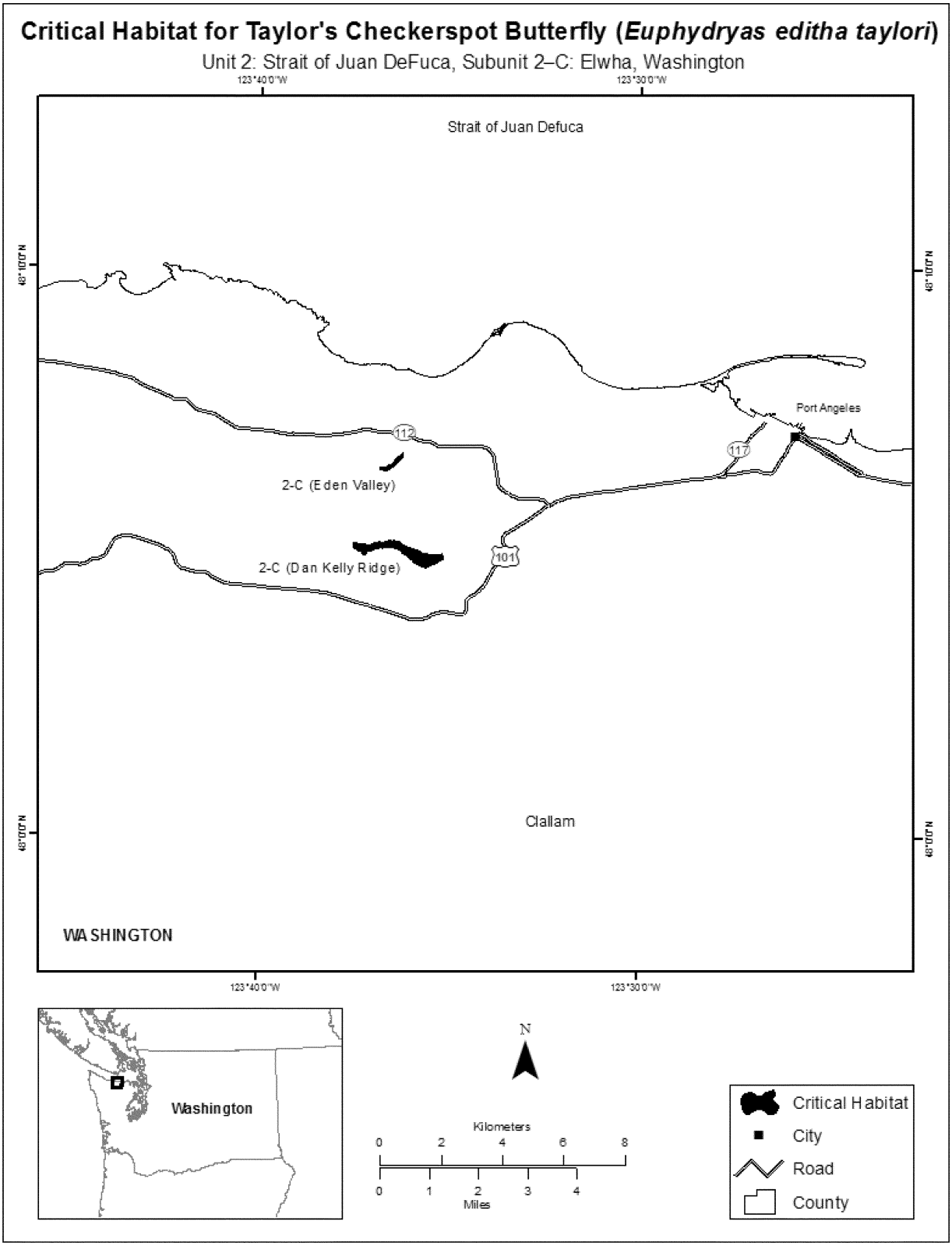
(16) Unit 2—Strait of Juan DeFuca, Subunit 2–A: Deception Pass, Island County, Washington. Map of Unit 2, Subunit 2–A, follows:



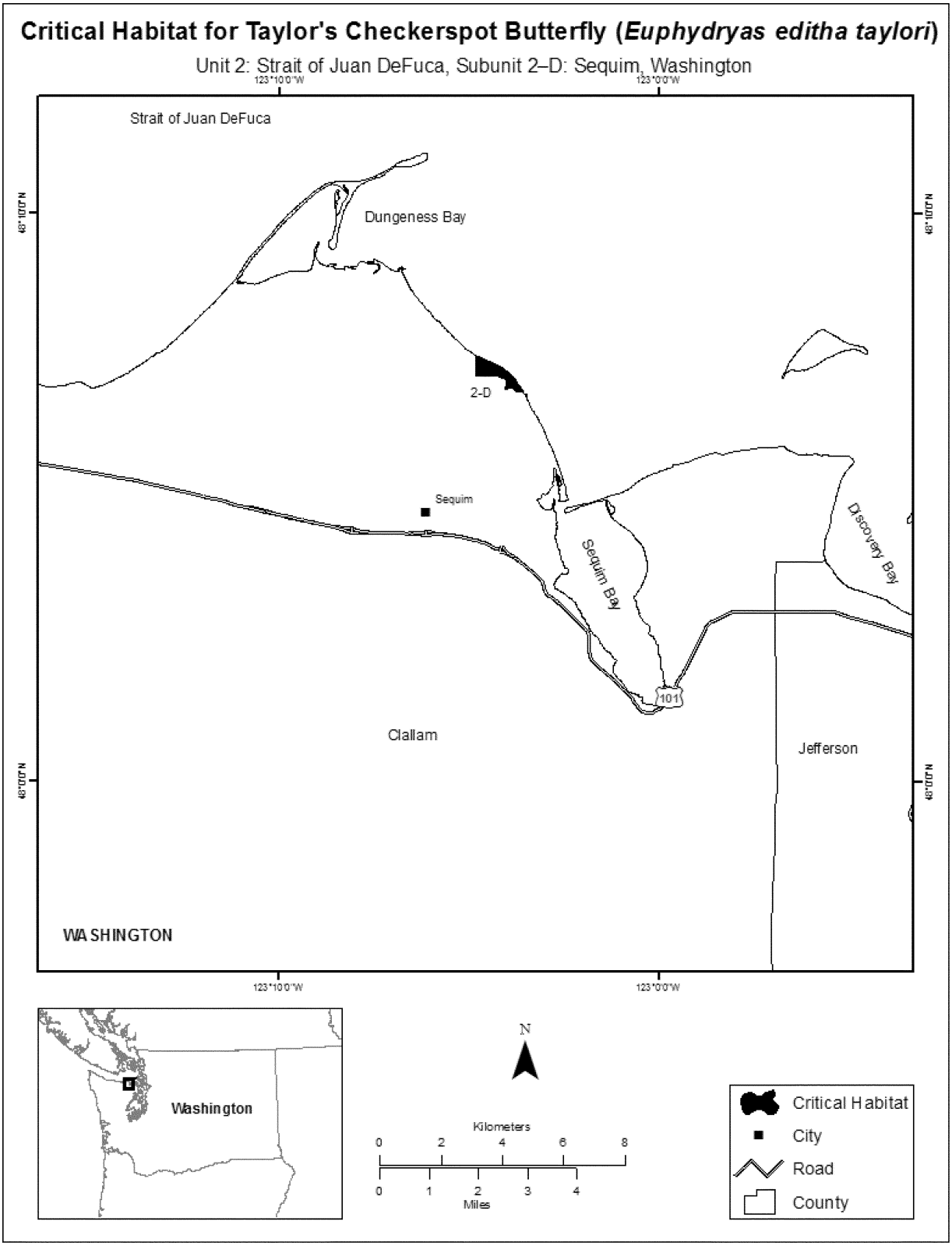
(17) Unit 2—Strait of Juan DeFuca, Subunit 2–B: Central Whidbey, Island County, Washington. Map of Unit 2, Subunit 2–B follows:



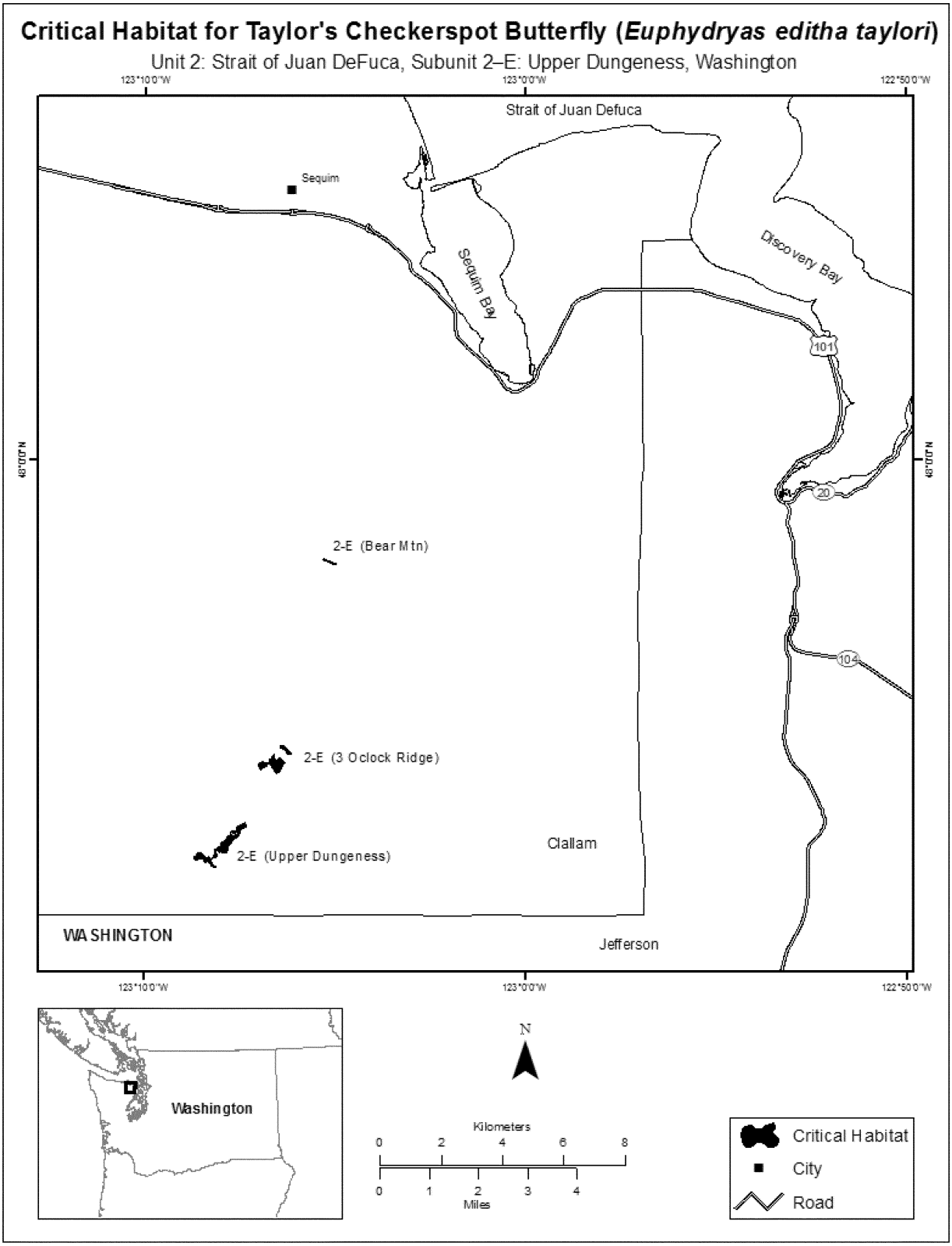
(18) Unit 2—Strait of Juan DeFuca, Subunit 2–C: Elwha, Clallam County, Washington. Map of Unit 2, Subunit 2–C follows:



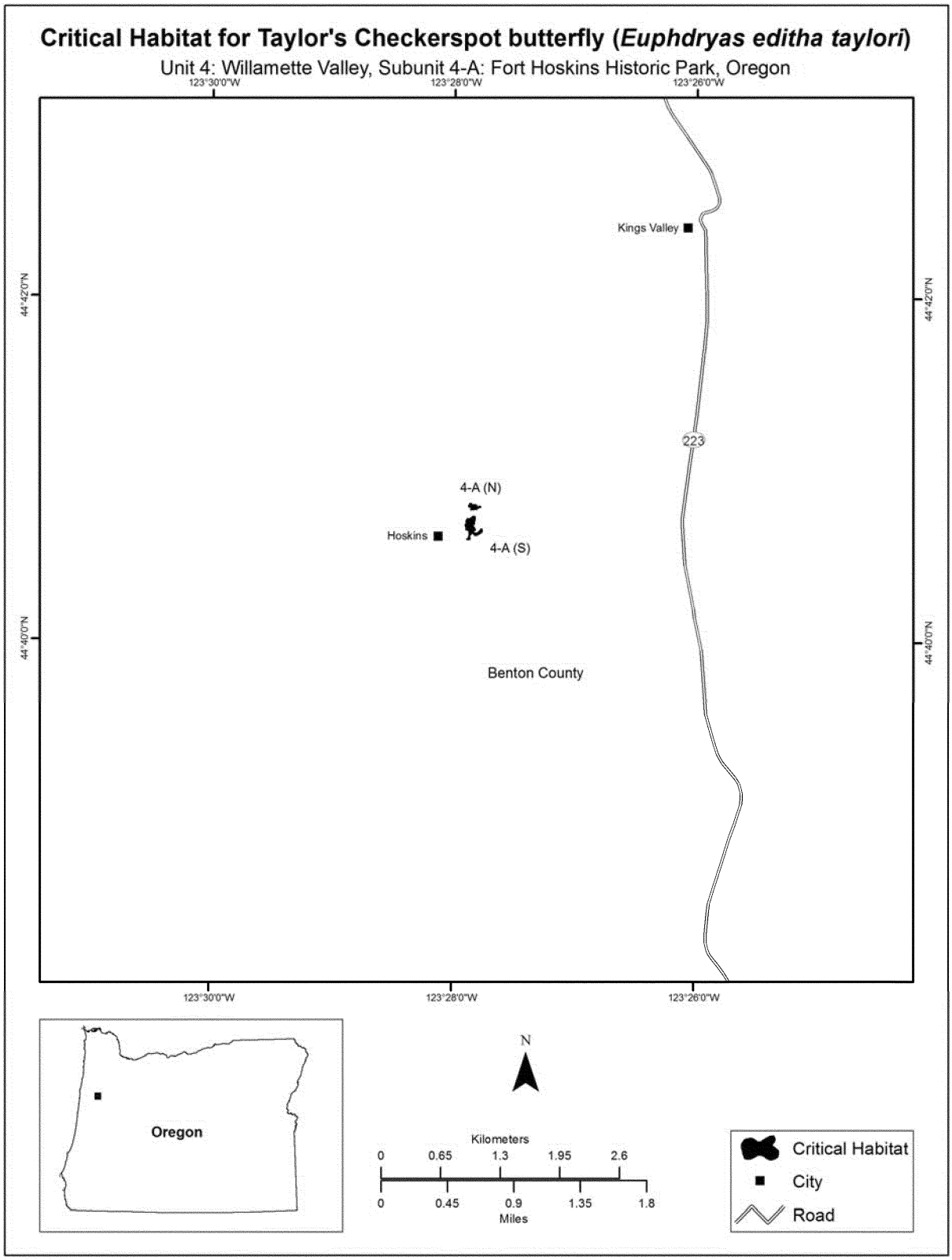
(19) Unit 2—Strait of Juan DeFuca, Subunit 2–D: Sequim, Clallam County, Washington. Map of Unit 2, Subunit 2–D follows:



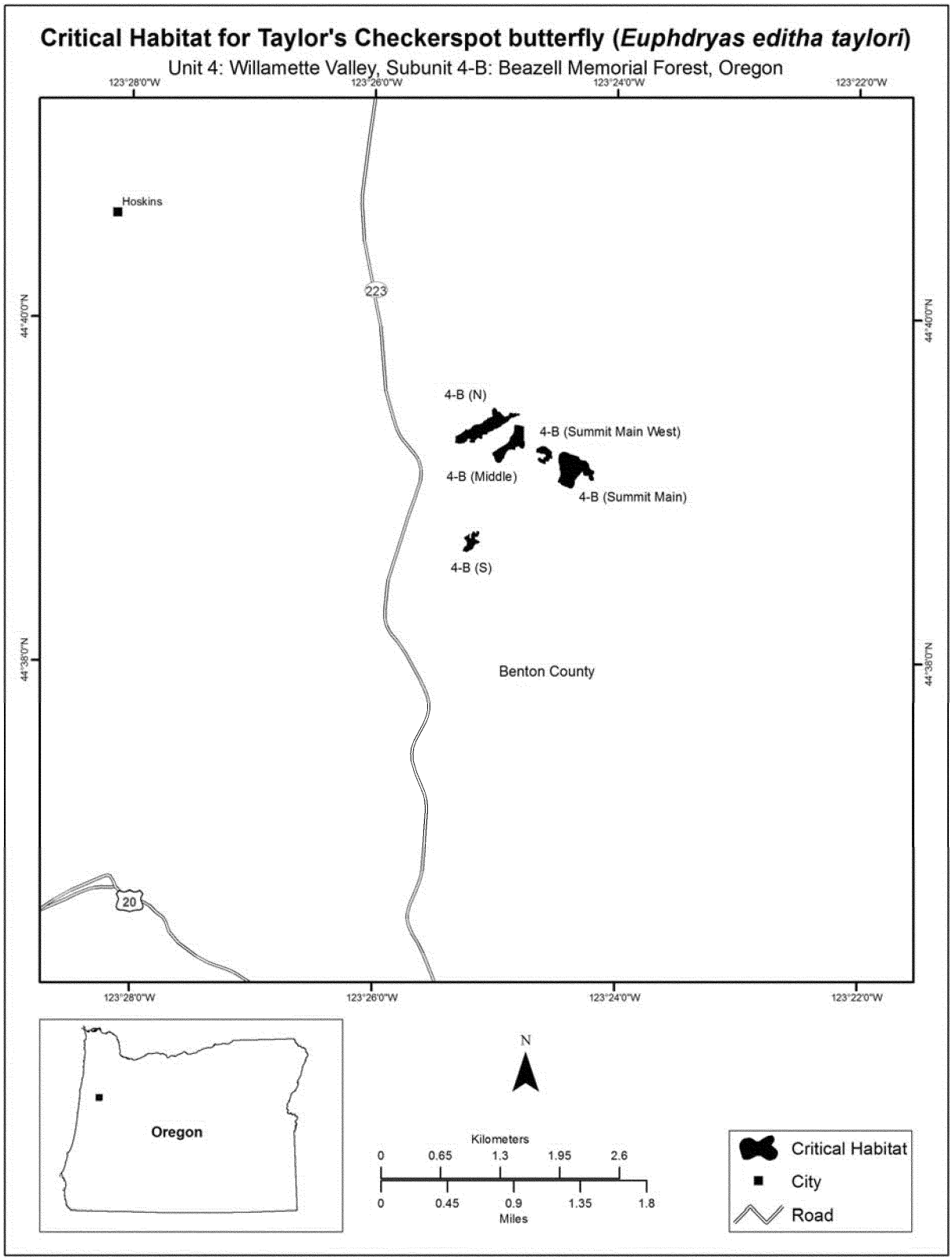
(20) Unit 2—Strait of Juan DeFuca, Subunit 2–E: Upper Dungeness, Clallam County, Washington. Map of Unit 2, Subunit 2- E, follows:



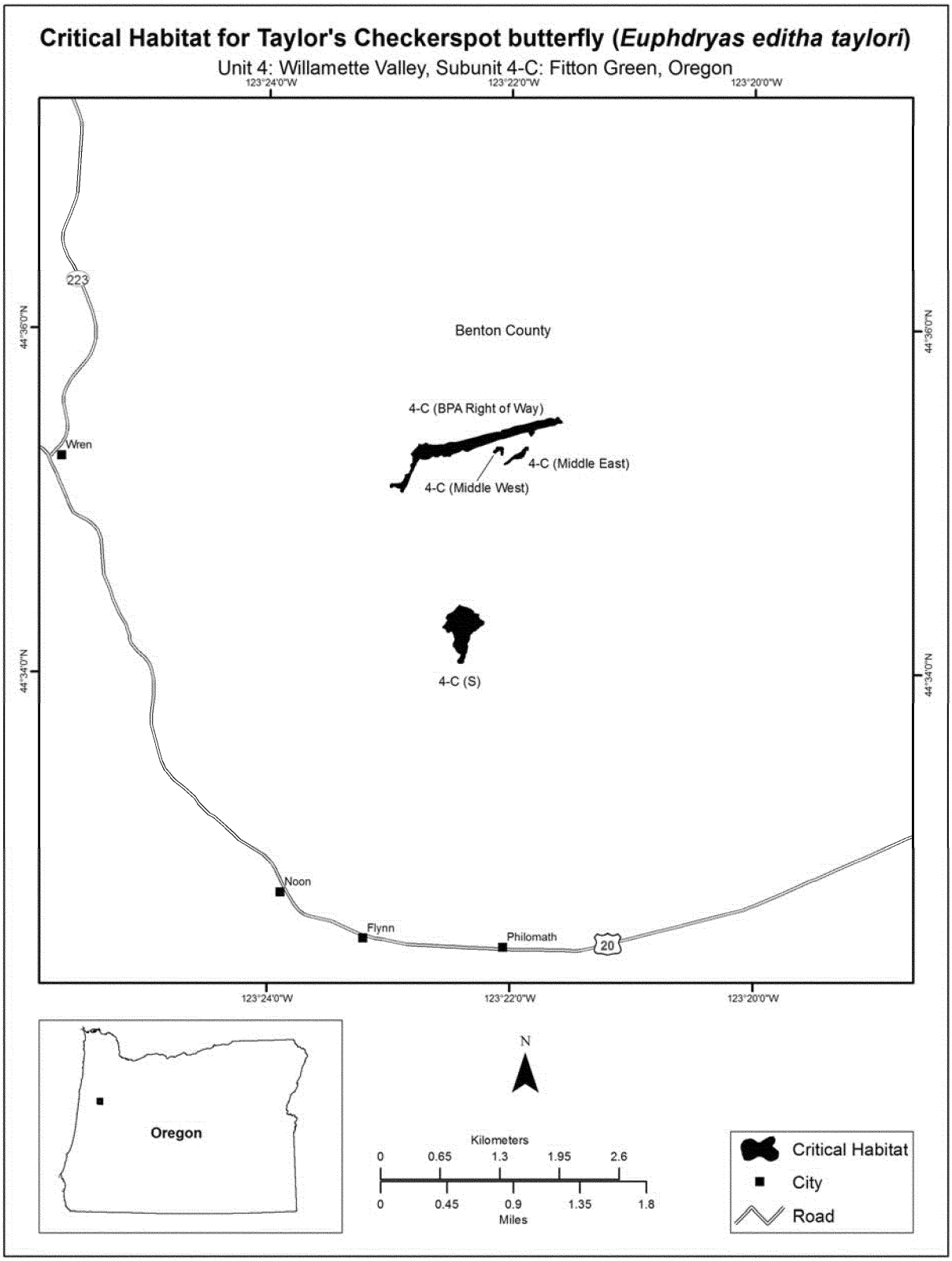
(21) Unit 4—Willamette Valley, Subunit 4–A: Fort Hoskins Historic Park, Benton County, Oregon. Map of Unit 4, Subunit 4–A follows:



(22) Unit 4—Willamette Valley, Subunit 4–B: Beazell Memorial Forest, Benton County, Oregon. Map of Unit 4, Subunit 4–B follows:



(23) Unit 4: Willamette Valley, Subunit 4–C: Fitton Green, Benton County, Oregon. Map of Unit 4, Subunit 4–C, follows:


Critical Habitat for Taylor's Checkerspot butterfly (*Euphdryas editha taylori*)
Unit 4: Willamette Valley, Subunit 4-C: Fitton Green, Oregon
123°24'0"W
123°22'0"W
123°20'0"W
44°36'0"N
44°34'0"N
223
Benton County
4-C (BPA Right of Way)
4-C (Middle East)
4-C (Middle West)
Wren
4-C (S)
Noon
Flynn
Philomath
20
Oregon
N
Kilometers
0
0.65
1.3
1.95
2.6
0
0.45
0.9
1.35
1.8
Miles
Critical Habitat
City
Road

* * * * *

Dated: September 27, 2012.

Eileen Sobeck,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–24465 Filed 10–10–12; 8:45 am]

BILLING CODE 4310–55–C

FEDERAL REGISTER

Vol. 77 Thursday,

No. 197 October 11, 2012

Part V

National Transportation Safety Board

Privacy Act of 1974, as Amended; Revisions to Existing Systems of Records; Notice

NATIONAL TRANSPORTATION SAFETY BOARD

Privacy Act of 1974, as Amended; Revisions to Existing Systems of Records

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice of revised systems of records.

SUMMARY: The NTSB conducted a comprehensive review of previously published notices describing the systems of records it maintains pursuant to the Privacy Act of 1974. The NTSB is revising and republishing all its systems of records (systems) notices as a result of this review. The systems revisions are minor corrective and administrative changes that do not meet the threshold criteria established by the Office of Management and Budget (OMB) for either a new or altered system of records.

DATES: This action will be effective without further notice 30 days from the date of publication in the **Federal Register**, unless the NTSB receives comments that result in a contrary determination.

ADDRESSES: You may send written comments using any of the following methods:

1. *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
2. *Mail:* Mail comments concerning this notice to Melba D. Moye, CIO–40, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594–2000.
3. *Fax:* (202) 314–6132, Attention: Melba D. Moye
4. *Hand Delivery:* 6th Floor, National Transportation Safety Board, CIO–40, 490 L'Enfant Plaza, SW., Washington, DC, between 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Melba D. Moye, Office of Chief Information Officer, Records Management Division, (202) 314–6551.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended (codified at 5 U.S.C. 552a), the NTSB notes that each of the descriptions below includes a reference to the Chief of the NTSB's Records Management Division. Individuals may request access to or amendment of records pertaining to themselves by contacting the Chief of the NTSB's Records Management Division, or the Chief's designee. Several descriptions also reference particular General Records Schedules; these Schedules are from the National Archives and Records Administration (NARA), and are available on the NARA Web site.

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NTSB–2

SYSTEM NAME:

Official Personnel Folders.

SYSTEM LOCATION:

Records on current Federal employees are located within the employing agency. Records maintained in paper may also be located at OPM or with personnel officers, or at other designated offices of local installations of the department or agency that employs the individual. When agencies determine that duplicates of these records need to be located in a second office, e.g., an administrative office closer to where the employee actually works, such copies are covered by this system. Some agencies have employed the Enterprise Human Resource Integration (EHRI) data system to store their records electronically. Although stored in EHRI, agencies are still responsible for the maintenance of their records. Former Federal employees' paper Official Personnel Folders (OPFs) are located at the National Personnel Records Center, National Archives and Records Administration (NARA), 111 Winnebago Street, St. Louis, Missouri 63118. Former Federal employees' electronic Official Personnel Folders (eOPF) are located in the EHRI data system that is administered by NARA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and certain former NTSB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include employee's name, Social Security number, date of birth, home address, home telephone number, and specialized education. Records reflect Federal service and work experience, including past and present positions held, grades, salaries, duty station locations, and notices of all personnel actions, such as appointments, promotions, reassignments, demotions, details, transfers, reductions-in-force, resignations, retirements, removal, and suspensions. Records also include information concerning election and/or waiver of Federal benefits, including employees' designation of beneficiaries for these and other programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 *et seq.,* 1302, 2951, 3301, 4118, 8347; 5 CFR part 293; Executive Order Nos. 9,397, 9,830, and 12,107.

PURPOSE(S):

The OPF, which may exist in various approved media, and other general personnel records files, is the official repository of the records, reports of personnel actions, and the documentation required in connection with these actions affected during an employee's Federal service. The personnel action reports and other documents, some of which are filed in the OPF, give legal force and effect to

personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment. These files and records are maintained by OPM and agencies in accordance with OPM regulations and instructions. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

The OPF, which may exist in various approved media, and other general personnel records files, is the official repository of the records, reports of personnel actions, and the documentation required in connection with these actions affected during an employee's Federal service. The personnel action reports and other documents, some of which are filed in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment. These files and records are maintained by OPM and agencies in accordance with OPM regulations and instructions. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services. These records may also be used to locate individuals for personnel research.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

These records are maintained in file folders, on lists and forms, microfilm or microfiche, and in computer processable storage media such as personnel system databases, PDF forms and data warehouse systems.

RETRIEVABILITY:

These records are retrieved by the name, Social Security number, or date of birth of the individuals about whom they concern.

SAFEGUARDS:

Paper or microfiche/microfilmed records are located in locked metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of user logins and passwords, access codes, and entry logs, to those whose official duties require access. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location.

This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB maintains records within this system for the period of the employee's service at the NTSB. When an employee leaves the NTSB to begin employment at another Federal agency, the NTSB transfers these records to the employee's new Federal agency. When an employee retires, resigns, or dies, the NTSB forwards the employee's record to the National Personnel Records Center for permanent storage, in accordance with General Records Schedule 1, item 1.

a. SYSTEM MANAGER(S) AND ADDRESS: Manager, OCIO/RM, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice. Chief, Human Resources Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment; and
5. Signature.

a. Former Federal employees who want access to their Official Personnel Folders (OPF) should contact the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118, regarding the records in this system. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social security number.
d. Last employing agency (including duty station) and approximate date(s) of the employment (for former Federal employees).
e. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individual to whom the record pertains and NTSB officials responsible for pay, leave, and activity reporting requirements.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.
b. Educational institutions.
c. Agency officials and other individuals or entities.
d. Other sources of information maintained in an employee's OPF, in accordance with Code of Federal Regulations part 293, and OPM's

Operating Manual, ''The Guide to Personnel Recordkeeping.''

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

NTSB–3

SYSTEM NAME:

Personnel Security and Investigative Records.

SYSTEM LOCATION:

National Transportation Safety Board, Human Resources Division, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, prospective employees, and potential contractors seeking access to sensitive materials or facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security folders containing the results of name checks, inquiries, record checks, and investigations furnished by the Office of Personnel Management (OPM), the Federal Bureau of Investigation, or a private service provider. Information in these records may contain dates and places of birth, citizenship, marital status, military status, and Social Security records. In addition, these records may contain investigative information concerning an individual's character, conduct, and behavior, as well as arrests, convictions, or judgments regarding any legal or regulatory violations. Records may also contain information from current and former supervisors, colleagues, associates, and educators; in addition, records may contain financial or medical records and any other information developed from the records listed above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order No. 10,450.

PURPOSE(S):

The NTSB maintains this system to determine whether the employment of a job applicant, or retention of a current employee, is in the interest of the Government, as well as which persons may have access to classified or sensitive material and access to other facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to other Federal agencies when necessary to allow the individual to access classified or sensitive material that other Federal agencies maintain;
2. Disclosure to other Federal agencies or private organizations when necessary to allow the individual to visit a certain facility or site; and
3. Disclosure to OPM, when necessary for an investigation, personnel matter, or an assessment of agency compliance with Federal personnel security and suitability program requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

Records are stored on paper in file folders within the Human Resources Division or Office of Management at the NTSB, at the address above.

RETRIEVABILITY:

These records are retrieved by either the name or Social Security number of the individuals about whom they concern.

SAFEGUARDS:

Records are maintained in locked metal file cabinets that are restricted through electronic keycards to enter the facility where records are located. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB maintains records within this system in accordance with OPM directives and General Records Schedule 18, item 22. In general, the NTSB destroys records in this system once the records are obsolete or no longer warrant retention, such as at the conclusion of three years following the year that the employee departed from the NTSB.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Human Resources Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individual to whom the record pertains, and may be obtained from NTSB officials, former employers, educational institutions, and individuals who are familiar with the individual, as well as officials from other Federal agencies.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

NTSB—4

SYSTEM NAME:

Employee Travel Records.

SYSTEM LOCATION:

National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. The National Business Center, which is a division of the Department of Interior, stores some information electronically off-site on behalf of the NTSB, at: National Business Center, DOI, Mail Stop D–2600, 7301 West Mansfield Avenue, Lakewood, Colorado 80235–2230. As described below, the National Business Center transfers the records to the Federal Records Center after the expiration of one year following the date of the employee's travel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and invitational travelers who have traveled pursuant to authorized official business of the NTSB.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel vouchers, which include receipts for various expenditures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Travel Expense Amendments Act of 1975, Public Law 94–22, 89 Stat. 84 (codified at 5 U.S.C. 5701–5707).

PURPOSE(S):

The NTSB maintains this system to determine and verify amounts to be paid to an employee or invitational traveler for reimbursement of travel expenses for authorized, official travel performed on behalf of the NTSB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine use:

- Disclosure to other Federal agencies that need the information for an audit or investigation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

Records are system generated or scanned and saved in an electronic database. In addition, some copies of the records are stored on paper in file folders within the employee's office at the NTSB, at the address above.

RETRIEVABILITY:

These records are indexed by name.

SAFEGUARDS:

Paper records are maintained in lockable file cabinets that are restricted through electronic keycards to enter the facility where records are located. Computerized records are maintained in a secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

Pursuant to General Records Schedule 9, items 3 and 4, the NTSB maintains records relating to reimbursing individuals for six years after payment of the allowable travel expenses and maintains routine administrative records for two years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individual to whom the record pertains.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

NTSB–5

SYSTEM NAME:

Executive Branch Confidential Financial Disclosure Reports.

SYSTEM LOCATION:

National Transportation Safety Board, Office of General Counsel, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NTSB employees who must submit confidential financial disclosure reports under the requirements of the Ethics in Government Act of 1978 (hereinafter ''Ethics Act''), as amended, or to whom the Ethics Act otherwise applies. All such individuals are described in the categories listed in Government-wide system of records notice OGE/GOVT–2. The NTSB incorporates by reference the text of OGE/GOVT–2 into this Notice; as such, this Notice contains a summary of the information and provisions of OGE/GOVT–2 and descriptions of how NTSB–5 is consistent with OGE/GOVT–2, and identifies any differences between NTSB–5 and OGE/GOVT–2. OGE/GOVT–2 is available at 68 FR 3098 (Jan. 22, 2003), as updated at 68 FR 24744 (May 8, 2003).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information that is necessary for administration of all provisions of the Ethics Act and the Ethics Reform Act of 1989, as amended, and Executive Order 12,674, as modified. In particular, this system contains statements and amended statements of personal and family holdings and other interests in property; income; gifts and reimbursements; liabilities; agreements and arrangements; outside positions; and other information related to conflict-of-interest determinations. These statements may consist of certifications of no new interests for the reporting period, and may be supplemental or alternative confidential report forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I of the Ethics in Government Act of 1978, Public Law 95–521, 92 Stat. 1824 (codified as amended 5 U.S.C. 7301, 7351, 7353, and other scattered sections of 5 U.S.C.); 5 CFR part 2634; Executive Order 12,674 (as modified by Executive Order 12,731).

PURPOSE(S):

The NTSB collects the records in this system in order to comply with the Ethics Act, and implementing Office of Government Ethics (OGE) regulations and applicable Executive Orders. The collection of these records is necessary to assure compliance with statutory and regulatory requirements, to determine if an actual or apparent conflict of interest exists between the employment of

individuals by the Federal Government and their outside employment and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

The NTSB notes that, when the Director or other authorized officials of OGE requests that the NTSB furnish OGE with records from this system, such disclosure will be in response to OGE's need for the records in the performance of their official duties under the Ethics Act, and other related statutes, regulations, and Executive Orders, pursuant to 5 U.S.C. 552a(b)(1). In addition to other disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine use:

1. Disclosure of information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination; and

2. Disclosure of the confidential financial disclosure report or certificate of no new interests and any accompanying documents to reviewing officials in a new office, department, or agency when an employee transfers or is detailed from a covered position in one office, department, or agency to a covered position in another office, department, or agency.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

The NTSB primarily maintains these records on paper in file folders. In addition, the Office of General Counsel maintains certain information about current and former employees in searchable electronic databases.

RETRIEVABILITY:

Records in this system are indexed alphabetically by name.

SAFEGUARDS:

Paper records are maintained in locked file cabinets that are restricted through electronic keycards to enter the facility where records are located. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 25, the NTSB retains these records for a period of six years after filing, or for such other period of time as set forth in Schedule 25 for certain types of ethics records. The NTSB may retain records needed in an ongoing investigation for a period that exceeds six years, until the investigation no longer requires such records. At the expiration of the retention period, the NTSB destroys these records by shredding them.

SYSTEM MANAGER(S) AND ADDRESS:

Designated Agency Ethics Official, National Transportation Safety Board, 490 East L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Designated Agency Ethics Official at the following address: National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Dates of employment; and
3. Signature.

RECORD ACCESS PROCEDURES:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Current and former NTSB employees, or designated persons on behalf of such employees, such as trustees, attorneys, accountants, bankers, or relatives; Federal officials who review the records to make conflict-of-interest determinations; persons alleging conflicts of interest or violations of other ethics laws, and persons contacted during any investigation of the allegations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–6

SYSTEM NAME:

Employee Payroll, Leave, and Attendance Records.

SYSTEM LOCATION:

National Transportation Safety Board, Human Resources Division, 490 L'Enfant Plaza SW., Washington, DC 20594. The National Business Center, which is a division of the Department of Interior, stores some information electronically off-site on behalf of the NTSB, at: National Business Center, DOI, Payroll Operations Division, Mail Stop D–2600, 7301 West Mansfield Avenue, Lakewood, Colorado 80235–2230. In addition, the NTSB stores payroll records pertaining to individuals who have retired from the NTSB at the National Archives and Records Administration, National Personnel Records Center (Civilian Personnel Records Center), 111 Winnebago Street, St. Louis, Missouri 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former employees of the NTSB.

CATEGORIES OF RECORDS IN THE SYSTEM:

The agency's system consists of four files. Official personnel files held by the NTSB are governed by the U.S. Office of Personnel Management (OPM)regulations, at 5 CFR parts 293 and 297.

1. Official personnel file: This file consists of the forms and documents that record employees' Standard Form 50s, copies of benefits election forms, and applications used for qualification determinations. This is a paper file.

2. Security File: This file is described at NTSB–3, above. Duplicates of the security records described in NTSB–3 may also exist in this system, designated as NTSB–6.

3. Payroll file: This file consists of documents related to employees' pay and related payroll deductions that are not filed in the official personnel file. These files may contain copies of income tax forms, savings bond elections, net deposits and allotments, union dues elections, benefits elections, and records regarding garnishments. This is a paper file.

4. Time and attendance reports: This system consists of credit hour records,

biweekly summaries of hours worked and leave taken, flextime records, leave applications, authorized premium pay, danger pay requests, and corrections. This information is maintained in an electronic system, and some records may exist on microfiche.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR Parts 293 and 297; Executive Order 12107.

PURPOSE(S):

The NTSB uses these records to establish and maintain employee qualifications, benefits and pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to the Treasury Department for payroll purposes or for the issuance of savings bonds;
2. Disclosure to the Office of Personnel Management for retirement, health and life insurance purposes, and to carry out the Government-wide personnel management functions of the NTSB;
3. Disclosure to the National Finance Center for the Thrift Savings Plan and Temporary Continuation of Coverage;
4. Disclosure to the Social Security Administration for compliance with the Federal Insurance Compensation Act;
5. Disclosure to the Internal Revenue Service for taxable earnings and withholding purposes, or for audit and inspection and investigation purposes;
6. Disclosure to the Combined Federal Campaign for charitable contribution purposes;
7. Disclosure to the American Federation of Government Employees for union dues;
8. Disclosure to state and local government tax entities for income tax purposes;
9. Disclosure to holders of judgment liens, for the purposes of garnishments; and
10. Disclosure to arbitrators pursuant to a negotiated labor agreement or to Equal Employment Opportunity investigators who hear or investigate employee grievances or complaints of discrimination.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

Official personnel files, security files, and payroll files and are kept in file folders, which the NTSB maintains within metal file cabinets in a locked office. Time and attendance reports are maintained in an electronic system, as described above.

RETRIEVABILITY:

Official personnel files, payroll files, and time and attendance reports are indexed by name.

SAFEGUARDS:

Records are maintained in locked file cabinets that are restricted through electronic keycards to enter the facility where records are located. Computerized records are maintained in a secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB retains and disposes of records within this system as follows:

1. The NTSB retains each employee's official personnel file until the end of the first thirty days following the date of the individual's separation from the NTSB if the individual is not thereafter employed by a Federal agency, pursuant to General Records Schedule 1, item 1. After expiration of the thirty-day period, the NTSB sends records to the National Archives and Records Administration, National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri. However, if following the separation from the NTSB, the individual is employed by another Federal agency, the NTSB maintains the records until that Federal agency requests the records from the NTSB;
2. Security records are kept for three years following an employee's separation, as described at NTSB–3, above;
3. The NTSB retains payroll records for three calendar years following the year in which the employee separates; and
4. The NTSB retains time and attendance reports for six years after the year of the employee's separation.

SYSTEM MANAGER AND ADDRESS:

Chief, Human Resources Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Individuals about whom the records concern, individuals' supervisors, and NTSB employees acting in their official capacities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–7

SYSTEM NAME:

Equal Employment Opportunity (EEO) Discrimination Complaint Records.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Equal Employment Opportunity Diversity and Inclusion, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, classes of individuals, or organizations which have consulted an EEO Counselor regarding discrimination on the basis of race, color, religion, sex, national origin, physical disability,

genetic information, or age because of a determination, or decision made by a Safety Board official or which have filed a formal allegation of discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents concerning pre-complaint processing and formal allegations of discrimination. The records consist of counselors' reports, the initial allegations, letters or notices to the individual or organization, materials placed into the record to support or refute the decision or determination, statements of witnesses, investigative reports, instructions about action to be taken to comply with decisions, and related correspondence, opinions, recommendations, and final administrative actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order No. 11,478; 42 U.S.C. 2000e; 29 U.S.C. 633a; 29 CFR part 1614.

PURPOSE(S):

The NTSB uses these records to initiate, investigate, and resolve discrimination complaints within the NTSB. The NTSB may also use these records as a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the NTSB collects and maintains the records, or for related personnel management functions or manpower studies. In addition, the NTSB may use these records to locate specific individuals for personnel research or other personnel management functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to the Office of Personnel Management, Merit Systems Protection Board (including its Office of the Special Counsel), Equal Employment Opportunity Commission, the Federal Labor Relations Authority (including the General Counsel of the Authority and the Federal Service Impasses Panel), the Federal Mediation and Conciliation Service, and to an arbitrator, in carrying out their functions;

2. Disclosure to other Federal or foreign agencies that need the information for an audit or investigation of a civil, criminal, or regulatory violation or potential violation;

3. A record from this system of records may be disclosed to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit;

4. Disclosure to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decisions on the matter;

5. Disclosure in response to a subpoena to the NTSB where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, have issued the subpoena;

6. Where a contract between an NTSB office and a labor organization recognized under Executive Order No. 11,491 or 5 U.S.C. Chapter 71 provides that the agency will disclose personal records relevant to the organization's mission, the NTSB may disclose records in this system of records to such organization;

7. Disclosure to a private entity with which the NTSB maintains a contractual relationship for the purposes of investigating discrimination claims or collating, analyzing, aggregating or otherwise refining records in this system, where the private entity is subject to a non-disclosure agreement and understands that it must honor Privacy Act safeguards with respect to such records;

8. In the event of litigation where the defendant is (a) the NTSB, any component of the NTSB, or any employee of the NTSB in his or her official capacity; (b) the United States, where the NTSB determines that the claim, if successful, is likely to directly affect the operations of the NTSB or any of its components; or (c) any NTSB employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, the NTSB may disclose such records as it deems desirable or necessary to the Department of Justice to enable the NTSB to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected;

9. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the NTSB but technically not having the status of NTSB employees, if they need access to the records to perform their assigned agency functions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

These records are maintained in file folders, binders, and index cards.

RETRIEVABILITY:

These records are indexed by the names of the individuals or organizations concerning which the NTSB maintains them.

SAFEGUARDS:

Records are maintained in lockable file cabinets that are restricted through electronic keycards to enter the facility where records are located. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The records are retained for four years after final disposition of the EEO complaint. After the four-year period expires, the NTSB destroys the records, pursuant to General Records Schedule 1, item 25.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Equal Employment Opportunity Diversity and Inclusion, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment; and
5. Signature.

RECORD ACCESS PROCEDURES:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

The NTSB obtains the records in this system from: The individual to whom the record pertains; the NTSB or other officials; NTSB employees or other witnesses; and the EEO director or other such persons or organizations who create or submit official documents relating to the counseling or formal allegation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

To the extent that any records in this system consist of attorney work product or attorney-client communications, 5 U.S.C. 552a(d)(5) may apply to preclude access to any information compiled in reasonable anticipation of a civil action or proceeding.

NTSB—8

SYSTEM NAME:

FOIA and Privacy Act Request Records.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Chief Information Officer, Records Management Division, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who submit requests for NTSB records under the Freedom of Information Act (FOIA) or the Privacy Act (PA), and administrative appeals based on responses to those requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of written or electronic requests from individuals or organizations made under the provisions of the FOIA or PA, NTSB response letters, copies of requested records, and records concerning an administrative appeal of the response, where the requester has submitted such an appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Freedom of Information Act, as amended, (codified at 5 U.S.C. 552); the Privacy Act of 1974, as amended (codified at 5 U.S.C. 552a).

PURPOSE(S):

The NTSB maintains these records to process requests made under the provisions of the Freedom of Information Act and Privacy Act of 1974.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to a court, or other deciding agency or official, when a requester has filed an appeal or court suit concerning a request; and
2. Disclosure to another Federal agency when consultation or referral is required to process a request.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records of correspondence regarding a requester's request or appeal are stored manually in file folders and electronically, in a database. Records within the scope of a requester's request may be stored on audiotapes and/or videotapes, on computer disks, and electronically, in databases.

RETRIEVABILITY:

The NTSB retrieves records in this system by unique assigned number for each request, by the requester's name, or by the investigation number, where the requester seeks information from a particular accident investigation.

SAFEGUARDS:

Paper records are maintained in lockable file cabinets or shelving and computerized records are maintained in secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access that is restricted through electronic keycards to enter the facility where records are located. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB—24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB retains the records in this system until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. The NTSB also disposes of records within this system in accordance with General Records Schedule 14.

SYSTEM MANAGER AND ADDRESS:

Freedom of Information Act Officer, National Transportation Safety Board, Attention: FOIA and Privacy Act Requester Service Center, CIO–40, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Subject of FOIA request or Privacy Act record;
3. Date of FOIA or Privacy Act request; and
4. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Individuals who submit requests and administrative appeals pursuant to FOIA and PA, agency records obtained in the process of responding to such requests and appeals and NTSB personnel who handle such requests and appeals. These requests are accepted by fax, public web, postal mail, and email.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–10

SYSTEM NAME:

Employee Records of Disciplinary Action, Adverse Action, and Grievance and Appeal Files.

SYSTEM LOCATION:

National Transportation Safety Board, Human Resources Division, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former National Transportation Safety Board Federal employees against whom such action has been proposed or taken in accordance with 5 CFR parts 315 (subparts H and I), 432, 752, or 754.

CATEGORIES OF RECORDS IN THE SYSTEM:

Current and former National Transportation Safety Board Federal employees against whom such action has been proposed or taken in accordance with 5 CFR parts 315 (subparts H and I), 432, 752, or 754, or who have filed grievances pursuant to 5 CFR part 771.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents concerning: (1) the processing of disciplinary and adverse actions, performance-based reduction in grade and removal actions, and grievances and appeals of such actions; (2) the termination of employees serving initial appointment probation and return to their former grade of employees serving supervisory or managerial probation; and (3) grievances raised by agency employees, except EEO complaints and grievances filed under negotiated grievance procedures in accordance with 5 U.S.C. 7121. The records include, as appropriate: Copies of the notice of proposed action; materials upon which the NTSB relied to support the reasons in the notice; replies by the employee; statements of witnesses and affidavits; hearing notices; reports of investigations; agency decisions; and records of resolutions or settlement agreements, which may include reports of interviews and hearing examiners; findings and recommendations, copies of original decisions, related correspondence and exhibits, and records concerning reconsideration requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3321, 4303, 4308, 5115, 5338, 7151, 7301, 7504, 7514, 7543, 7701, and 8347; 5 CFR part 771.

PURPOSE(S):

The NTSB maintains this system of records regarding the proposal, processing, and documentation of disciplinary and adverse employment actions in order to comply with 5 CFR parts 315 (subparts H and I), 432, 752, or 754; in addition, the NTSB maintains grievance information in accordance with 5 CFR part 771.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to labor organization officials to provide information defined under 5 U.S.C. chapter 71, when the information is relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

2. Disclosure to other Federal or foreign agencies that need the information for an audit or investigation of a civil, criminal, or regulatory violation or potential violation;

3. Disclosure to any source from which the NTSB requests additional information for processing any of the covered actions or in regard to an appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested;

4. Disclosure to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decisions on the matter;

5. Disclosure to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding;

6. Disclosure to other agencies or contractors for other agencies, when disclosure is necessary to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies in support of the function for which the other organization seeks to collect the record, or for related workforce studies; the NTSB notes that, while published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference;

7. Disclosure to a party engaged in litigation of information that is relevant to subject matter concerning a pending judicial or administrative proceeding, when such disclosure is subject to discovery or order from a court with competent jurisdiction;

8. Disclosure to the Merit System Protection Board in connection with appeals, special studies of the civil service and other merit systems, review of agency rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, as promulgated in 5 U.S.C. 1205 and 1206, and as specified in 5 U.S.C. 7503(c) and 5 U.S.C. 7513(e), or as may be authorized by any other applicable statute.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains these records on paper in file folders within a lectriever in a locked file room.

RETRIEVABILITY:

The NTSB retrieves records by name.

SAFEGUARDS:

The NTSB maintains paper records within this system in a locked file room that is restricted through electronic keycards to enter the room where records are located. Access to and use of these records is limited to those persons whose official duties require

such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB destroys these records five years after the closing of the case.

SYSTEM MANAGER AND ADDRESS:

Chief, Human Resources Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

The NTSB obtains the records in this system from: NTSB employees and supervisors, NTSB Office of Administration; representatives of NTSB employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–11

SYSTEM NAME:

Parking Permit Records.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Administration, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NTSB employees who apply for parking permits at the NTSB headquarters facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains parking applications, which include but are not limited to, the applicant's name, address, telephone number, division, grade level, vehicle, carpool, handicap information, and justifications for the priority of parking permits. The NTSB collects parking applications from each applicant on a regular annual basis.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 121(c); 41 CFR 102–74.305; Executive Order No. 12,191, 45 FR 7,997 (Feb. 1, 1980).

PURPOSE(S):

The NTSB maintains this system of records in order to provide parking for qualified NTSB employees located at the NTSB headquarters facility in Washington, DC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to labor organization officials to provide information defined under 5 U.S.C. chapter 71, when the information is relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions;

2. Disclosure to other Federal or foreign agencies that need the information for an audit or investigation of a civil, criminal, or regulatory violation or potential violation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains these records on paper in file folders.

RETRIEVABILITY:

The NTSB retrieves these records by searching either by the employee's name or by the individual parking permit number.

SAFEGUARDS:

The NTSB maintains paper records within this system in lockable file cabinets that are restricted through electronic keycards to enter the facility where records are located. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

As stated above, the NTSB collects parking applications on a regular annual basis. The NTSB retains applications for a period of 3 years, after which the NTSB destroys the applications, pursuant to General Records Schedule 9.

SYSTEM MANAGER AND ADDRESS:

Chief, Administrative Operations, Safety and Security Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Dates of employment; and
3. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

NTSB employees and supervisors, NTSB Administrative Operations, Safety and Security Division.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–12

SYSTEM NAME:

Employee Travel Card Records.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Chief Financial Officer, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NTSB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains credit card applications, a list of terms and conditions for use of credit cards, credit card training documentation, monthly reports regarding accounts, credit data, and related documentation, all of which may include an individual's name, Social Security number, and personal contact information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701; 31 U.S.C. 716, 1104, 3511–3512, 3701, 3711, 3717–3718, 3726; 41 CFR parts 301–304; Exec. Order No. 9,397, 8 FR 16,095 (Nov. 30, 1943); Consolidated Appropriations Act of 2005, Public Law 108–447, § 639, 118 Stat. 2809 (2004).

PURPOSE(S):

The NTSB collects information for this system in order to facilitate the process of obtaining travel cards for NTSB employees. Such travel cards are necessary for the provision of funds for employees' official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to the General Services Administration and the Office of Management and Budget for periodic reporting required by statute, regulation, and/or Executive Order;
2. Disclosure to the bank that issued the credit card, for necessary record-keeping purposes;
3. Disclosure to the National Business Center of the Department of Interior, for facilitating collection of travel card delinquencies by employee salary offset; and
4. Disclosure to a consumer reporting agency, for the purpose of obtaining the credit reports necessary to provide the credit cards, and not for the purposes listed at 5 U.S.C. 552(b)(12) (referring to Debt Collection Act).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None, except as described at 5 U.S.C. 552a(b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains the information in this system in file folders in an electronic database.

RETRIEVABILITY:

Records in this system are indexed by name.

SAFEGUARDS:

Computerized records are maintained in a secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB retains electronic records in this system until the NTSB no longer needs the records because the employee separates from Federal service and no pending claims on the employee's credit card exists, or until the retention period for the records has expired, pursuant to General Records Schedule 9.

SYSTEM MANAGER AND ADDRESS:

Chief, Accounting Division, Office of Chief Financial Officer, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

The NTSB obtains information in this system from NTSB employees, the bank issuing the credit card, the consumer reporting agency, and outside vendors who have provided travel services or accommodations to an NTSB employee for the employee's official travel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–13

SYSTEM NAME:

Airman or Mariner Certificate Enforcement Actions.

SYSTEM LOCATION:

Primary system: Office of Administrative Law Judges, NTSB, 490 L'Enfant Plaza SW., Washington, DC 20594. Upon assignment of a case to an NTSB Administrative Law Judge (ALJ) located in Texas, the case file is maintained at 624 Six Flags Drive, Suite 150, Arlington, Texas 76011; upon assignment of a case to an NTSB ALJ in Colorado, the case file is maintained at 4760 Oakland Street, Suite 500, Denver, Colorado 80239. When a party appeals the decision of the NTSB ALJ, the Office of Administrative Law Judges transfers the case's docket file to the NTSB Office of General Counsel, 490 L'Enfant Plaza SW., Washington, DC 20594, until the Safety Board has served a final ruling on the appeal, at which time the Office of General Counsel transfers the docket file back to the Office of Administrative Law Judges.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who hold airman certificates who have been subject to

Federal Aviation Administration (FAA) enforcement actions, or to whom the FAA has denied certification; and mariners who hold maritime licenses, certificates, documents, or registers who have been subject to U.S. Coast Guard enforcement actions or certificate denials.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes, but is not limited to, the petition or appeal filed by an airman, pleadings from both parties in the case; motions and responses filed by the parties; relevant documents related to these actions (i.e., Orders of Revocation, Orders of Suspension, Orders of Assessment, Denials of applications for issuance of airman certificates); hearing notices, transcripts of hearings, exhibits introduced during hearings; and Administrative Law Judges' decisions. For cases that a party appeals to the full five-member Board, records will include the following additional categories: Notice of Appeal for review of the Judge's decision, and briefs in support of that appeal; the Board's Opinion and Order resulting from the review; and other correspondence that is initiated by the Board, or parties pertaining to the case. Where a case arises out of a U.S. Coast Guard action, records will include: hearing notices, pleadings from both parties in the case; motions and responses filed by the parties; in addition, if a hearing occurred, records will include the transcript of testimony and exhibits from the hearing; the decision of the Administrative Law Judge, the U.S. Coast Guard order; the Notice of Appeal of the Commandant's decision; parties' appeal briefs; and the Commandant's decision on appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 216B, 239–a–b; 49 U.S.C. 1133, 44106, 44703, 44709, 44710, and 46301.

PURPOSE(S):

The NTSB maintains this system in order to fulfill Congress's statutory directive of deciding airman and mariner appeals, in accordance with 49 U.S.C. 1133; the NTSB manages the case load and tracks all documents related to cases in this system of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure in response to discovery ordered by a court, in accordance with 49 U.S.C. 1153; and

2. Publicly available records within the system, which the Privacy Act does not preclude from disclosure (e.g., final decisions issued by ALJs and the Board), are available on the NTSB Web site, *http://www.ntsb.gov.*

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are primarily maintained on paper in docket folders. In addition, the Office of Administrative Law Judges maintains certain information and documents regarding each case in a searchable electronic database.

RETRIEVABILITY:

The electronic database is indexed by names of the certificate holder who is the subject of the action and by docket numbers, which are assigned when individual cases are received and docketed. Paper docket files are indexed by the airman's or mariner's surname.

SAFEGUARDS:

The NTSB maintains paper records within this system in locked file cabinets that are restricted through electronic keycards to enter the facility where records are located. Computerized records are maintained in secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB maintains paper docket files for one year following the disposition of the case. After the one-year period has expired, the NTSB sends files to the Federal Records Center, National Archives and Records Administration, which destroys the files after 15 years in cases for which a hearing occurred, or after 6 years in cases in which no hearing occurred.

SYSTEM MANAGER AND ADDRESS:

Manager, ALJ Operations, National Transportation Safety Board, Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Certificate Number; and
3. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

The NTSB primarily obtains information in the records from the individual to whom a record pertains, authorized representatives for these individuals, from information supplied by the certificate holder, and attorneys and other representatives from the FAA and the U.S. Coast Guard.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–14

SYSTEM NAME:

Information Request Database

SYSTEM LOCATION:

National Transportation Safety Board, Office of Chief Information Officer, Records Management Division, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking publicly available information from the NTSB.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the individual's name, address, telephone number, email address, and a description of the

requested records. The list may also include the requester's title, occupation, and institutional affiliation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552(a)(2); 49 U.S.C. 1131(e).

PURPOSE(S):

The NTSB maintains this system in order to provide individuals and organizations, at their request, with publicly available information that the NTSB produces.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

The NTSB may disclose information from this system of records in accordance with subsection (b) of the Privacy Act, and as described in Appendix A, below.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronically in databases.

RETRIEVABILITY:

The NTSB retrieves records in this system by individual name, company name, accident date, accident location, accident investigation number and mailing list title.

SAFEGUARDS:

The NTSB maintains paper records within this system in lockable file cabinets that are restricted through electronic keycards to enter the facility where records are located. Computerized records are maintained in secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB retains these records until the request has been fulfilled and the individual requests removal from the system.

SYSTEM MANAGER AND ADDRESS:

Records Management Officer, National Transportation Safety Board, Office of the Chief Information Officer, Records Management Division, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of correspondence; and
3. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Individuals who provide their name and mailing address directly to the NTSB.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–15

SYSTEM NAME:

NTSB Staff Database.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Chief Information Officer, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have a domain account on the agency's network. These individuals include: Former and current NTSB employees, consultants, contractors, interns, and employees from other Federal agencies who are temporarily assigned to work at the NTSB.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records within this system include the individual's name; photograph; personal or agency-issued cell phone number(s); and a history of the individual's previous employment positions and titles, including date ranges, contact information of the previous employer, and the individual's managerial status in such positions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Information Security Management Act, enacted as Title III of E-Government Act of 2002, Public Law 107–347, 116 Stat. 2899 (codified at 44 U.S.C. 3541 *et seq.*)

PURPOSE(S):

The NTSB uses the data in this system to control access to various NTSB applications that require a listing of employees by office and position. The NTSB also generates a listing of employees' names and offices for an internal office telephone directory from this list.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine use:

- Disclosure to other Federal agencies that need the information for an audit or investigation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB stores all records in this system electronically in a database.

RETRIEVABILITY:

Records are indexed by name and office identifier, and can be retrieved using the web-based graphical user interface.

SAFEGUARDS:

The NTSB maintains these computerized records in a secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the username, date and time of any additions or edits is logged. The Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the

location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB maintains this data for the duration of the use of the applications for which the data supports. The NTSB marks inactive or former employees as such, but maintains the data for historical relevance and auditing purposes.

SYSTEM MANAGER AND ADDRESS:

Chief, Systems Support Division, Office of the Chief Information Officer, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment or NTSB service; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

The NTSB obtains the information for records within this system from the individual, after the individual has provided the information to the NTSB Office of Administration, Human Resources Division.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–16

SYSTEM NAME:

Correspondence, Notations, and Safety Recommendations.

SYSTEM LOCATION:

National Transportation Safety Board, Office of the Managing Director, Safety Recommendations and Quality Assurance Division, Executive Secretariat, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public, other government agencies, Members of Congress, the White House, and members of private industry seeking information from or about the NTSB.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the individual's name, address, and other contact information, as well as a description of the subject of the correspondence or request, and a copy of the incoming correspondence. The record may also include the requester's title, occupation, and institutional affiliation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552(a)(2); 49 U.S.C. 1131(e).

PURPOSE(S):

The NTSB maintains this system in order to verify receipt, generate a response, and establish a record of correspondence addressed to the head of the agency or that requires the signature of the Chairman or an NTSB office director.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

The NTSB may disclose information in accordance with subsection (b) of the Privacy Act, and as described in Appendix A, below.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB office that drafts the response to the correspondence stores an electronic copy in this system on a secure, password-protected computer network server; the NTSB Office of the Managing Director stores some categories of information electronically in the system. The NTSB may transmit some records to other offices within the NTSB when a response to the correspondence requires input from another office.

RETRIEVABILITY:

Records are indexed by individual's name, organization, date of correspondence, date of response, and subject matter.

SAFEGUARDS:

The NTSB maintains paper records within this system in a secure, password protected computer network server. Access to and use of these records is limited to authorized users of the system whose official duties require such access. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB permanently maintains records in the electronic system. The NTSB maintains corresponding paper records within this system until the expiration of 3 years following the final response to the correspondence, after which the NTSB destroys the records by shredding them.

SYSTEM MANAGER AND ADDRESS:

Executive Secretariat, Office of the Managing Director, Safety Recommendations and Quality Assurance Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date and subject of correspondence; and
3. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Individuals who provide their name and mailing address directly to the NTSB in their correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–17

SYSTEM NAME:

Office of Transportation Disaster Assistance Family Member Database.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Transportation Disaster Assistance, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Family members of those fatally injured and survivors of transportation accidents that are or have been the subject of an NTSB investigation

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and contact information of victims of transportation accidents, as well as the names and contact information for victims' family members and legal next-of-kin.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 1136 and 49 U.S.C. 1139.

PURPOSE(S):

The NTSB uses this system to maintain mailing and telephone contact information in order to provide services and information to survivors of transportation accidents, and/or fatally injured family members and next-of-kin.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine use:

1. Disclosure to other government agencies, when necessary to determine whether the victim and/or family member has received information or services in accordance with 49 U.S.C. 1136(c) and 49 U.S.C. 1139(c); and
2. Disclosure to state police or other agencies, when necessary for safety of Federal employees;
3. Disclosure to the FBI Office for Victim Assistance if the investigation becomes criminal in order to provide federal crime victim service under Victims' Right and Restitution Act (42 U.S.C. 10607) and the Crime Victims' Rights Act (18 U.S.C. 3771).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB stores information electronically in a database.

RETRIEVABILITY:

The database containing information in this system is searchable by NTSB investigation number and date and location of transportation accident.

SAFEGUARDS:

The computerized records that compose this system of records are maintained in secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB maintains the records in this system indefinitely, unless an individual requests removal from the system.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Transportation Disaster Assistance, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date, location, or NTSB investigation identifier pertaining to the accident investigation from which the NTSB created the record; and
3. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Individuals directly submit their own contact information for inclusion in the database; the NTSB may also obtain information from other Federal agencies who provide assistance to victims and victims' family members, or from transportation operators who may have passenger lists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–18

SYSTEM NAME:

Correspondence from Members of Congress.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Communications, Government Affairs Division, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Senators, Members of Congress, and congressional staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests and written correspondence from Senators, Members of Congress, and congressional staff, Safety Board responses to congressional correspondence, and records regarding the Safety Board's preparation of responses to congressional inquiries and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552(a)(2); 49 U.S.C. 1101–1155.

PURPOSE(S):

The NTSB utilizes this system to track and provide timely responses to inquiries and correspondence from Senators, Members of Congress, and congressional staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the

Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine use:

- Disclosure to other government agencies, when necessary, to respond to congressional inquiries or correspondence from Members of Congress.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains these records in paper folders within file cabinets and in an electronic database.

RETRIEVABILITY:

Records are indexed by the surname of the Senator or Member of Congress.

SAFEGUARDS:

The NTSB maintains paper records within this system in file cabinets that are restricted through electronic keycards to enter the facility where records are located. Computerized records are maintained in a secure, password-protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB maintains these documents until the Senator or Member of Congress is no longer serving in Congress, or until the NTSB determines that it no longer needs the record after the NTSB has responded to the request or inquiry. The NTSB destroys records by shredding them.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Communications, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Subject of original correspondence; and
3. Signature.

RECORD ACCESS PROCEDURES:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Senators, Members of Congress, congressional staff, and employees of other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–19

SYSTEM NAME:

Training Center Student Registration Database

SYSTEM LOCATION:

NTSB Training Center, 45065 Riverside Parkway, Ashburn, Virginia 20147.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students, members of the public, NTSB employees, and employees of state and Federal agencies who have registered to attend training course(s) at the NTSB Training Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of course applications and the revenue collected for all training courses that are offered to the public and to NTSB employees. The applications include, but are not limited to, the registrant's name, address, telephone and fax number, email address, country, and payment information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 1115 and 1118(c).

PURPOSE(S):

The NTSB uses this system to register students, issue student transcripts and certificates of completion of training programs, and record associated tuition payment for training courses at the NTSB Training Center.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to the Department of Interior, National Business Center, for processing credit card or check payments for tuition, tuition refunds, or for collection of delinquencies;
2. Disclosure to the Department of State or an embassy for passports or visas, or for responding to request for disclosing international students and associated countries, and tuition collected;
3. Disclosure of limited information to an employer for verification of training completed;
4. Disclosure of limited information to a college or university as students requesting student transcripts; and
5. Disclosure to Congress for annual reporting requirements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB stores the electronic database in a system on a SQL server. The NTSB maintains some paper folders, which the NTSB keeps in a locked cabinet at the NTSB Training Center.

RETRIEVABILITY:

Records are indexed by registrant's name or by student identification code assigned by the Office of the Assistant to the Associate Managing Director for the NTSB Training Center.

SAFEGUARDS:

The NTSB maintains paper records within this system in locked file cabinets that are restricted through electronic keycards to enter the facility where records are located. Computerized records are maintained in

secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The Training Center maintains student records in the electronic system for 10 years and paper files for 7 years, in accordance with the budgeting and financial management policy.

SYSTEM MANAGER AND ADDRESS:

Assistant to Associate Managing Director for NTSB Training Center, 45065 Riverside Parkway, Ashburn, Virginia 20147.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Employer;
3. Description of course that the individual attended or applied to attend;
4. Student identification number; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

The NTSB obtains information for this system from course applications that persons seeking to register for a training course submit to the NTSB Training Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–20

SYSTEM NAME:

Public Affairs Phone Log

SYSTEM LOCATION:

Office of Public Affairs, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Journalists who contact the NTSB Public Affairs Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of caller, affiliation, phone number, email address, subject of the call, and additional relevant comments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 1101–1155; 49 CFR 800.2(b) and 831.13(a).

PURPOSE(S):

The NTSB maintains this system to keep a log of telephone activity for the Office of Public Affairs as it pertains to news media representatives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

The NTSB may disclose information in accordance with subsection (b) of the Privacy Act, and as described in Appendix A, below.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains records within this system in an electronic database.

RETRIEVABILITY:

The database containing these records is searchable by name, affiliation, subject matter, or NTSB public affairs officer who handled the telephone call.

SAFEGUARDS:

The NTSB maintains the computerized records in this system of records in secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB maintains the records in this system indefinitely.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Public Affairs, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Subject of original correspondence; and
3. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Journalists who contact the NTSB Office of Public Affairs via telephone.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–21

SYSTEM NAME:

Respiratory Protection Program Records.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Administration, Administrative Operations, Safety and Security Division, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees who have received medical clearance and have been

trained to don a half-face negative pressure respirator.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, date of birth, office location, job title, date of last medical clearance, date of last physical exam, medical clearance expiration date, suggested activity level while donning a respirator, date of training, date of fit test and type of respirator issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 653, 655, and 657; 29 CFR 1910.134(m).

PURPOSE(S):

The NTSB uses this system to document employee medical qualifications and training for respirator usage pursuant to OSHA regulations, 29 CFR 1910.134(m).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to other Federal agencies, such as the Department of Labor or the Office of Personnel Management, that need the information for an audit; and
2. Disclosure to other Federal agencies when necessary for the investigation of a potential civil, criminal, or regulatory violation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains these records in an electronic database and in paper file folders within a lockable file cabinet.

RETRIEVABILITY:

All records in this system are indexed by name.

SAFEGUARDS:

The NTSB maintains paper records within this system in a lockable file cabinet that is restricted through electronic keycards to enter the facility where records are located. Computerized records are maintained in secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB retains records within this system indefinitely, but will destroy the records when the NTSB determines it no longer needs the records.

SYSTEM MANAGER AND ADDRESS:

Occupational Safety and Health Specialist, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment or NTSB service; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Individuals to whom the records apply, the individual's supervisor (if the individual was referred to the program by his or her supervisor), and the Occupational Safety and Health Specialist.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB—22

SYSTEM NAME:

Occupational Safety and Health Training Program.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Administration, Administrative Operations, Safety and Security Division, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current NTSB employees, interns, volunteers, contractors, and employees from other Federal agencies who may be on assignment at the NTSB. In addition, this system may include records concerning former NTSB employees, depending upon when the employee separated from the NTSB, as described below.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, Social Security number, office location, job title, and indication of whether employee has completed necessary training under the NTSB Occupational Safety and Health Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 668 and 673; 29 CFR 1960.59.

PURPOSE(S):

The NTSB maintains this system in order to document employee safety and health training, as required by 29 CFR 1960.59.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

The NTSB may disclose information from this system of records in accordance with subsection (b) of the Privacy Act, and described in Appendix A, below.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains these records in an electronic database and in paper file folders within a lockable file cabinet.

RETRIEVABILITY:

All records in this system are indexed by name, training course(s) assigned, and scores of quizzes administered during the training.

SAFEGUARDS:

The NTSB maintains paper records within this system in a lockable file cabinet that is restricted through electronic keycards to enter the facility where records are located. Computerized records are maintained in secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB retains electronic and paper records until the expiration of five years after the employee leaves the NTSB.

SYSTEM MANAGER AND ADDRESS:

Occupational Safety and Health Specialist, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security Number;
4. Dates of employment or NTSB service; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Individuals to whom the records apply, the individual's supervisor (if the individual was referred to the program by his or her supervisor), and the Manager of the Occupational Safety and Health Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–23

SYSTEM NAME:

Transit Subsidy Program Records.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Administration, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NTSB employees who apply for transit subsidy benefits from the Federal government.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of Transit Subsidy applications which include, but are not limited to, the applicant's name, address, telephone number, last four digits of Social Security number, office division, commuting costs, and employee certification. The NTSB collects these transit subsidy applications on a regular annual basis.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7905; 26 U.S.C. 132(f)(2); IRS Revenue Procedure 2004–71, section 132(f)(2)(A).

PURPOSE(S):

The NTSB maintains this system of records in order to provide transit subsidy benefits to eligible NTSB employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to the Department of Transportation, for administration of the transit subsidy program and distribution of benefits to eligible recipients;
2. Disclosure to officials of labor organizations under 5 U.S.C. chapter 71, when relevant and necessary to the organizations' duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and
3. Disclosure to the Internal Revenue Service for taxable earnings and withholding purposes, or for audit and inspection and investigation purposes, when necessary.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains records within this system in paper file folders within a lockable file cabinet and in an electronic database.

RETRIEVABILITY:

Records are indexed by employee's name or last four digits of employee's Social Security number.

SAFEGUARDS:

The NTSB maintains paper records within this system in a lockable file cabinet that is restricted through electronic keycards to enter the facility where records are located. Computerized records are maintained in secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

As stated above, the NTSB collects transit subsidy applications on a regular annual basis. The NTSB retains applications for a period of 3 years, after which the NTSB destroys the applications, pursuant to General Records Schedule 9.

SYSTEM MANAGER AND ADDRESS:

Chief, Administrative Operations, Safety and Security Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains

information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Last four digits of Social Security Number;
3. Dates of employment or NTSB service; and
4. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Employees who apply for transit subsidy benefits, applicants' supervisors, the NTSB Office of Administration, and the Department of Transportation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–24

SYSTEM NAME:

Facility Security Access Control System.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Administration, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals and personnel that require access to NTSB Headquarters and regional office facilities. This includes NTSB employees, contractors, temporary employees, interns, property managers, volunteer workers, and any persons that the NTSB may permit to access NTSB facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of electronic cardholder information, which includes, but is not limited to, the individual's name, keycard number, personal identification number, access level, and cardholder history and transaction reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Information Security Management Act, enacted as Title III of E-Government Act of 2002, Public Law 107–347, 116 Stat. 2899 (codified at 44 U.S.C. 3541 *et seq.*)

PURPOSE(S):

The NTSB maintains this system to provide individuals with an electronic keycard to access secured office space and areas within the NTSB headquarters and regional office facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to property managers for building maintenance and/or security purposes; and
2. Disclosure to other Federal agencies that need the information for an audit or investigation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains this system in specialized electronic database.

RETRIEVABILITY:

Records within this system are indexed by individual's name, keycard number, personal identification number, and access level.

SAFEGUARDS:

The NTSB maintains the computerized records within this system in secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and this System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB retains information in this database for periods of up to six months. The database runs on a regular schedule with regard to deleting records within the database after the passage of approximately six months; deletion of records older than six months occurs on a rolling basis.

SYSTEM MANAGER AND ADDRESS:

Chief, Administrative Operations, Safety and Security Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Dates of employment or NTSB service; and
3. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Individuals who require access to NTSB headquarters and regional offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–25

SYSTEM NAME:

Employee Purchase Card Holders.

SYSTEM LOCATION:

National Transportation Safety Board, Office of Administration, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NTSB employees who apply for and use NTSB-assigned purchase cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes personal information on individuals who apply for and use Federal charge cards, including individuals' names, Social Security numbers, business addresses (including city, state, country, and zip code), title or position, business

telephone, business fax number, and business email address. This system also includes account processing and management information, such as purchase authorizations and vouchers, charge card applications, charge card receipts, terms and conditions for card use, charge card transactions, contractor monthly reports showing charges to individual account numbers, account balances, and other data needed to authorize, account for, and pay authorized purchase card expenses. The NTSB also maintains in this system a master list of open accounts that includes: Cardholder names; transaction and card limits; cardholder business address and business telephone number; and the name of the official who has approved purchases using the purchase card(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 501–502; 41 U.S.C. chapter 4; Executive Order Nos. 9,397 and 12,931.

PURPOSE(S):

The NTSB uses this system to establish and maintain accurate records necessary for operating, controlling, and managing a purchase charge card program involving commercial purchases by authorized NTSB employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to a Federal, state, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where an agency becomes aware of a violation or potential violation of civil or criminal law or regulation;

2. Disclosure to labor organization officials to provide information defined under 5 U.S.C. chapter 71, when the information is relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions;

3. Disclosure to the Government Accountability Office (GAO) or other Federal agencies when such agencies require the information to carry out their respective missions, such as conducting an audit;

4. Disclosure to an expert, consultant, or contractor in the performance of a Federal duty to which the information is relevant, including issuance of purchase cards; and

5. Disclosure to the National Business Center of the Department of Interior, for facilitating collection of travel card delinquencies by employee salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

The NTSB may disclose records within this system to a consumer reporting agency when such disclosure is compliant with 5 U.S.C. 552a(b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB stores records within this system on paper in file folders, and stores certain information from the paper records in electronic media.

RETRIEVABILITY:

Records are indexed by name, credit card number, credit limits and scores, and Social Security numbers.

SAFEGUARDS:

The NTSB maintains paper records within this system in a lockable file cabinet that is restricted through electronic keycards to enter the facility where records are located. Computerized records are maintained in secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB destroys these records after the expiration of 3 years subsequent to the NTSB's final payment for the purchase, in accordance with subpart 4.805 of the Federal Acquisition Regulations and General Records Schedule 3, item 3a(1)(b).

SYSTEM MANAGER AND ADDRESS:

Chief, Acquisition & Lease Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment or NTSB service; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

The NTSB obtains information in this system from individuals submitting Purchase Card applications, monthly contractor reports, purchase records, managers, other agencies, and non-Federal sources such as private firms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–26

SYSTEM NAME:

Office of Workers' Compensation Claim Records.

SYSTEM LOCATION:

National Transportation Safety Board, Human Resources Division, 490 L'Enfant Plaza SW., Washington, DC 20594. In addition, the NTSB may transfer records within this system to the Department of Labor, which maintains the records in accordance with DOL/GOVT–1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former NTSB employees who report an occupational injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information regarding the location and

descriptions of an employee's injury or illness, treatment, and disposition of the claim, as well as copies of Office of Workers' Compensation Program claim forms, adjudication decisions, and hearing transcripts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8101–8193.

PURPOSE(S):

The NTSB maintains this system in accordance with statutory requirements regarding the availability of workers' compensation, and the handling of claims for workers' compensation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine use:

- Disclosure to the Department of Labor in accordance with an authorized representative under Department of Labor regulations, and to prepare periodic statistical reports on employees' health and injury status for transmission to and review by the Department of Labor (DOL).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None, except as described at 5 U.S.C. 552a(b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains these records on paper within file folders.

RETRIEVABILITY:

The records within this system are indexed by employee name, organization, date of injury or illness, and assigned DOL claim number.

SAFEGUARDS:

The NTSB maintains paper records within this system in a locked file cabinet that is restricted through electronic keycards to enter the facility where records are located. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB destroys employee case files 5 years after the disposition of the worker's compensation claim, in accordance with the National Archives and Records Administration's General Records Schedule 1, item 34.

SYSTEM MANAGER AND ADDRESS:

Chief, Human Resources Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment or NTSB service; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

The NTSB obtains information for records in this system from: Claimants; NTSB supervisors or employees whose official duties require the processing of such claims; and Occupational Safety and Health Administration, within the Department of Labor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–27

SYSTEM NAME:

Employee Performance Folders.

SYSTEM LOCATION:

Records regarding current NTSB employees are located at: National Transportation Safety Board, Human Resources Division, 490 L'Enfant Plaza SW., Washington, DC 20594. Records regarding former NTSB employees who have not transferred to another Federal agency are located at the National Personnel Records Center, National Archives and Records Administration, 111 Winnebago Street, St. Louis, Missouri 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NTSB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records within this system reflect Federal employees' annual performance appraisals, and documents in connection with incentive awards. All categories of records include identifying information, such as employee's name, social security number, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. chapter 43; 5 CFR part 293.

PURPOSE(S):

The NTSB maintains this system of records to keep reports of incentive award personnel actions and employee's annual performance appraisals. This system of records is the repository of basic factual data about an employee's performance while in the service for the Federal government. Records in this system have various uses by the agency Human Resources Division, including employee relations purposes and audit purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to labor organization officials to provide information defined under 5 U.S.C. chapter 71, when the information is relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions;

2. Disclosure to other Federal or foreign agencies that need the information for an audit or investigation

of a civil, criminal, or regulatory violation or potential violation;

3. Disclosure to any source from which the NTSB requests additional information for processing any of the covered actions or in regard to an appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested;

4. Disclosure to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decisions on the matter;

5. Disclosure to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding;

6. Disclosure to other agencies or contractors for other agencies, when disclosure is necessary to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies in support of the function for which the other organization seeks to collect the record, or for related workforce studies; the NTSB notes that, while published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference;

7. Disclosure to a party engaged in litigation of information that is relevant to subject matter concerning a pending judicial or administrative proceeding, when such disclosure is subject to discovery or order from a court with competent jurisdiction; and

8. Disclosure to the Merit System Protection Board in connection with appeals, special studies of the civil service and other merit systems, review of agency rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, as promulgated in 5 U.S.C. 1205 and 1206, and as specified in 5 U.S.C. 7503(c) and 7513(e), or as may be authorized by any other applicable statute.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains these records on paper within file folders.

RETRIEVABILITY:

These records are indexed by name, date of birth, and Social Security number.

SAFEGUARDS:

The NTSB maintains paper records within this system in a locked file room that is restricted through electronic keycards to enter the facility where records are located. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB maintains each employee's Employee Performance Folder for the period of the employee's service in the agency. When an employee transfers to another Federal agency, the NTSB transmits these records to the new agency. When an employee retires, resigns or dies, the NTSB forwards the employee's record to the National Personnel Records Center.

SYSTEM MANAGER AND ADDRESS:

Chief, Administrative Services Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment or NTSB service; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

NTSB employees, supervisors, officials with the NTSB Office of Administration and Human Resources Division, and management officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–28

SYSTEM NAME:

Employee Medical Folders.

SYSTEM LOCATION:

Records regarding current NTSB employees are located at: National Transportation Safety Board, Human Resources Division, 490 L'Enfant Plaza SW., Washington, DC 20594.

Records regarding former NTSB employees who have not transferred to another Federal agency are located at the National Personnel Records Center, National Archives and Records Administration, 111 Winnebago Street, St. Louis, Missouri 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NTSB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records reflecting Federal employees' medical documentation and any documents pertaining to an employee's medical condition(s), including medical reports, forms, and reports generated as a result of requests for work accommodations or benefits related to a medical condition. All categories of records may include identifying information, such as employee's name, Social Security number, date of birth, and any medical condition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302; 5 CFR 501–511.

PURPOSE(S):

This system of records is the official repository of employees' medical records; the NTSB maintains the records in this system for employee relation purposes, for handling potential work performance issues, and for audit purposes. The NTSB also maintains the

records in this system in order to ensure that all relevant, necessary, accurate, and timely data are available to support any medical-related employment decisions affecting the subject of the records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to labor organization officials to provide information defined under 5 U.S.C. chapter 71, when the information is relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions;

2. Disclosure to other agencies or contractors for other agencies, when disclosure is necessary to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies in support of the function for which the other organization seeks to collect the record, or for related workforce studies; the NTSB notes that, while published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference; and

3. Disclosure to the Merit System Protection Board in connection with appeals, special studies of the civil service and other merit systems, review of agency rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, as promulgated in 5 U.S.C. 1205 and 1206, and as specified in 5 U.S.C. 7503(c) and 7513(e), or as may be authorized by any other applicable statute.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains the records in this system on paper within file folders.

RETRIEVABILITY:

These records are indexed by name, date of birth, and Social Security number.

SAFEGUARDS:

The NTSB maintains paper records within this system in a locked file room that is restricted through electronic keycards to enter the area where records are located. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The Employee Medical Folder is maintained for the period of the employee's service in the agency. When an employee leaves the agency, these records are either transferred with the employee to the new agency or once an employees either retires, resigns or dies, the record is forwarded to the National Personnel Records Center for permanent storage, in accordance with General Records Schedule 1, item 21.

SYSTEM MANAGER AND ADDRESS:

Chief, Human Resources Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment or NTSB service; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

NTSB employees, supervisors, officials with the NTSB Office of Administration and Human Resources Division, other Federal agencies, and management officials

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–29

SYSTEM NAME:

Job Application and Merit Promotion Files.

SYSTEM LOCATION:

National Transportation Safety Board, Human Resources Division, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NTSB employees; applicants for NTSB employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records regarding current NTSB employees and applicants for NTSB employment and merit promotion within the NTSB, including Form OF–612, applicants' names, Social Security numbers, home addresses, vacancy announcements, employment history, training and educational background, examination results, supervisors' evaluations, and other records relevant to an individual's application for a position or promotion at the NTSB.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301–3397, 5101–5115.

PURPOSE(S):

The NTSB maintains this system of records in order to process and respond to applications for employment or promotion at the NTSB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to labor organization officials to provide information defined under 5 U.S.C. chapter 71, when the information is relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions;

2. Disclosure to other agencies or contractors for other agencies, when disclosure is necessary to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies in support of the function for which the other organization seeks to collect the record, or for related workforce studies; the NTSB notes that, while published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference;

3. Disclosure to the Merit System Protection Board in connection with appeals, special studies of the civil service and other merit systems, review of agency rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, as promulgated in 5 U.S.C. 1205 and 1206, and as specified in 5 U.S.C. 7503(c) and 7513(e), or as may be authorized by any other applicable statute; and

4. Disclosure to the Office of Federal Employees Life Insurance or to health insurance carriers to provide benefit information regarding NTSB employees.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains the records in this system concerning merit promotions on paper within file folders. The NTSB maintains the records in this system concerning job applications in an electronic database.

RETRIEVABILITY:

Records concerning merit promotions are indexed by name, date of birth, and Social Security number; records concerning applications for employment are indexed by applicant's name and by vacancy announcement number.

SAFEGUARDS:

The NTSB maintains paper records within this system in a locked file cabinet that is restricted through electronic keycards to enter the facility where records are located. Computerized records are maintained in secure, password protected computer system. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB destroys records from this system concerning each vacancy or promotion under merit competition procedures after 2 years following either the date of the selection of a candidate for the position or the conclusion of an Office of Personnel Management audit, whichever is sooner, in accordance with General Records Schedule 1, item 32.

SYSTEM MANAGER AND ADDRESS:

Chief, Administrative Services Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment or NTSB service; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Applicants for NTSB positions, NTSB employees, supervisors, officials with the NTSB Office of Administration and Human Resources Division, other Federal agencies, and management officials

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NTSB–30

SYSTEM NAME:

Employee Training Records.

SYSTEM LOCATION:

NTSB Training Center, 45065 Riverside Parkway, Ashburn, Virginia 20147.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NTSB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include employee's name and Social Security number, business and home address, and person to be notified in case of emergency. Records reflect career development plans, training courses that individuals seek to attend or have attended, and any related records concerning mentoring or career progression of employees. This system also includes employees' Individual Development Plans.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 *et seq.,* 2951, 3301, 4101–4121, 4302; 5 CFR part 293.

PURPOSE(S):

The NTSB maintains this system in order to create and maintain a list of training needs for developing future training initiatives, and to assess individuals' training in the interest of evaluating individuals' skill levels.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to educational institutions on appointment of a recent graduate to a position in the Federal service; and

2. Disclosure to officials of labor organizations under 5 U.S.C. chapter 71, when relevant and necessary to the organizations' duties of exclusive

representation concerning personnel policies, practices, and matters affecting working conditions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

Records are stored on paper in file folders at the NTSB Training Center, at the address above. The NTSB may scan all paper records into a learning management system, which will function as the master database of all training activities and records.

RETRIEVABILITY:

The records are indexed by name, within major topic categories. Once the NTSB begins using the aforementioned new database, records will be retrievable by name, office, keyword, class title, and date of training class.

SAFEGUARDS:

Records are maintained in locked file cabinets that are further secured in locked rooms that are restricted through electronic keycards to enter the facility where records are located. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB maintains records within this system for the period of the employee's service at the NTSB. When an employee leaves the NTSB to begin employment at another Federal agency, the NTSB transfers these records to the employee's new Federal agency. When an employee retires, resigns, or dies, the NTSB forwards the employee's record to the National Personnel Records Center. The NTSB or National Personnel Records Center will destroy these records by shredding them once they are either obsolete or 5 years old, in accordance with General Records Schedule 1, item 29b.

SYSTEM MANAGER(S) AND ADDRESS:

NTSB Training Officer, 45065 Riverside Parkway, Ashburn, Virginia 20147.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Social Security number;
3. Dates of employment; and
4. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

The NTSB obtains information in this system from the individual to whom the record pertains and NTSB officials responsible for the individual's career development and training.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

NTSB–31

SYSTEM NAME:

Labor-Management Relations Records.

SYSTEM LOCATION:

National Transportation Safety Board, Human Resources Division, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former National Transportation Safety Board employees and union representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains files on grievances and arbitrations filed pursuant to grievance procedures negotiated in accordance with 5 U.S.C. 7121, including reports of interviews, correspondence with arbitrators, hearing transcripts, arbitration awards, exceptions (i.e., appeals) to the Federal Labor Relations Authority, and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7101–7135.

PURPOSE(S):

The NTSB maintains this system of records in order to comply with 5 U.S.C. 7101–7135.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

1. Disclosure to labor organization officials to provide information defined under 5 U.S.C. chapter 71, when the information is relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions (but information covered by 5 U.S.C. 7114(b)(4)(c) need not be released to labor organizations);

2. Disclosure to other agencies or contractors for other agencies, when disclosure is necessary to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies in support of the function for which the other organization seeks to collect the record, or for related workforce studies; the NTSB notes that, while published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference; and

3. Disclosure to the Merit System Protection Board in connection with appeals, special studies of the civil service and other merit systems, review of agency rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, as promulgated in 5 U.S.C. 1205 and 1206, and as specified in 5 U.S.C. 7503(c) and 7513(e), or as may be authorized by any other applicable statute.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NTSB maintains these records on paper in file folders within an automated file cabinet.

RETRIEVABILITY:

The NTSB indexes these records by name.

SAFEGUARDS:

The NTSB maintains paper records within this system in a locked file room that is restricted through electronic keycards to enter the room where records are located. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

The NTSB destroys these records 5 years after the final resolution of the case to which they apply, in accordance with General Records Schedule 1, item 28b.

SYSTEM MANAGER AND ADDRESS:

Chief, Human Resources Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Chief, Records Management Division, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment; and
5. Signature.

RECORD ACCESS PROCEDURE:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

The NTSB obtains the records in this system from NTSB employees and supervisors, NTSB Office of Administration, representatives of NTSB employees, arbitrators, the Federal Labor Relations Authority, the Federal Service Impasse Panel, and the Federal Mediation and Conciliation Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

To the extent that any records in this system consist of attorney work product or attorney-client communications, 5 U.S.C. 552a(d)(5) may apply to preclude access to any information compiled in reasonable anticipation of a civil action or proceeding.

NTSB–32

SYSTEM NAME:

Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records.

SYSTEM LOCATION:

National Transportation Safety Board, Office of General Counsel, 490 L'Enfant Plaza SW., Washington, DC 20594.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NTSB employees who have filed financial disclosure statements under the requirements of the Ethics in Government Act of 1978 (hereinafter ''Ethics Act''), as amended, or to whom the Ethics Act otherwise applies.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information that is necessary for administration of all provisions of the Ethics Act and the Ethics Reform Act of 1989, as amended, and Executive Order 12,674, as modified. In particular, this system contains financial information, as well as information concerning: gifts received, certain liabilities, former employment, and assets placed in trust pending disposal. The NTSB incorporates by reference the text of OGE/GOVT–1 into this Notice; as such, this Notice contains a summary of the information and provisions of OGE/GOVT–1 and descriptions of how NTSB–5 is consistent with OGE/GOVT–1, and identifies any differences between NTSB–32 and OGE/GOVT–1. OGE/GOVT–1 is available at 68 FR 3098 (Jan. 22, 2003), as updated at 68 FR 24744 (May 8, 2003) and 76 FR 24489 (May 2, 2011).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I of the Ethics in Government Act of 1978, Public Law 95–521, 92 Stat. 1824 (codified as amended 5 U.S.C. 7301, 7351, 7353, and other scattered sections of 5 U.S.C.); 5 CFR part 2634; 31 U.S.C. 1353; Executive Order 12,674 (as modified by Executive Order 12,731).

PURPOSE(S):

The NTSB collects the records in this system in order to comply with the Ethics Act, and implementing Office of Government Ethics (OGE) regulations and applicable Executive Orders. The collection of these records is necessary to assure compliance with statutory and regulatory requirements, and to preserve and promote the integrity of public officials and institutions. These requirements also include the NTSB's Designated Agency Ethics Official (DAEO) possession or maintenance of information that the DAEO researches or prepares for referral to an Inspector General or the Department of Justice, concerning employees or former employees of the Federal Government who are the subject of complaints of misconduct or alleged violations of ethics statutes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

The NTSB notes that, when the Director or other authorized officials of OGE requests that the NTSB furnish OGE with records from this system, such disclosure will be in response to OGE's need for the records in the performance of their official duties under the Ethics Act, and other related statutes, regulations, and Executive Orders, pursuant to 5 U.S.C. 552a(b)(1). In addition to other disclosures permitted under subsection (b) of the Privacy Act, and described in Appendix A, below, the NTSB may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine use:

1. Disclosure of information furnished by the reporting official, in accordance with provisions of section 105 of the Ethics Act, as amended, to any requesting person;

2. Disclosure, in accordance with section 105 of the Ethics Act, as amended, and subject to the limitations contained in 18 U.S.C. 208(d)(1), of any determination granting an exemption pursuant to section 208(d)(1) or 18 U.S.C. 208(b)(3), to any requesting person;

3. Disclosure of information to any source when necessary to obtain

information relevant to a conflict-of-interest investigation or determination;

4. Disclosure of public financial disclosure reports and any accompanying documents to reviewing officials in a new office, department, or agency when an employee transfers or is detailed from a covered position in one office, department, or agency to a covered position in another office, department, or agency.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

The NTSB primarily maintains these records on paper in file folders. In addition, the Office of General Counsel maintains certain information about current and former employees in searchable electronic databases.

RETRIEVABILITY:

Records in this system are indexed alphabetically by name.

SAFEGUARDS:

Paper records are maintained in locked file cabinets that are restricted through electronic keycards to enter the facility where records are located. Access to and use of these records is limited to those persons whose official duties require such access, and the Facility Security Access Control System (NTSB–24) logs the date and time that each electronic keycard was used to enter the location. This system conforms to all applicable Federal laws and regulations, as well as NTSB policies and standards, as they relate to information security and data privacy. In this regard, the following laws and regulations may apply: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; and corresponding regulations implementing these statutes.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 25, the NTSB retains these records for a period of six years after filing, or for such other period of time as set forth in Schedule 25 for certain types of ethics records. The NTSB may retain records needed in an ongoing investigation for a period that exceeds six years, until the investigation no longer requires such records. At the expiration of the retention period, the NTSB destroys these records by shredding them.

SYSTEM MANAGER(S) AND ADDRESS:

Designated Agency Ethics Official, National Transportation Safety Board, 490 East L'Enfant Plaza SW., Washington, DC 20594.

NOTIFICATION AND PROCEDURE:

Individuals wishing to inquire about whether this system of records contains information about them may contact the Designated Agency Ethics Official at the following address: National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594. Individuals must comply with NTSB regulations regarding the Privacy Act, at 5 CFR part 802, and must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Dates of employment; and
3. Signature.

RECORD ACCESS PROCEDURES:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Current and former NTSB employees, or designated persons on behalf of such employees, such as trustees, attorneys, accountants, bankers, or relatives; Federal officials who review the records to make conflict-of-interest determinations; persons alleging conflicts of interest or violations of other ethics laws, and persons contacted during any investigation of the allegations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix A: General Routine Uses Applicable to All Systems of Records

The NTSB may make the following disclosures of information from the above-listed systems of records.

A. Disclosure for Law Enforcement Purposes

When information indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

B. Disclosure Incident to Requesting Information

Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

C. Disclosure to Requesting Agency

Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. Disclosure to Congressional Offices

Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of the individual about whom the record is maintained. The NTSB will not make such a disclosure until the congressional office has furnished appropriate documentation of the individual's request, such as a copy of the individual's written request.

E. Disclosure to Department of Justice

Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the NTSB is authorized to appear, when:

1. The NTSB, or any component thereof; or
2. Any employee of the NTSB in his or her official capacity; or
3. Any employee of the NTSB in his or her individual capacity where the Department of Justice or the NTSB has agreed to represent the employee; or
4. The United States is a party to litigation or has an interest in such litigation, and the NTSB determines that the records are both relevant and necessary to the litigation and the use of such records is deemed by the NTSB to be for a purpose that is compatible with the purpose for which the records were collected.

F. Disclosure to the National Archives and General Services Administration

Information may be disclosed to the National Archives and Records Administration or General Services Administration for records management

inspections conducted under 44 U.S.C. 2904 and 2906.

G. Disclosure to Contractors, Grantees, Etc.

Information may be disclosed to agency contractors, grantees, consultants, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, job, or other activity for the NTSB related to this system of records and who need to have access to the records in order to perform the activity for the NTSB. This includes Federal agencies providing payroll, management, or administrative services to the NTSB. When appropriate, recipients shall be required to comply with the requirements of the Privacy Act of 1974 as provided at 5 U.S.C. 552a(m).

H. Disclosures for Administrative Claims, Complaints and Appeals

Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee or former employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

I. Disclosure to the Office of Personnel Management

Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

J. Disclosure in Connection With Litigation

Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the NTSB, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, codified at 5 U.S.C. 552a(b)(11).

K. Disclosure to Persons or Entities in Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information

The NTSB may disclose information from any of the above-listed system of records to the appropriate agencies, entities, and/or persons when: (a) The NTSB suspects or has confirmed that the security or confidentiality of personally identifiable information in the system of records has been compromised; (b) the NTSB has determined that, as a result of the suspected or confirmed compromise, a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system exists; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the NTSB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Appendix B: General Routine Uses Applicable to All Systems of Records

As described in the above notices, some NTSB records may be located in the Government-wide systems of records listed below:

1. EEOC/GOVT–1 Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.
2. DOL/GOVT–3 Office of Workers' Compensation Programs, Federal Employees' Compensation Act File.
3. GSA/GOVT–3 Travel Charge Card Program.
4. MSPB/GOVT–1 Appeals and Case Records.
5. OGE/GOVT–1 Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records.
6. OGE/GOVT–2 Executive Branch Confidential Financial Disclosure Reports.
7. OPM/GOVT–1 General Personnel Records.
8. OPM/GOVT–2 Employee Performance File System Records.
9. OPM/GOVT–3 Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers.
10. OPM/GOVT–10 Employee Medical File System Records.

Dated: October 4, 2012.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–24966 Filed 10–10–12; 8:45 am]

BILLING CODE 7533–01–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 197 October 11, 2012

Part VI

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline, Notice

AGENCY: State Justice Institute.

ACTION: Grant Guideline for FY 2013.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2013 State Justice Institute grants, cooperative agreements, and contracts.

DATES: October 11, 2012.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *jonathan.mattiello@sji.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984 (42 U.S.C. 10701, *et seq.*), SJI is authorized to award grants, cooperative agreements, and contracts to state and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the state courts of the United States.

The following Grant Guideline is adopted by the State Justice Institute for FY 2013.

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I. The Mission of the State Justice Institute

SJI was established by State Justice Institute Authorization Act of 1984 (42 U.S.C. 10701 *et seq.*) to improve the administration of justice in the state courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, SJI is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of state court systems through national and state organizations.

To accomplish these broad objectives, SJI is authorized to provide funding to state courts, national organizations which support and are supported by state courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the state courts. SJI is supervised by a Board of Directors appointed by the President, with the advice and consent of the Senate. The Board is statutorily composed of six judges; a state court administrator; and four members of the public, no more than two can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, SJI is authorized to perform the following activities:

A. Support technical assistance, demonstrations, special projects, research and training to improve the administration of justice in the state courts;

B. Provide for the preparation, publication, and dissemination of information regarding state judicial systems;

C. Participate in joint projects with federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the state courts;

E. Encourage and assist in furthering judicial education; and,

F. Encourage, assist, and serve in a consulting capacity to state and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services.

II. Eligibility for Award

SJI is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).*

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of state governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of state governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to state and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705 (b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. SJI may also make awards to state or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* SJI may enter into inter-agency agreements with federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

SJI is prohibited from awarding grants to federal, tribal, and international courts.

III. Scope of the Program

SJI is offering six types of grants in FY 2013: Project Grants, Technical Assistance (TA) Grants, Curriculum Adaptation and Training (CAT) Grants, Partner Grants, Strategic Initiatives Grants (SIG) Program, and the Education Support Program (ESP).

The SJI Board of Directors has established Priority Investment Areas for grant funding. SJI will allocate significant financial resources through grant-making for these Priority Investment Areas (in no ranking order):

- Limited English Proficiency (LEP)—e.g., interpretation service plans, remove interpretation (outside the courtroom), interpreter certification, courtroom services (plain language forms, Web sites, etc.).
- Self-Represented Litigation—e.g., court-operated self-help centers, online services, training.

• Reengineering in Response to Budget Reductions—e.g., the process of court reengineering, regionalization or centralization of services, structural changes, the electronic record.

• Human Trafficking and the State Courts—e.g., technical assistance/training, trafficking victim identification and assistance.

• Immigration Issues in the State Courts—e.g., impact of federal and state immigration law and policies, juvenile and family issues, technical assistance/training.

• Guardianship, Conservatorship, and Elder Issues—e.g., court visitor programs, electronic reporting, reports, technical assistance/training.

The Priority Investment Areas replace the former Special Interest Categories for Project Grants in many ways—most importantly in that they apply to ALL grant types (with the exception of the Education Support Program). SJI strongly encourages potential grant applicants to consider projects addressing one or more of these Priority Investment Areas.

A. Project Grants

Project Grants are intended to support innovative education and training, research and evaluation, demonstration, and technical assistance projects that can improve the administration of justice in state courts locally or nationwide. Project Grants may ordinarily not exceed $300,000. Examples of expenses not covered by Project Grants include the salaries, benefits, or travel of full-or part-time court employees. Grant periods for Project Grants ordinarily may not exceed 36 months.

Applicants for Project Grants will be required to contribute a cash match of not less than 50 percent of the total cost of the proposed project. In other words, grant awards by SJI must be matched at least dollar for dollar by grant applicants. Applicants may contribute the required cash match directly or in cooperation with third parties. Prospective applicants should carefully review Section VI.8. (matching requirements) and Section VI.16.a. (non-supplantation) of the Guideline prior to beginning the application process. If questions arise, applicants are strongly encouraged to consult SJI.

A temporary reduced cash match process is available for state courts submitting Project Grant applications. The use of this cash match reduction authority is intended to help the state courts in this climate of severe budget reductions. The process requires the state court to formally request a reduced cash match, and that the request be certified by the chief justice of that state. The state court must explain in detail how it is facing budgetary cutbacks that will result in significant reductions in other services, and why it will be unable to undertake the project without a cash match reduction. This must be described in detail in the application and verified by the chief justice of that state. Only state courts may apply for a cash match reduction.

Applicants should examine their projected project costs closely, and if they are unable to cover half the costs of the project, they may apply for a reduction in cash match. Applicants are strongly encouraged to provide as much cash match as possible in their application, as some cash match contribution is still required.

Applicants are also encouraged to provide the percentage of budget reductions in their court(s), and the measures that have been taken by the jurisdiction/state to handle the budget shortfalls. This may include staff reductions, as well as reductions in services and programs. Some cash contribution is still required for Project Grants, and should be reflected in the budget proposal for the project. For example, if the total cost of the proposed project is $100,000, the normal cash match would be $50,000. However, if the applicant is unable to provide $50,000 for the activities, but is able to contribute $25,000, the budget should show the request to SJI totaling $75,000, with the cash match of $25,000.

As set forth in Section I., SJI is authorized to fund projects addressing a broad range of program areas. Funding will not be made available for the ordinary, routine operations of court systems.

B. Technical Assistance (TA) Grants

TA Grants are intended to provide state or local courts, or regional court associations, with sufficient support to obtain expert assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. TA Grants may not exceed $50,000. Examples of expenses not covered by TA Grants include the salaries, benefits, or travel of full- or part-time court employees. Grant periods for TA Grants ordinarily may not exceed 24 months. In calculating project duration, applicants are cautioned to fully consider the time required to issue a request for proposals, negotiate a contract with the selected provider, and execute the project.

Applicants for TA Grants will be required to contribute a *total* match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $50,000 TA grant must provide a $25,000 match, of which up to $20,000 can be in-kind and not less than $5,000 must be cash. TA Grant application procedures can be found in section IV.B.

C. Curriculum Adaptation and Training (CAT) Grants

CAT Grants are intended to: (1) Enable courts and regional or national court associations to modify and adapt model curricula, course modules, or conference programs to meet states' or local jurisdictions' educational needs; train instructors to present portions or all of the curricula; and pilot-test them to determine their appropriateness, quality, and effectiveness, or (2) conduct judicial branch education and training programs, led by either expert or in-house personnel, designed to prepare judges and court personnel for innovations, reforms, and/or new technologies recently adopted by grantee courts. CAT Grants may not exceed $30,000. Examples of expenses not covered by CAT Grants include the salaries, benefits, or travel of full- or part-time court employees. Grant periods for CAT Grants ordinarily may not exceed 12 months.

Applicants for CAT Grants will be required to contribute a match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $30,000 CAT grant must provide a $15,000 match, of which up to $12,000 can be in-kind and not less than $3,000 must be cash. CAT Grant application procedures can be found in section IV.C.

D. Partner Grants

Partner Grants are intended to allow SJI and federal, state, or local agencies or foundations, trusts, or other private entities to combine financial resources in pursuit of common interests. SJI and its financial partners may set any level for Partner Grants, subject to the entire amount of the grant being available at the time of the award. Grant periods for Partner Grants ordinarily may not exceed 36 months.

Partner Grants are subject to the same cash match requirement as Project Grants. In other words, grant awards by SJI must be matched at least dollar-for-dollar. Partner Grants are coordinated by the funding organizations. Partner Grant application procedures can be found in section IV.E.

E. Strategic Initiatives Grants

The Strategic Initiatives Grants (SIG) program provides SJI with the flexibility to address national court issues as they occur, and develop solutions to those problems. This is an innovative approach where SJI uses its expertise and the expertise and knowledge of its grantees to address key issues facing state courts across the United States.

The funding is used for grants or contractual services, and any remaining balance not used for the SIG program will become available for SJI's other grant programs. The program is handled at the discretion of the SJI Board of Directors and staff outside the normal grant application process (i.e., SJI will initiate the project).

F. Education Support Program (ESP) for Judges and Court Managers

The new Education Support Program (ESP), formally the Scholarship Program, is intended to enhance the skills, knowledge, and abilities of state court judges and court managers by enabling them to attend out-of-state, or to enroll in online, educational and training programs sponsored by national and state providers that they could not otherwise attend or take online because of limited state, local, and personal budgets. An ESP award only covers the cost of tuition up to a maximum of $1,000 per award. ESP application procedures can be found in section IV.D.

IV. Grant Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (see below). See Appendix B for the Project Grant application forms.

1. Forms

a. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from SJI. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (Form B)

An application from a state or local court must include a copy of Form B signed by the state's chief justice or state court administrator. The signature denotes that the proposed project has been approved by the state's highest court or the agency or council it has designated. It denotes further that, if applicable, a cash match reduction has been requested, and that if SJI approves funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Form (Form C)

Applicants must submit a Form C. In addition, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category (see subsection A.4. below).

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities (Form E)

Applicants other than units of state or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts (see section VI.A.7.).

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

The applicant must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

b. Need for the Project

If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

c. Tasks, Methods and Evaluations

(1) Tasks and Methods. The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects,* the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; the type of assistance determined; how suitable providers would be selected and briefed; and how reports would be reviewed.

(2) *Evaluation.* Projects should include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. The evaluation plan should be appropriate to the type of project proposed.

d. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30), per section VI.A.13.

Applicants should be aware that SJI is unlikely to approve a limited extension of the grant period without strong justification. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

e. Products

The program narrative in the application should contain a description of the product(s) to be developed (e.g., training curricula and materials, Web sites or other electronic multimedia, articles, guidelines, manuals, reports, handbooks, benchbooks, or books), including when they would be submitted to SJI. The budget should include the cost of producing and disseminating the product to the state chief justice, state court administrator, and other appropriate judges or court personnel. If final products involve electronic formats, the applicant should indicate how the product would be made available to other courts. Discussion of this dissemination process should occur between the grantee and SJI prior to the final selection of the dissemination process to be used.

(1) *Dissemination Plan.* The application must explain how and to whom the products would be disseminated; describe how they would benefit the state courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the court community and the public at large (i.e., whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (see section VI.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

Applicants proposing to develop Web-based products should provide for sending a notice and description of the document to the appropriate audiences to alert them to the availability of the Web site or electronic product (i.e., a written report with a reference to the Web site).

Three (3) copies of all project products should be submitted to SJI, along with an electronic version in HTML or PDF format. Discussions of final product dissemination should be conducted with SJI prior to the end of the grant period.

(2) *Types of Products.* The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period (see section VI.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use by others and again by the original participants in the course of their duties.

(3) *SJI Review.* Applicants must submit a final draft of all written grant products to SJI for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in Web site or multimedia format, applicants must provide for SJI review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or

reproduction of a final grant product without the written approval of SJI (see section VI.A.11.f.).

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from SJI and a disclaimer paragraph based on the example provided in section VI.A.11.a.2. in the Grant Guideline. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a Web site or other multimedia product, unless SJI approves another placement. The SJI logo can be downloaded from SJI's Web site: *www.sji.gov.*

f. Applicant Status

An applicant that is not a state or local court and has not received a grant from SJI within the past three years should indicate whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of state governments, or a national non-profit organization for the education and training of state court judges and support personnel (see section II). If the applicant is a non-judicial unit of federal, state, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

g. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

h. Organizational Capacity

Applicants that have not received a grant from SJI within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from SJI within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, ''current'' means no earlier than two years prior to the present calendar year.

If a current audit report is not available, SJI will require the organization to complete a financial capability questionnaire, which must be signed by a certified public accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

i. Statement of Lobbying Activities

Non-governmental applicants must submit SJI's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts (see Appendix A).

j. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. Letters of general support for a project are also encouraged.

4. Budget Narrative

In addition to Project Grant applications, the following section also applies to Technical Assistance and Curriculum Adaptation and Training grant applications.

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Grant funds may not be used to purchase alcoholic beverages.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. No grant funds or cash match may be used to pay the salary and related costs for a current or new employee of a court or other unit of government because such funds would constitute a supplantation of state or local funds in violation of 42 U.S.C. 10706(d)(1); this includes new employees hired specifically for the project. The salary and any related costs for a current or new employee of a court or other unit of government may only be accepted as in-kind match.

b. Fringe Benefit Computation

For non-governmental entities, the applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e.g., the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section VII.I.2.c. Prior written SJI approval is required for any consultant rate in excess of $800 per day; SJI funds may not be used to pay a consultant more than $1,100 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established

travel policy, then travel rates must be consistent with those established by the federal government. The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. In other words, grant funds cannot be used strictly for the purpose of purchasing equipment. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section VII.I.2.b.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited except for the limited purposes set forth in section VI.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

i. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

j. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. Recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs; i.e., salaries plus fringe benefits (see section VII.I.4.).

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section VII.I.4. If the applicant has an indirect cost rate or allocation plan approved by any federal granting agency, a copy of the approved rate agreement must be attached to the application.

5. Submission Requirements

a. Every applicant must submit an original and three copies of the application package consisting of Form A; Form B, if the application is from a state or local court, or a Disclosure of Lobbying Form (Form E), if the applicant is not a unit of state or local government; Form C; the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

Letters of application may be submitted at any time. However, applicants are encouraged to review the grant deadlines available on the SJI Web site. Receipt of each application will be acknowledged by letter or email.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of the application.

B. Technical Assistance (TA) Grants

1. Application Procedures

Applicants for TA Grants may submit an original and three copies of a detailed letter describing the proposed project, as well as a Form A, ''State Justice Institute Application'' (see Appendix B) and Form B, Certificate of State Approval from the State Supreme Court, or its designated agency and Form C, ''Project Budget in Tabular Format.'' Letters from regional court associations must be signed by the president of the association.

2. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* The applicant must explain the critical need facing the applicant, and the proposed technical assistance enable the applicant to meet this critical need. The applicant must also explain why state or local resources are not sufficient to fully support the costs of the project. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

b. *Project Description.* The applicant must describe how the proposed project addressed one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

The applicant must describe the tasks the consultant will perform, and how would they be accomplished. In addition, the applicant must identify which organization or individual will be hired to provide the assistance, and how the consultant was selected. If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant (applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services)? What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or

regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and SJI upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

3. Budget and Matching State Contribution

Applicants must follow the same guidelines provided under Section IV.A.4. A completed Form C ''Project Budget, Tabular Format'' and budget narrative must be included with the letter requesting technical assistance.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (e.g., the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $800 per day must be approved in advance by SJI, and that no consultant will be paid more than $1,100 per day from SJI funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the SJI.

Recipients of TA Grants do not have to submit an audit report but must maintain appropriate documentation to support expenditures (see section VI.A.3.).

4. Submission Requirements

Letters of application should be submitted according to the grant deadlines provided on the SJI Web site.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Letters of general support for the project are also encouraged. Support letters also may be submitted under separate cover; however, they should be received by the same date as the application.

C. Curriculum Adaptation and Training (CAT) Grants

1. Application Procedures

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter as well as a Form A, ''State Justice Institute Application;'' Form B, ''Certificate of State Approval;'' and Form C, ''Project Budget, Tabular Format'' (see Appendices).

2. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information.

a. For adaptation of a curriculum:

(1) *Project Description.* The applicant must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not. Due to the high costs of travel to attend training events, the innovative use of distance learning is highly encouraged.

The applicant must provide the title of the curriculum that will be adapted, and identify the entity that originally developed the curriculum. The applicant must also address the following questions: Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (e.g., from a single local jurisdiction, from across the state, from a multi-state region, from across the nation)?

(2) *Need for Funding.* The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

The applicant should explain why state or local resources are unable to fully support the modification and presentation of the model curriculum. The applicant should also describe the potential for replicating or integrating the adapted curriculum in the future using state or local funds, once it has been successfully adapted and tested. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

(3) *Likelihood of Implementation.* The applicant should provide the proposed timeline, including the project start and end dates, the date(s) the judicial branch education program will be presented, and the process that will be used to modify and present the program. The applicant should also identify who will serve as faculty, and how they were selected, in addition to the measures taken to facilitate subsequent presentations of the program. Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? Applicants may demonstrate this by attaching letters of support.

b. For training assistance:

(1) *Need for Funding.* The applicant must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National

Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

The applicant should describe the court reform or initiative prompting the need for training. The applicants should also discuss how the proposed training help the applicant implement planned changes at the court, and why state or local resources are not sufficient to fully support the costs of the required training. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

(2) *Project Description.* The applicant must identify the tasks the trainer(s) will be expected to perform, which organization or individual will be hired, and, if in-house personnel are not the trainers, how the trainer will be selected. If a trainer has not yet been identified, the applicant must describe the procedures and criteria that will be used to select the trainer. In addition, the applicant should address the following questions: What specific tasks would the trainer and court staff or regional court association members undertake? What presentation methods will be used? What is the schedule for completion of each required task and the entire project? How will the applicant oversee the project and provide guidance to the trainer, and who at the court or affiliated with the regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the trainer has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the trainer's ability to complete the assignment within the proposed time frame and for the proposed cost.

(3) *Likelihood of Implementation.* The applicant should explain what steps have been or will be taken to coordinate the implementation of the training. For example, if the support or cooperation of specific court or regional court association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the reform and initiate the training proposed, how will the applicant secure their involvement in the development and implementation of the training?

3. Budget and Matching State Contribution

Applicants must also follow the same guidelines provided under Section IV.A.4. Applicants should attach a copy of budget Form C and a budget narrative (see subsection A.4. above) that describes the basis for the computation of all project-related costs and the source of the match offered.

4. Submission Requirements

For curriculum adaptation requests, applicants should allow at least 90 days between the Board meeting and the date of the proposed program to allow sufficient time for needed planning. Letters of support for the project are also encouraged. Applicants are encouraged to call SJI to discuss concerns about timing of submissions.

D. Partner Grants

SJI and its funding partners may meld, pick and choose, or waive their application procedures, grant cycles, or grant requirements to expedite the award of jointly-funded grants targeted at emerging or high priority problems confronting state and local courts. SJI may solicit brief proposals from potential grantees to fellow financial partners as a first step. Should SJI be chosen as the lead grant manager, Project Grant application procedures will apply to the proposed Partner Grant. As with Project Grants, Partner Grants will be targeted at initiatives likely to have a significant national impact.

E. Education Support Program (ESP)

1. Limitations

Applicants may not receive more than one ESP award in a two-year fiscal year period unless the course specifically assumes multi-year participation, such as a certification program or a graduate degree program in judicial studies in which the applicant is currently enrolled (neither exception should be taken as a commitment on the part of SJI's Board of Directors to approve serial ESP awards). If the course assumes multi-year participation, awards will be limited to one per fiscal year. Attendance at annual or mid-year meetings or conferences of a state or national organization does not qualify as an out-of-state educational program for the ESP, even though it may include workshops or other training sessions.

The ESP only covers the cost of tuition up to a maximum of $1,000 per award, per course. Awards will be made for the exact amount requested for tuition. Funds to pay tuition in excess of $1,000, and other cost of attending the program such as travel, lodging, transportation, meals, materials, transportation to and from airports (including rental cars) must be obtained from other sources or borne by the ESP award recipient. Applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible. An ESP award is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by SJI.

2. Eligibility Requirements

a. *Recipients.* Because of the limited amount of funding available, only full-time judges of state or local trial and appellate courts; full-time professional, state, or local court personnel with management and supervisory responsibilities; and supervisory and management probation personnel in judicial branch probation offices are eligible for the program. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible.

b. *Courses.* An ESP award is only for: (1) a course presented in a state other than the one in which the applicant resides or works, or (2) an online course. The course must be designed to enhance the skills of new or experienced judges and court managers; or be offered by a recognized graduate program for judges or court managers.

Applicants are encouraged not to wait for the decision on an ESP application to register for an educational program they wish to attend. SJI does not submit the names of ESP award recipients to educational organizations, nor provide the funds to the educational organization. ESP funds are provided as reimbursements directly to the recipient.

3. Forms

a. Education Support Program Application—Form ESP–1 (Appendix B). The application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the

skills and knowledge gained with state and local court colleagues. The application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted. Please be sure to indicate whether the state will be providing funds for the course and, if so, how much. SJI will not supplant state funds with these awards.

b. Education Support Program Concurrence—Form ESP–2 (Appendix B). Judges and court managers applying for the program must submit the original written concurrence of the chief justice of the state's supreme court (or the chief justice's designee) on Form ESP–2 (see Appendix B). The signature of the presiding judge of the applicant's court may not be substituted for that of the state's chief justice or the chief justice's designee. The chief justice or state court administrator must notify SJI of the designees within the state for ESP purposes.

4. Submission Requirements

Applications may be submitted at any time but will be reviewed on a quarterly basis. This means ESP awards will be on a ''first-come, first-considered'' basis. The dates for applications to be received by SJI for consideration in FY 2013 are November 1, February 1, May 1, and August 1. These are *not* mailing deadlines. The applications must be received by SJI on or before each of these dates. No exceptions or extensions will be granted. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item sent will be used in determining the review date. All applications should be sent by mail or courier (not fax or email).

V. Application Review Procedures

A. Preliminary Inquiries

SJI staff will answer inquiries concerning application procedures.

B. Selection Criteria

1. Project Grant Applications

a. Project Grant applications will be rated on the basis of the criteria set forth below. SJI will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;

(5) The applicant's management plan and organizational capabilities;

(6) The qualifications of the project's staff;

(7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for state courts across the nation;

(8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(9) The reasonableness of the proposed budget; and

(10) The demonstration of cooperation and support of other agencies that may be affected by the project.

b. In determining which projects to support, SJI will also consider whether the applicant is a state court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under SJI's enabling legislation (see section II.); the availability of financial assistance from other sources for the project; the amount of the applicant's match; the extent to which the proposed project would also benefit the federal courts or help state courts enforce federal constitutional and legislative requirements; and the level of appropriations available to SJI in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance (TA) Grant Applications

TA Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the applicant;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired or the specific criteria that will be used to select the consultant(s);

d. The commitment of the court or association to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

SJI also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to SJI in the current year, and the amount expected to be available in succeeding fiscal years.

3. Curriculum Adaptation and Training (CAT) Grant Applications

CAT Grant applications will be rated on the basis of the following criteria:

a. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

b. For training assistance:

(1) Whether the training would address a critical need of the court or association;

(2) The soundness of the training approach to the problem;

(3) The qualifications of the trainer(s) to be hired or the specific criteria that will be used to select the trainer(s);

(4) The commitment of the court or association to the training program; and

(5) The reasonableness of the proposed budget. SJI will also consider factors such as the reasonableness of the amount requested; compliance with match requirements; diversity of subject matter, geographic diversity; the level of appropriations available in the current year; and the amount expected to be available in succeeding fiscal years.

4. Partner Grants

The selection criteria for Partner Grants will be driven by the collective priorities of SJI and other organizations and their collective assessments regarding the needs and capabilities of court and court-related organizations. Having settled on priorities, SJI and its financial partners will likely contact the courts or court-related organizations most acceptable as pilots, laboratories, consultants, or the like.

5. Education Support Program (ESP)

ESP awards are only for programs that either: (1) Enhance the skills of judges and court managers; or (2) are part of a graduate degree program for judges or court personnel. Awards are provided on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent (''first-come, first-considered'');

b. The unavailability of state or local funds, or funding from another source to cover the costs of attending the program, or participating online;

c. The absence of educational programs in the applicant's state addressing the topic(s) covered by the educational program for which the award is being sought;

d. Geographic balance among the recipients;

e. The balance of ESP awards among educational providers and programs;

f. The balance of ESP awards among the types of courts and court personnel (trial judge, appellate judge, trial court administrator) represented; and

g. The level of appropriations available to SJI in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

C. Review and Approval Process

1. Project Grant Applications

SJI's Board of Directors will review the applications competitively. The Board will review all applications and decide which projects to fund. The decision to fund a project is solely that of the Board of Directors. The Chairman of the Board will sign approved awards on behalf of SJI.

2. Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grant Applications

The Board will review the applications competitively. The Board will review all applications and decide which projects to fund. The decision to fund a project is solely that of the Board of Directors. The Chairman of the Board will sign approved awards on behalf of SJI.

3. Education Support Program (ESP)

A committee of the Board of Directors will review ESP applications quarterly. The committee will review the applications competitively. The Chairman of the Board will sign approved awards on behalf of SJI.

4. Partner Grants

SJI's internal process for the review and approval of Partner Grants will depend on negotiations with fellow financiers. SJI may use its procedures, a partner's procedures, a mix of both, or entirely unique procedures. All Partner Grants will be approved by the Board of Directors.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that SJI records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

SJI will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except ESP applications), if requested, SJI will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle.

F. Response to Notification of Approval

With the exception of those approved for ESP awards, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to SJI within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration. In the event an issue will only be resolved after award, such as the selection of a consultant, the final award document will include a Special Condition that will require additional grantee reporting and SJI review and approval. Special Conditions, in the form of incentives or sanctions, may also be used in other situations.

VI. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by SJI. The Board of Directors has approved additional policies governing the use of SJI grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by SJI may be used to support or conduct training programs for the purpose of advocating particular non-judicial public policies or encouraging non-judicial political activities (42 U.S.C. 10706(b)).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to SJI. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds (see section VIII.A.7.).

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles (see section VII.K. for the requirements of such audits). ESP award recipients, Curriculum Adaptation and Training Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures (see section VIII.K.).

4. Budget Revisions

Budget revisions among direct cost categories that: (a) transfer grant funds to an unbudgeted cost category, or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior SJI approval (see section VIII.A.1.).

5. Conflict of Interest

Personnel and other officials connected with SJI-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which SJI funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of SJI project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or

subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of SJI-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and SJI on disposition of such items, SJI shall determine whether protection of the invention or discovery shall be sought. SJI will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by SJI shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by federal, state or local agencies, or to influence the passage or defeat of any legislation by federal, state or local legislative bodies (42 U.S.C. 10706(a)).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, SJI will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than ESP award recipients are required to provide a match. A match is the portion of project costs not borne by the Institute. Match includes both cash and in-kind contributions. Cash match is the direct outlay of funds by the grantee or a third party to support the project. In-kind match consists of contributions of time and/or services of current staff members, new employees, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project or that portion of the grantee's federally-approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75 percent of salaries and benefits).

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of SJI, match may be incurred from the date of the Board of Directors' approval of an award. The amount and nature of required match depends on the type of grant (see section III.).

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, SJI may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VII.E.1.). Match should be expended at the same rate as SJI funding.

The Board of Directors looks favorably upon any unrequired match contributed by applicants when making grant decisions. The match requirement may be waived in exceptionally rare circumstances upon the request of the chief justice of the highest court in the state or the highest ranking official in the requesting organization and approval by the Board of Directors (42 U.S.C. 10705(d)). The Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process (see section V.B.1.b.).

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by SJI funds. Recipients of SJI funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available SJI funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify SJI or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office (42 U.S.C. 10706(a)).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of SJI funds must acknowledge prominently on all products developed with grant funds that support was received from the SJI. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a multimedia product, unless another placement is approved in writing by SJI. This includes final products printed or otherwise reproduced during the grant period, as well as re-printings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available on SJI's Web site: *www.sji.gov/forms*.

(2) Recipients also must display the following disclaimer on all grant products: ''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.''

(3) In addition to other required grant products and reports, recipients must provide a one page executive summary of the project. The summary should include a background on the project, the tasks undertaken, and the outcome. In addition, the summary should provide the performance metrics that were used during the project, and how performance will be measured in the future.

b. Charges for Grant-Related Products/Recovery of Costs

(1) SJI's mission is to support improvements in the quality of justice and foster innovative, efficient solutions to common issues faced by all courts. SJI has recognized and established procedures for supporting research and development of grant products (e.g. a report, curriculum, video, software, database, or Web site) through competitive grant awards based on merit review of proposed projects. To ensure that all grants benefit the entire court community, projects SJI considers worthy of support (in whole or in part), are required to be disseminated widely and available for public consumption. This includes open-source software and interfaces. Costs for development,

production, and dissemination are allowable as direct costs to SJI.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of SJI of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either SJI grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of SJI-funded project or other purposes consistent with the State Justice Institute Act that have been approved by SJI (see section VII.G.).

c. Copyrights

Except as otherwise provided in the terms and conditions of a SJI award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of a SJI-supported project, but SJI shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Due Date

All products and, for TA and CAT grants, consultant and/or trainer reports (see section VI.B.1 & 2) are to be completed and distributed (see below) not later than the end of the award period, not the 90-day close out period. The latter is only intended for grantee final reporting and to liquidate obligations (see section VII.L.).

e. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Three (3) copies of each final product developed with grant funds to SJI, unless the product was developed under either a Technical Assistance or a Curriculum Adaptation and Training Grant, in which case submission of 2 copies is required; and

(2) An electronic version of the product in HTML or PDF format to SJI.

f. SJI Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of SJI. Grantees shall submit a final draft of each written product to SJI for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit SJI review and incorporation of any appropriate changes required by SJI. Grantees must provide for timely reviews by the SJI of Web site or other multimedia products at the treatment, script, rough cut, and final stages of development or their equivalents.

g. Original Material

All products prepared as the result of SJI-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by SJI may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of SJI funds other than ESP awards must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

b. The quarterly Financial Status Report must be submitted in accordance with section VII.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section VII.L.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under a SJI grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

Human subjects are defined as individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique. All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, SJI must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council. The supreme court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application (42 U.S.C. 10705(b)(4)). See section VII.C.2.

16. Supplantation and Construction

To ensure that SJI funds are used to supplement and improve the operation of state courts, rather than to support basic court services, SJI funds shall not be used for the following purposes:

a. To supplant state or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, SJI may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award (42 U.S.C. 10708(a)).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with SJI funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by SJI that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or SJI disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in SJI, which will direct the disposition of the property.

B. Recipients of Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grants

Recipients of TA and CAT Grants must comply with the requirements listed in section VI.A. (except the requirements pertaining to audits in subsection A.3. above and product dissemination and approval in subsection A.11.e. and f. above) and the reporting requirements below:

1. Technical Assistance (TA) Grant Reporting Requirements

Recipients of TA Grants must submit to SJI one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

2. Curriculum Adaptation and Training (CAT) Grant Reporting Requirements

Recipients of CAT Grants must submit one copy of the agenda or schedule, outline of presentations and/or relevant instructor's notes, copies of overhead transparencies, power point presentations, or other visual aids, exercises, case studies and other background materials, hypotheticals, quizzes, and other materials involving the participants, manuals, handbooks, conference packets, evaluation forms, and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty, developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future, as well as two copies of the consultant's or trainer's report.

C. Education Support Program (ESP) Recipients

1. ESP award recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the state.

Recipients also must submit to SJI a certificate of attendance from the program and a copy of the notice of any funding received from other sources. A state or local jurisdiction may impose additional requirements on ESP award recipients.

2. To receive the funds authorized by an ESP award, recipients must submit an ESP Payment Request (Form ESP–3) together with a paid tuition statement from the program sponsor.

ESP Payment Requests must be submitted within 90 days after the end of the course, which the recipient attended.

3. ESP recipients are encouraged to check with their tax advisors to determine whether an award constitutes taxable income under federal and state law.

D. Partner Grants

The compliance requirements for Partner Grant recipients will depend upon the agreements struck between the grant financiers and between lead financiers and grantees. Should SJI be the lead, the compliance requirements for Project Grants will apply, unless specific arrangements are determined by the Partners.

VII. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, sub-grantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;
2. Complying with regulatory requirements of SJI for the financial management and disposition of funds;
3. Generating financial data to be used in planning, managing, and controlling projects; and
4. Facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Grant Guideline, the following circulars are applicable to SJI grants and cooperative agreements under the same terms and conditions that apply to federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied (circulars may be obtained on the OMB Web site at *http://www.whitehouse.gov/omb*).

1. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.
2. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.
3. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
4. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher

Education, Hospitals and Other Non-Profit Organizations.

5. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

6. *Office of Management and Budget (OMB) Circular A–133,* Audits of States, Local Governments and Non-profit Organizations.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from SJI are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of the State Supreme Court

a. Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council.

b. The state supreme court or its designee shall receive all SJI funds awarded to such courts; be responsible for assuring proper administration of SJI funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The state supreme court or its designee should be familiar with, and periodically monitor, its sub-grantee's financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The sub-grantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the state supreme court or its designee in summary form. Sub-grantee expenditures should be recorded on the books of the state supreme court or evidenced by report forms duly filed by the sub-grantee. Matching contributions provided by sub-grantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The state supreme court or its designee should ensure that each sub-grantee prepares an adequate budget as the basis for its award commitment. The state supreme court should maintain the details of each project budget on file.

(4) *Accounting for Match.* The state supreme court or its designee will ensure that sub-grantees comply with the match requirements specified in this Grant Guideline (see section VI.A.8.).

(5) *Audit Requirement.* The state supreme court or its designee is required to ensure that sub-grantees meet the necessary audit requirements set forth by SJI (see sections K. below and VI.A.3.).

(6) *Reporting Irregularities.* The state supreme court, its designees, and its sub-grantees are responsible for promptly reporting to SJI the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its sub-grantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by SJI must be structured and executed on a ''Total Project Cost'' basis. That is, total project costs, including SJI funds, state and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions should be applied at the same time of the obligation of SJI funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of SJI, contributions made following approval of the grant by the Board of Directors, but before the beginning of the grant, may be counted as match. If a proposed cash or in-kind match is not fully met, SJI may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does SJI funds and required matching shares. For all grants made to state and local courts, the state supreme court has primary responsibility for grantee/sub-grantee compliance with the requirements of this section (see subsection C.2. above).

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, sub-grants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. state supreme courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and sub-grant awards, applications, and required grantee/sub-grantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, sub-grant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and sub-grantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and sub-grantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/sub-grantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and sub-grantees must give any authorized representative of SJI access to and the right to examine all records, books, papers, and documents related to a SJI grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to SJI (see subsection H.2. below). The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A state and any agency or instrumentality of a state, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to sub-grantees through a state, the sub-grantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/sub-grantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval from SJI. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval from SJI. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to SJI in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VI.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all SJI grant funds and grantees.

a. *Request for Reimbursement of Funds.* Grantees will receive funds on a U.S. Treasury ''check-issued'' or electronic funds transfer (EFT) basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by SJI, payment will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Reimbursement Form R), along with the instructions for its preparation, and the SF 3881 Automated Clearing House (ACH/Miscellaneous Payment Enrollment Form for EFT) are available on the Institute's Web site: *http://www.sji.gov/forms.php.*

b. *Termination Reimbursement Funding.* When a grantee organization receiving cash advances from SJI:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or is unable to adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of sub-grants or contracts; or

(3) Is unable to submit reliable and/or timely reports; SJI may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by U.S. Treasury check or EFT to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, SJI may suspend reimbursement payments until the deficiencies are corrected. In extreme cases, grants may be terminated.

c. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/sub-grantees submit timely reports for review.

b. *Due Dates and Contents.* A Financial Status Report is required from all grantees, other than ESP award recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to SJI funds, state and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, are provided on the SJI Web site. If a grantee requests substantial payments for a project prior to the completion of a given quarter, SJI may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in *OMB Circulars A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; *A–87,* Cost Principles for State and Local Governments; and *A–122,* Cost Principles for Non-profit Organizations.

No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained on the OMB Web site at *http://www.whitehouse.gov/omb.*

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of SJI is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval from SJI is required when the rate of compensation to be paid a consultant exceeds $800 a day. SJI funds may not be used to pay a consultant more than $1,100 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior SJI approval (see section VIII.A.1.).

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the federal government. SJI funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting, or conference of that organization.

4. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although SJI's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a federal agency. However, recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs (salaries plus fringe benefits).

a. Approved Plan Available.

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to SJI.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

J. Procurement and Property Management Standards

1. Procurement Standards

For state and local governments, SJI has adopted the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* apply to all SJI grantees and sub-grantees except as provided in section VI.A.18. All grantees/sub-grantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project Grant must provide for an annual fiscal audit. This requirement also applies to a state or local court receiving a sub-grant from the state supreme court. The audit may be of the entire grantee or sub-grantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 *and OMB Circular A–133,* will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a state or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a federal agency and satisfy audit requirements of the cognizant federal agency must submit two copies of the audit report prepared for that federal agency to SJI in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: (1) Follow-up, (2) maintaining a record of the actions taken on recommendations and time schedules, (3) responding to and acting on audit recommendations, and (4) submitting periodic reports to SJI on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, SJI will not make a subsequent grant award to an applicant that has an unresolved audit report involving SJI awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active SJI grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see subsection L.2. below), the following documents must be submitted to SJI by grantees (other than ESP award recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by SJI. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no instance should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the

project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation. These reporting requirements apply at the conclusion of every grant other than an ESP award.

2. Extension of Close-Out Period

Upon the written request of the grantee, SJI may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

VIII. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Grant Guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may result in the termination of a grantee's award.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of SJI:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget (see section VII.I.2.d.).
2. A change in the scope of work to be performed or the objectives of the project (see subsection D. below).
3. A change in the project site.
4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see subsection E. below).
5. Satisfaction of special conditions, if required.
6. A change in or temporary absence of the project director (see subsections F. and G. below).
7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VI.A.2.).
8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.
9. A change in the name of the grantee organization.
10. A transfer or contracting out of grant-supported activities (see subsection H. below).
11. A transfer of the grant to another recipient.
12. Pre-agreement costs (see section VII.I.2.a.).
13. The purchase of automated data processing equipment and software (see section VII.I.2.b.).
14. Consultant rates (see section VII.I.2.c.).
15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify SJI, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help SJI's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the SJI Executive Director. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by SJI. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification to SJI.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for an extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section VII.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/sub-grantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by SJI.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, SJI must be notified immediately. In such cases, if the grantee/sub-grantee wishes to terminate the project, SJI will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to SJI for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by SJI. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of SJI at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility

for the direction of the project and accountability to SJI.

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Jonathan D. Mattiello,

Executive Director.

BILLING CODE P

STATE JUSTICE INSTITUTE
APPLICATION

1. APPLICANT
a. Organization Name _____
b. Street/P.O. Box _____
c. City _____
d. State _____ e. Zip Code _____
f. Phone Number _____
g. Fax Number _____
h. Web Site Address _____
i. Name & Phone Number of Contact Person _____
j. Title _____
k. E-Mail Address _____

2. TYPE OF APPLICANT (Check appropriate box)
□ State Court
□ National organization operating in conjunction with State court
□ National State court support organization
□ College or university
□ Other non-profit organization or agency
□ Individual
□ Corporation or partnership
□ Other unit of government
□ Other _____
(Specify) _____

3. PROPOSED START DATE _____

4. PROJECT DURATION (months) _____

5. APPLICANT FINANCIAL CONTACT
a. Organization Name _____
b. Street/P.O. Box _____
c. City _____
d. State _____ e. Zip Code _____
f. Phone Number _____
g. Fax Number _____
h. Web Site Address _____
i. Name & Phone Number of Contact Person _____
j. Title _____
k. E-Mail Address _____
l. Organization EIN _____

6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Requested _____
Disposition (if any) or Current Status _____

7. a. AMOUNT REQUESTED FROM SJI $ _____
b. AMOUNT OF MATCH
Cash Match $_____
In-kind Match $_____
c. TOTAL MATCH $_____
d. OTHER CASH $_____
e. TOTAL PROJECT COST $_____

8. TITLE OF PROPOSED PROJECT

9. CONGRESSIONAL DISTRICT OF: _____ _____
Name of Representative; District Number — Project location (if different from applicant location): Name of Representative; District Number

10. CERTIFICATION
On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on the behalf of the applicant.

SIGNATURE OF RESPONSIBLE OFFICIAL _____ TITLE _____ DATE _____
(For applications from State and local courts, Form B - Certificate of State Approval, must be attached)

Form A 12/11

STATE JUSTICE INSTITUTE
INSTRUCTIONS FOR APPLICATION FORM A

1. Legal **name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; complete **address** of the applicant, including phone and fax numbers and website addresses; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. Type of Applicant:

    a. **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by, or report for, administrative purposes to the chief or presiding justice or judge, or his or her designee.

    b. **National organizations operating in conjunction with a state court** include national non-profit organization controlled by, operating in conjunction with, and serving state courts.

    c. **National state court support organization** include national non-profit organizations with primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of state government.

    d. **College or university** includes all institutions of higher education.

    e. **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

    f. **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

    g. **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

    h. **Other unit of government** includes any governmental agency, office, or organization that is not a state or local court.

3. The **proposed start date** of the project should be the earliest feasible date on which applicant will be able to begin project activities following the date of award (example: 08/01/2012).

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

5. The **applicant financial contact** is the court or organization employee that will administer and account for any funding awarded. Include the EIN for the court or organization.

6. If this application, or an application requesting support for the same project or a similar project, has been previously submitted to another funding source (federal or private), enter the name of the **source**, the **date** of submission, the **amount** of funding sought, and the **disposition** (if any) or current status.

7. Requested funding:

   a. Insert the **amount requested** from the State Justice Institute to conduct the project.

   b. The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of state or local government, or private sources. See 42 U.S.C. 10705 (d).

      Cash match refers to funds directly contributed by the applicant, a unit of State or local government, or private sources to support the project.

      Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government or private sources to support the project.

   c. **Total match** refers to the sum of the cash and in-kind contributions to the project.

   d. **Other cash** refers to other funds that may not serve as a match but can be used for a project.

   e. **Total project cost** represents the sum of the amount requested from SJI and all other contributions to the project.

8. The **title of the proposed project** should reflect the objectives of the activities to be conducted.

9. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district**, along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representative(s) from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the state, the country, or from a particular region), enter *statewide*, *national*, or *regional*, as appropriate, in the space provided.

10. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed. For applications from state and local courts, Form B, Certificate of State Approval, must be attached.

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

prepared by _____
Name of Applicant

approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by SJI pursuant to the application;

[ ] herby requests consideration of a reduction in cash match as requested by the applicant (**NOTE: only applicable to Project Grant applications**);

[ ] designates _____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by SJI pursuant to the application.

_____ _____
Signature Date

_____
Name

_____
Title

INSTRUCTIONS

The *State Justice Institute Act* requires that:

Each application for funding by a state or local court shall be approved, consistent with state law, by the state's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by SJI to such courts (42 U.S.C. 10705(b)(4)).

FORM B should be signed by the chief judge or chief justice of the state supreme court, or by the director of the designated agency or chair of the designated council.

The term "state supreme court" refers to the court of last resort of a state. "Designated agency or council" refers to the office or judicial body which is authorized under state law, or by delegation from the state supreme court, to approve applications for grant funding and to receive, administer, and be accountable for that funding.

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant:
Project Title:
For Project Activity from/to:
Total Amount Requested for Project from SJI:

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND FUNDS	TOTAL
Direct Costs							
Personnel							$ -
Fringe Benefits							$ -
Consultant / Contractual							$ -
Travel							$ -
Equipment							$ -
Supplies							$ -
Postage							$ -
Printing / Photocopying							$ -
Audit							$ -
Other (specify)							$ -
Subtotal, Direct Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Subtotal, Indirect Costs							$ -
Grand Total	$ -	$ -	$ -	$ -	$ -	$ -	$ -

Remarks:

Form C 09/12

Application Budget Instructions

If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding twelve-month period or portion thereof beyond 12 months. However, a grand total project budget must also be included for multi-year projects. In addition to Form C, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category. If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75 percent of personnel and fringe benefit costs. If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

STATE JUSTICE INSTITUTE
ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the grant, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of SJI as they relate to the acceptance and use of SJI funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by SJI funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by SJI will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by federal, state or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any federal, state or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

    a. It will not contribute or make available SJI funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

    b. No officer or employee of the applicant will intentionally identify SJI or applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

    c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the SJI.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by SJI will be used to support or conduct training programs for the purpose of advocating particular non-judicial public policies or encouraging non-judicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by SJI will be used to supplant state or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give SJI, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708(b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, SJI must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of SJI. The recipient will submit a final draft of each such product to SJI for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project: "This [document, website, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

13. The "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by SJI.

14. Except as otherwise provided in the terms and conditions of a SJI award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of a SJI-supported project, but SJI shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or

otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of the project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period,; and that financial reports will contain the information required.

16. At the conclusion of the project, title to all expendable and non-expendable personal property purchased with SJI funds shall vest in the court, organization, or individual that purchased the property if certification is made to SJI that the property will continue to be used for the authorized purposes of a SJI-funded project or other purposes consistent with the State Justice Institute Act, as approved by SJI. If such certification is not made or SJI disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in SJI, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant, and to obligate the applicant to comply with the assurances enumerated above.

Form D 10/08

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by SJI to directly or indirectly influence the passage or defeat of any legislation by federal, state of local legislative bodies (42 U.S.C. 10706 (a)). It also is the policy of SJI to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), SJI will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to SJI to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

☐ **Yes** ☐ **No** **Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?**

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered **YES** above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

Signature **Name**

Title **Date**

Form E 10/07

APPENDIX B

Education Support Program (ESP)

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (M.I.)
2. Position: _____
3. Name of Court: _____
4. Address: _____
(Street/P.O. Box)
_____
(City) (State) (Zip Code)
5. Telephone No.: _____ 6. Email Address: _____

PROGRAM INFORMATION:

7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____

TUITION COSTS:

Please note: Awards are limited to tuition only, up to a maximum of $1,000 per award.

Tution: $ _____

If I receive an award, I will share the skills and knowledge I have gained with my court colleagues locally and, if possible,

_____ Signature _____ Date

Please return this form and form ESP-2 to:
Education Support Program Coordinator
State justice Institute
11951 Freedom Drive
Suite 1020
Reston, VA 20190

ESP-1 09/11

Education Support Program (ESP)

Concurrence

I, _____,

Name of Chief Justice of the State Supreme Court (or Chief Justice's Designee)

have reviewed the ESP application to attend the program entitled: _____

_____,

prepared by _____,
and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the state. The applicant's absence to attend the program would not present an undue hardship to the court.

Check box that applies:

❑ 1. Public funds **are not** available to enable the applicant to attend this course, and receipt of an award would not diminish the amount of funds made available by the state for judicial branch education.

❑ 2. Public funds **are** available to support the applicant, but are insufficient to cover total costs. Therefore funding from the State Justice Institute is requested.

_____
Signature

_____
Name

_____
Title

_____
Date

Form ESP-2 (09/11)

[FR Doc. 2012–24990 Filed 10–10–12; 8:45 am]
BILLING CODE C

FEDERAL REGISTER

Vol. 77 Thursday,

No. 197 October 11, 2012

Part VII

Federal Trade Commission

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims

AGENCY: Federal Trade Commission.

ACTION: Adoption of Revised Guides.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') adopts revised Guides for the Use of Environmental Marketing Claims (''Green Guides'' or ''Guides''). This document summarizes the Commission's revisions to the Guides and includes the final Guides.

DATES: Effective October 11, 2012.

ADDRESSES: Readers can find the Commission's complete analysis in the Statement of Basis and Purpose (''Statement'') on the FTC's Web site at *http://www.ftc.gov/os/fedreg/2012/10/greenguidesstatement.pdf.*

FOR FURTHER INFORMATION CONTACT: Laura Koss, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 202–326–2890.

SUPPLEMENTARY INFORMATION: As part of its comprehensive review of its Green Guides,[1] the Commission reviewed public comments, public workshop transcripts, and consumer perception research.[2] The Commission now makes several modifications and additions to the 1998 Guides and adopts the resulting revised Guides as final.

The Commission modifies sections for the following claims: General Environmental Benefit, Compostable, Degradable, Ozone, Recyclable, and Recycled Content.[3] Additionally, the Commission creates the following new sections: Carbon Offsets, Certifications and Seals of Approval, Free-of, Non-toxic, Made with Renewable Energy, and Made with Renewable Materials.[4] Finally, the Commission makes non-substantive changes throughout the Guides to make them easier to read and use, including simplifying language and reorganizing sections to make information easier to find. Industry guides, such as these, are administrative interpretations of law. Therefore, they do not have the force and effect of law and are not independently enforceable.

I. General Environmental Benefit Claims

The final Guides caution marketers not to make unqualified general environmental benefit claims because ''it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims.''[5] A new example illustrates how marketers may make general benefit claims through the combination of images and text.[6]

The Guides further provide that marketers may be able to qualify general environmental benefit claims to focus consumers on the specific environmental benefits that they can substantiate.[7] In doing so, marketers should use clear and prominent qualifying language to convey that a general environmental claim refers only to a specific and limited environmental benefit(s). In addition, this section cautions marketers that explanations of specific attributes, even when true and substantiated, will not adequately qualify general environmental marketing claims if an advertisement's context implies other deceptive claims.[8] Moreover, the Guides advise marketers not to imply that any specific benefit is significant if it is, in fact, negligible.[9] Finally, the Guides state that if a qualified general claim conveys that a product is more environmentally beneficial overall because of the particular touted benefit, marketers should analyze trade-offs resulting from the benefit to substantiate this claim.[10]

II. Carbon Offsets

The final Guides include a new section on carbon offsets.[11] This section advises marketers to have competent and reliable scientific evidence to support their carbon offset claims, including using appropriate accounting methods to ensure they are properly quantifying emission reductions and not selling those reductions more than once. Additionally, the Guides advise marketers to disclose if consumers' offset purchases fund emission reductions that will not occur for two years or longer. Finally, the Guides caution marketers not to advertise a carbon offset if the activity that forms the basis of the offset is already required by law. More detailed guidance could quickly become obsolete given the rapidly changing nature of this market and consumers' minimal understanding of such issues. Moreover, such guidance might place the FTC in the inappropriate role of setting environmental policy.

III. Certifications and Seals of Approval

This new section provides that it is deceptive to misrepresent that an item or service has been endorsed or certified by an independent third party.[12] It also emphasizes that certifications and seals may be endorsements covered by the Commission's Endorsement Guides.[13] Several examples illustrate application of the Endorsement Guides' advice that marketers disclose a ''material connection'' (*i.e.,* a connection that might materially affect the weight or credibility of an endorsement).[14] For instance, Example 8 clarifies that marketers featuring certifications from third-party certifiers need not disclose their payment of a reasonable certification fee if that is their only connection to the certifier. In this situation, there is no need for disclosure because consumers likely expect that certifiers charge a reasonable fee for their services. As other examples demonstrate, whether a material connection exists depends on whether the ties between the marketer and certifier likely affect the weight or credibility of the certification. If, for example, an independent certifier administers an industry trade association certification program by objectively applying a voluntary consensus standard (*i.e.,* a standard that has been developed and maintained by a voluntary consensus standard body), then the connection between the industry group and the marketer would not likely be material.[15]

[1] The FTC issued the Green Guides in 1992, with subsequent updates in 1996 and 1998. To avoid confusion, we refer to the current Guides as the ''1998 Guides.''

[2] In October 2010, the Commission proposed changes to the 1998 Guides. 75 FR 63552 (Oct. 15, 2010).

[3] The Commission additionally makes a minor change to an example in the Source Reduction section (16 CFR 260.17, Example 1) and retains the guidance on Refillable claims (16 CFR 260.14) without change.

[4] The final Guides do not include specific guidance for organic, natural, or sustainable claims.

[5] 16 CFR 260.4(b).

[6] 16 CFR 260.4, Example 3. The Commission has moved many of the original examples to newly-created sections (*see, e.g.,* Certifications and Seals of Approval, Free-Of, and Non-toxic).

[7] 16 CFR 260.4(c).

[8] 16 CFR 260.4(d).

[9] 16 CFR 260.4(c), Example 4.

[10] 16 CFR 260.4(c), Example 5.

[11] 16 CFR 260.5.

[12] 16 CFR 260.6(a).

[13] 16 CFR 260.6(b), citing 16 CFR 255.

[14] Examples 2, 3, 4, 8.

[15] Voluntary consensus standard bodies are ''organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. * * * A voluntary consensus standards body is defined by the following attributes: (i) Openness, (ii) balance of interest, (iii) due process, (iv) an appeals process, (v) consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus members are given an opportunity to change their votes after reviewing the comments.'' Circular No. A–119 Revised, Office of Management and Budget at *http://www.whitehouse.gov/omb/circulars_a119.*

The final Guides also advise that an environmental certification or seal likely conveys a general environmental benefit claim when it does not clearly convey, either through its name or other means, the basis for the certification.[16] Because it is highly unlikely that marketers can substantiate such a claim, they should not use environmental certifications or seals that do not convey the basis for the certification. The final Guides further state that marketers should accompany such seals or certifications with clear and prominent language that effectively conveys that the certification or seal refers only to specific and limited benefits. This may be particularly challenging with certifications based on comprehensive, multi-attribute standards. Therefore, a new example illustrates one way of qualifying such certifications.[17]

Finally, the Guides clarify that third-party certification does not eliminate a marketer's obligation to have substantiation for all conveyed claims.[18]

IV. Compostable

The final Guides adopt the 1998 guidance on compostable claims with one clarification. The 1998 Guides stated that marketers should possess competent and reliable scientific evidence showing that ''all the materials in the product or package will break down into, or otherwise become a part of, usable compost (*e.g.,* soil-conditioning material, mulch) in a safe and *timely manner* in an appropriate composting program or facility, or in a home compost pile or device.'' [19] The final Guides clarify that ''timely manner'' means ''in approximately the same time as the materials with which it is composted.'' [20] The final Guides also reiterate the 1998 guidance that marketers clearly qualify compostable claims, if, for example, their product cannot be composted safely or in a timely manner at home, or if necessary large-scale facilities are not available to a substantial majority of the marketer's consumers.[21]

V. Degradable

The 1998 Guides stated that a marketer should qualify a degradable claim unless it has competent and reliable scientific evidence that the ''entire product or package will completely break down and return to nature, *i.e.,* decompose into elements found in nature within a *reasonably short period of time* after customary disposal.'' [22] The final Guides state that marketers should not make unqualified degradable claims for items destined for landfills, incinerators, or recycling facilities because complete decomposition in those specific environments will not occur within one year.[23] The final Guides also clarify that a marketer making an unqualified degradable claim for solid items other than those destined for landfills, incinerators, or recycling facilities should substantiate that the entire item will fully decompose within one year after customary disposal.[24]

VI. Free-Of Claims

The final Guides include a new section on claims that products or services have no, are free of, or do not contain certain substances (''free-of claims'').[25] This new section advises that, even if true, claims that an item is free of a substance may be deceptive if: (1) The item contains substances that pose the same or similar environmental risk as the substance not present; or (2) the substance has not been associated with the product category.[26] This two-part analysis prevents deception resulting from two implied claims. The first prong addresses the implied claim that a product is free of negative attributes associated with that substance. Thus, a free-of claim would still be deceptive even if a product is free of a particular substance if it has another substance that causes the same or similar environmental harm. The second prong cautions that free-of claims may deceive consumers by falsely suggesting that competing products contain the substance or that the marketer has ''improved'' the product by removing the substance.

The final Guides also clarify that a free-of claim may, in some circumstances, be non-deceptive even though the product contains a ''trace amount'' of the substance. A marketer can make a claim for a product that still contains some amount of a substance only if: (1) The level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level; (2) the substance's presence does not cause material harm that consumers typically associate with that substance; and (3) the substance has not been added intentionally to the product.[27] The first prong of this test reflects consumers' likely expectations that products advertised as ''free-of'' a substance contain no more than trace amounts that occur naturally in the environment or in product ingredients. The second prong clarifies that it is deceptive to make a free-of claim if the product contains any amount of the substance that causes material harm that consumers typically associate with that substance, no matter how small. The third prong recognizes that, if added intentionally, reasonable consumers would not think that a product was free of that substance, even if that intentionally-added amount is less than a typical background level amount of that substance.

VII. Non-Toxic Claims

The final Guides include a new section on non-toxic claims. This section includes the 1998 Guides' advice that it is deceptive to misrepresent that a product, package, or service is non-toxic.[28] Like the 1998 Guides, it also cautions that such claims likely convey that an item or service is non-toxic both for humans and for the environment.[29]

VIII. Ozone-Safe and Ozone-Friendly Claims

The final Guides include the 1998 Guides' advice that it is deceptive to misrepresent that a product is safe for, or ''friendly'' to, the ozone layer or the atmosphere.[30] The Commission, however, eliminates Examples 3 and 4, which both referenced ozone-depleting chemicals that the EPA now bans.

IX. Recyclable

The final Guides, like the 1998 Guides, advise marketers to qualify recyclable claims when recycling facilities are not available to a ''substantial majority'' of consumers or communities where a product is sold.[31] They clarify that ''substantial majority,'' as used in this context, means at least 60 percent. They also emphasize that the lower the levels of access to appropriate facilities, the more strongly the marketer should emphasize the limited availability of recycling for the product.

[16] 16 CFR 260.6(d).

[17] 16 CFR 260.6, Example 7.

[18] 16 CFR 260.6(c).

[19] 16 CFR 260.7(c) (emphasis added) (1998 Guides).

[20] 16 CFR 260.7(b).

[21] 16 CFR 260.7(c), 260.7(d).

[22] 16 CFR 260.7(b) (emphasis added) (1998 Guides).

[23] 16 CFR 260.8(c).

[24] *Id.*

[25] 16 CFR 260.9. The 1998 Guides covered these claims only in examples. 16 CFR 260.6(c), Example 4; 16 CFR 260.7(h), Example 3.

[26] 16 CFR 260.9(b).

[27] 16 CFR 260.9(c).

[28] 16 CFR 260.10. The 1998 Guides did not include a non-toxic section but addressed these claims in an example in the General Environmental Benefit section.

[29] 16 CFR 260.10, Example 1.

[30] 16 CFR 260.11.

[31] 16 CFR 260.12(b).

X. Recycled Content

The final Guides include minor changes to the 1998 guidance for recycled content claims.[32] Like the 1998 Guides, they provide that marketers should make such claims only for materials that were recovered or otherwise diverted from the waste stream, either during the manufacturing process (pre-consumer) or after consumer use (post-consumer).[33] Additionally, the final Guides continue to advise marketers to qualify claims for products or packages only partially made from recycled material.[34] The Commission, however, slightly revises Examples 11 and 12 to recognize alternative auto recyclers.[35]

XI. Renewable Energy Claims

A new section on renewable energy claims advises marketers to avoid making unqualified renewable energy claims based on energy derived from fossil fuels.[36] This section clarifies that marketers may make such claims if they purchase renewable energy certificates (''RECs'') to match their energy use.[37] Additionally, based on the Commission's study, the section cautions marketers that consumers likely interpret renewable energy claims differently than marketers may intend. Accordingly, unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable energy claims. The Guides suggest that one way to minimize the risk of deception is to specify the renewable energy source (*e.g.,* wind or solar energy).[38]

The Guides also advise against making unqualified claims unless all, or virtually all, of the significant manufacturing processes involved in making a product are powered with renewable energy or non-renewable energy matched with RECs. Finally, the Guides adopt the proposed advice that using the term ''hosting'' is deceptive when a marketer generates renewable power but has sold all of the renewable attributes of that power. An example, however, clarifies that not all generation claims by such marketers are deceptive.[39]

XII. Renewable Materials Claims

The final Guides include a new section on renewable materials claims.[40] Similar to the renewable energy guidance, this section advises that consumers likely interpret renewable materials differently than marketers may intend. Accordingly, the final Guides advise that unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable materials claims.[41] The final Guides provide an example of one way marketers can minimize the likelihood of unintended implied claims, such as recyclable, degradable, and made with recycled content. Specifically, they suggest that marketers specify the material used and why the material is renewable.[42] Additionally, the Guides state that marketers should further qualify these claims for products containing less than 100 percent renewable materials, excluding minor, incidental components.[43]

XIII. Areas Not Addressed by Final Guides

The final Guides do not address organic, sustainable, and natural claims. In the case of organic claims, the Commission wants to avoid providing advice that is duplicative or inconsistent with the USDA's National Organic Program (''NOP''), which provides a comprehensive regulatory framework governing organic claims for agricultural products. For organic claims outside the NOP's jurisdiction, and for sustainable and natural claims, the Commission lacks sufficient evidence on which to base general guidance.

XIV. Conclusion

For a complete analysis of comments and the final guidance, please see the Statement on the FTC's Web site, available at *http://www.ftc.gov/os/fedreg/2012/10/greenguidesstatement.pdf.*

XV. Revised Green Guides

List of Subjects in 16 CFR Part 260

Advertising, Environmental protection, Labeling, Trade practices.

For the reasons stated above, the Federal Trade Commission revises 16 CFR part 260 to read as follows:

[32] 16 CFR 260.7(e) (1998 Guides).

[33] 16 CFR 260.13(b). The final Guides eliminate Example 2, which provided circular advice.

[34] 16 CFR 260.13(c).

[35] These examples appeared in the 1998 Guides as Examples 12 and 13. The Commission makes this change because in the auto context, a recycled content claim for reused parts is true regardless of the type of recycler who sells them.

[36] 16 CFR 260.15.

[37] 16 CFR 260.15(a).

[38] 16 CFR 260.15(b).

[39] 16 CFR 260.15(d), Example 5.

[40] 16 CFR 260.16.

[41] 16 CFR 260.16(b).

[42] *Id.,* Example 1.

[43] 16 CFR 260.16(c); Example 2.

PART 260—GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS

Sec.
260.1 Purpose, scope, and structure of the guides.
260.2 Interpretation and substantiation of environmental marketing claims.
260.3 General principles.
260.4 General environmental benefit claims.
260.5 Carbon offsets.
260.6 Certifications and seals of approval.
260.7 Compostable claims.
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260.9 Free-of claims.
260.10 Non-toxic claims.
260.11 Ozone-safe and ozone-friendly claims.
260.12 Recyclable claims.
260.13 Recycled content claims.
260.14 Refillable claims.
260.15 Renewable energy claims.
260.16 Renewable materials claims.
260.17 Source reduction claims.

Authority: 15 U.S.C. 41–58.

§ 260.1 Purpose, scope, and structure of the guides.

(a) These guides set forth the Federal Trade Commission's current views about environmental claims. The guides help marketers avoid making environmental marketing claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45. They do not confer any rights on any person and do not operate to bind the FTC or the public. The Commission, however, can take action under the FTC Act if a marketer makes an environmental claim inconsistent with the guides. In any such enforcement action, the Commission must prove that the challenged act or practice is unfair or deceptive in violation of Section 5 of the FTC Act.

(b) These guides do not preempt federal, state, or local laws. Compliance with those laws, however, will not necessarily preclude Commission law enforcement action under the FTC Act.

(c) These guides apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service to individuals. These guides also apply to business-to-business transactions. The guides apply to environmental claims in labeling, advertising, promotional materials, and all other forms of marketing in any medium, whether asserted directly or by implication, through words, symbols, logos, depictions, product brand names, or any other means.

(d) The guides consist of general principles, specific guidance on the use of particular environmental claims, and

examples. Claims may raise issues that are addressed by more than one example and in more than one section of the guides. The examples provide the Commission's views on how reasonable consumers likely interpret certain claims. The guides are based on marketing to a general audience. However, when a marketer targets a particular segment of consumers, the Commission will examine how reasonable members of that group interpret the advertisement. Whether a particular claim is deceptive will depend on the net impression of the advertisement, label, or other promotional material at issue. In addition, although many examples present specific claims and options for qualifying claims, the examples do not illustrate all permissible claims or qualifications under Section 5 of the FTC Act. Nor do they illustrate the only ways to comply with the guides. Marketers can use an alternative approach if the approach satisfies the requirements of Section 5 of the FTC Act. All examples assume that the described claims otherwise comply with Section 5. Where particularly useful, the Guides incorporate a reminder to this effect.

§ 260.2 Interpretation and substantiation of environmental marketing claims.

Section 5 of the FTC Act prohibits deceptive acts and practices in or affecting commerce. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers' decisions. *See* FTC Policy Statement on Deception, 103 FTC 174 (1983). To determine if an advertisement is deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims. *See* FTC Policy Statement Regarding Advertising Substantiation, 104 FTC 839 (1984). In the context of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence. Such evidence consists of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. Such evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true.

§ 260.3 General principles.

The following general principles apply to all environmental marketing claims, including those described in §§ 260.4 through 240.16. Claims should comport with all relevant provisions of these guides.

(a) *Qualifications and disclosures.* To prevent deceptive claims, qualifications and disclosures should be clear, prominent, and understandable. To make disclosures clear and prominent, marketers should use plain language and sufficiently large type, should place disclosures in close proximity to the qualified claim, and should avoid making inconsistent statements or using distracting elements that could undercut or contradict the disclosure.

(b) *Distinction between benefits of product, package, and service.* Unless it is clear from the context, an environmental marketing claim should specify whether it refers to the product, the product's packaging, a service, or just to a portion of the product, package, or service. In general, if the environmental attribute applies to all but minor, incidental components of a product or package, the marketer need not qualify the claim to identify that fact. However, there may be exceptions to this general principle. For example, if a marketer makes an unqualified recyclable claim, and the presence of the incidental component significantly limits the ability to recycle the product, the claim would be deceptive.

Example 1: A plastic package containing a new shower curtain is labeled ''recyclable'' without further elaboration. Because the context of the claim does not make clear whether it refers to the plastic package or the shower curtain, the claim is deceptive if any part of either the package or the curtain, other than minor, incidental components, cannot be recycled.

Example 2: A soft drink bottle is labeled ''recycled.'' The bottle is made entirely from recycled materials, but the bottle cap is not. Because the bottle cap is a minor, incidental component of the package, the claim is not deceptive.

(c) *Overstatement of environmental attribute.* An environmental marketing claim should not overstate, directly or by implication, an environmental attribute or benefit. Marketers should not state or imply environmental benefits if the benefits are negligible.

Example 1: An area rug is labeled ''50% more recycled content than before.'' The manufacturer increased the recycled content of its rug from 2% recycled fiber to 3%. Although the claim is technically true, it likely conveys the false impression that the manufacturer has increased significantly the use of recycled fiber.

Example 2: A trash bag is labeled ''recyclable'' without qualification. Because trash bags ordinarily are not separated from other trash at the landfill or incinerator for recycling, they are highly unlikely to be used again for any purpose. Even if the bag is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no meaningful benefit exists.

(d) *Comparative claims.* Comparative environmental marketing claims should be clear to avoid consumer confusion about the comparison. Marketers should have substantiation for the comparison.

Example 1: An advertiser notes that its glass bathroom tiles contain ''20% more recycled content.'' Depending on the context, the claim could be a comparison either to the advertiser's immediately preceding product or to its competitors' products. The advertiser should have substantiation for both interpretations. Otherwise, the advertiser should make the basis for comparison clear, for example, by saying ''20% more recycled content than our previous bathroom tiles.''

Example 2: An advertiser claims that ''our plastic diaper liner has the most recycled content.'' The diaper liner has more recycled content, calculated as a percentage of weight, than any other on the market, although it is still well under 100%. The claim likely conveys that the product contains a significant percentage of recycled content and has significantly more recycled content than its competitors. If the advertiser cannot substantiate these messages, the claim would be deceptive.

Example 3: An advertiser claims that its packaging creates ''less waste than the leading national brand.'' The advertiser implemented the source reduction several years ago and supported the claim by calculating the relative solid waste contributions of the two packages. The advertiser should have substantiation that the comparison remains accurate.

Example 4: A product is advertised as ''environmentally preferable.'' This claim likely conveys that the product is environmentally superior to other products. Because it is highly unlikely that the marketer can substantiate the messages conveyed by this statement, this claim is deceptive. The claim would not be deceptive if the marketer accompanied it with clear and prominent language limiting the environmental superiority representation to the particular attributes for which the marketer has substantiation, provided the advertisement's context does not imply other deceptive claims. For example, the claim ''Environmentally preferable: contains 50% recycled content compared to 20% for the leading brand'' would not be deceptive.

§ 260.4 General environmental benefit claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service offers a general environmental benefit.

(b) Unqualified general environmental benefit claims are difficult to interpret and likely convey a wide range of meanings. In many cases, such claims likely convey that the product, package, or service has specific and far-reaching environmental benefits and may convey that the item or service has no negative environmental impact. Because it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims, marketers should not make unqualified general environmental benefit claims.

(c) Marketers can qualify general environmental benefit claims to prevent deception about the nature of the environmental benefit being asserted. To avoid deception, marketers should use clear and prominent qualifying language that limits the claim to a specific benefit or benefits. Marketers should not imply that any specific benefit is significant if it is, in fact, negligible. If a qualified general claim conveys that a product is more environmentally beneficial overall because of the particular touted benefit(s), marketers should analyze trade-offs resulting from the benefit(s) to determine if they can substantiate this claim.

(d) Even if a marketer explains, and has substantiation for, the product's specific environmental attributes, this explanation will not adequately qualify a general environmental benefit claim if the advertisement otherwise implies deceptive claims. Therefore, marketers should ensure that the advertisement's context does not imply deceptive environmental claims.

Example 1: The brand name ''Eco-friendly'' likely conveys that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, the use of such a brand name is deceptive. A claim, such as ''Eco-friendly: made with recycled materials,'' would not be deceptive if: (1) The statement ''made with recycled materials'' is clear and prominent; (2) the marketer can substantiate that the entire product or package, excluding minor, incidental components, is made from recycled material; (3) making the product with recycled materials makes the product more environmentally beneficial overall; and (4) the advertisement's context does not imply other deceptive claims.

Example 2: A marketer states that its packaging is now ''Greener than our previous packaging.'' The packaging weighs 15% less than previous packaging, but it is not recyclable nor has it been improved in any other material respect. The claim is deceptive because reasonable consumers likely would interpret ''Greener'' in this context to mean that other significant environmental aspects of the packaging also are improved over previous packaging. A claim stating ''Greener than our previous packaging'' accompanied by clear and prominent language such as, ''We've reduced the weight of our packaging by 15%,'' would not be deceptive, provided that reducing the packaging's weight makes the product more environmentally beneficial overall and the advertisement's context does not imply other deceptive claims.

Example 3: A marketer's advertisement features a picture of a laser printer in a bird's nest balancing on a tree branch, surrounded by a dense forest. In green type, the marketer states, ''Buy our printer. Make a change.'' Although the advertisement does not expressly claim that the product has environmental benefits, the featured images, in combination with the text, likely convey that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, this advertisement is deceptive.

Example 4: A manufacturer's Web site states, ''Eco-smart gas-powered lawn mower with improved fuel efficiency!'' The manufacturer increased the fuel efficiency by 1/10 of a percent. Although the manufacturer's claim that it has improved its fuel efficiency technically is true, it likely conveys the false impression that the manufacturer has significantly increased the mower's fuel efficiency.

Example 5: A marketer reduces the weight of its plastic beverage bottles. The bottles' labels state: ''Environmentally-friendly improvement. 25% less plastic than our previous packaging.'' The plastic bottles are 25 percent lighter but otherwise are no different. The advertisement conveys that the bottles are more environmentally beneficial overall because of the source reduction. To substantiate this claim, the marketer likely can analyze the impacts of the source reduction without evaluating environmental impacts throughout the packaging's life cycle. If, however, manufacturing the new bottles significantly alters environmental attributes earlier or later in the bottles' life cycle, *i.e.,* manufacturing the bottles requires more energy or a different kind of plastic, then a more comprehensive analysis may be appropriate.

§ 260.5 Carbon offsets.

(a) Given the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and to ensure that they do not sell the same reduction more than one time.

(b) It is deceptive to misrepresent, directly or by implication, that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future. To avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emission reductions that will not occur for two years or longer.

(c) It is deceptive to claim, directly or by implication, that a carbon offset represents an emission reduction if the reduction, or the activity that caused the reduction, was required by law.

Example 1: On its Web site, an online travel agency invites consumers to purchase offsets to ''neutralize the carbon emissions from your flight.'' The proceeds from the offset sales fund future projects that will not reduce greenhouse gas emissions for two years. The claim likely conveys that the emission reductions either already have occurred or will occur in the near future. Therefore, the advertisement is deceptive. It would not be deceptive if the agency's Web site stated ''Offset the carbon emissions from your flight by funding new projects that will begin reducing emissions in two years.''

Example 2: An offset provider claims that its product ''will offset your own 'dirty' driving habits.'' The offset is based on methane capture at a landfill facility. State law requires this facility to capture all methane emitted from the landfill. The claim is deceptive because the emission reduction would have occurred regardless of whether consumers purchased the offsets.

§ 260.6 Certifications and seals of approval.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service has been endorsed or certified by an independent third party.

(b) A marketer's use of the name, logo, or seal of approval of a third-party certifier or organization may be an endorsement, which should meet the criteria for endorsements provided in the FTC's Endorsement Guides, 16 CFR part 255, including Definitions (§ 255.0), General Considerations (§ 255.1), Expert Endorsements (§ 255.3), Endorsements by Organizations (§ 255.4), and Disclosure of Material Connections (§ 255.5).[44]

(c) Third-party certification does not eliminate a marketer's obligation to ensure that it has substantiation for all claims reasonably communicated by the certification.

(d) A marketer's use of an environmental certification or seal of approval likely conveys that the product offers a general environmental benefit (*see* § 260.4) if the certification or seal does not convey the basis for the certification or seal, either through the name or some other means. Because it is highly unlikely that marketers can substantiate general environmental benefit claims, marketers should not use environmental certifications or seals that do not convey the basis for the certification.

[44] The examples in this section assume that the certifiers' endorsements meet the criteria provided in the Expert Endorsements (§ 255.3) and Endorsements by Organizations (§ 255.4) sections of the Endorsement Guides.

(e) Marketers can qualify general environmental benefit claims conveyed by environmental certifications and seals of approval to prevent deception about the nature of the environmental benefit being asserted. To avoid deception, marketers should use clear and prominent qualifying language that clearly conveys that the certification or seal refers only to specific and limited benefits.

Example 1: An advertisement for paint features a ''GreenLogo'' seal and the statement ''GreenLogo for Environmental Excellence.'' This advertisement likely conveys that: (1) the GreenLogo seal is awarded by an independent, third-party certifier with appropriate expertise in evaluating the environmental attributes of paint; and (2) the product has far-reaching environmental benefits. If the paint manufacturer awarded the seal to its own product, and no independent, third-party certifier objectively evaluated the paint using independent standards, the claim would be deceptive. The claim would not be deceptive if the marketer accompanied the seal with clear and prominent language: (1) indicating that the marketer awarded the GreenLogo seal to its own product; and (2) clearly conveying that the award refers only to specific and limited benefits.

Example 2: A manufacturer advertises its product as ''certified by the American Institute of Degradable Materials.'' Because the advertisement does not mention that the American Institute of Degradable Materials (''AIDM'') is an industry trade association, the certification likely conveys that it was awarded by an independent certifier. To be certified, marketers must meet standards that have been developed and maintained by a voluntary consensus standard body.[45] An independent auditor applies these standards objectively. This advertisement likely is not deceptive if the manufacturer complies with § 260.8 of the Guides (Degradable Claims) because the certification is based on independently-developed and -maintained standards and an independent auditor applies the standards objectively.

Example 3: A product features a seal of approval from ''The Forest Products Industry Association,'' an industry certifier with appropriate expertise in evaluating the environmental attributes of paper products. Because it is clear from the certifier's name that the product has been certified by an industry certifier, the certification likely does not convey that it was awarded by an independent certifier. The use of the seal likely is not deceptive provided that the advertisement does not imply other deceptive claims.

Example 4: A marketer's package features a seal of approval with the text ''Certified Non-Toxic.'' The seal is awarded by a certifier with appropriate expertise in evaluating ingredient safety and potential toxicity. It applies standards developed by a voluntary consensus standard body. Although non-industry members comprise a majority of the certifier's board, an industry veto could override any proposed changes to the standards. This certification likely conveys that the product is certified by an independent organization. This claim would be deceptive because industry members can veto any proposed changes to the standards.

Example 5: A marketer's industry sales brochure for overhead lighting features a seal with the text ''EcoFriendly Building Association'' to show that the marketer is a member of that organization. Although the lighting manufacturer is, in fact, a member, this association has not evaluated the environmental attributes of the marketer's product. This advertisement would be deceptive because it likely conveys that the EcoFriendly Building Association evaluated the product through testing or other objective standards. It also is likely to convey that the lighting has far-reaching environmental benefits. The use of the seal would not be deceptive if the manufacturer accompanies it with clear and prominent qualifying language: (1) indicating that the seal refers to the company's membership only and that the association did not evaluate the product's environmental attributes; and (2) limiting the general environmental benefit representations, both express and implied, to the particular product attributes for which the marketer has substantiation. For example, the marketer could state: ''Although we are a member of the EcoFriendly Building Association, it has not evaluated this product. Our lighting is made from 100 percent recycled metal and uses energy efficient LED technology.''

Example 6: A product label contains an environmental seal, either in the form of a globe icon or a globe icon with the text ''EarthSmart.'' EarthSmart is an independent, third-party certifier with appropriate expertise in evaluating chemical emissions of products. While the marketer meets EarthSmart's standards for reduced chemical emissions during product usage, the product has no other specific environmental benefits. Either seal likely conveys that the product has far-reaching environmental benefits, and that EarthSmart certified the product for all of these benefits. If the marketer cannot substantiate these claims, the use of the seal would be deceptive. The seal would not be deceptive if the marketer accompanied it with clear and prominent language clearly conveying that the certification refers only to specific and limited benefits. For example, the marketer could state next to the globe icon: ''EarthSmart certifies that this product meets EarthSmart standards for reduced chemical emissions during product usage.'' Alternatively, the claim would not be deceptive if the EarthSmart environmental seal itself stated: ''EarthSmart Certified for reduced chemical emissions during product usage.''

Example 7: A one-quart bottle of window cleaner features a seal with the text ''Environment Approved,'' granted by an independent, third-party certifier with appropriate expertise. The certifier granted the seal after evaluating 35 environmental attributes. This seal likely conveys that the product has far-reaching environmental benefits and that Environment Approved certified the product for all of these benefits and therefore is likely deceptive. The seal would likely not be deceptive if the marketer accompanied it with clear and prominent language clearly conveying that the seal refers only to specific and limited benefits. For example, the seal could state: ''Virtually all products impact the environment. For details on which attributes we evaluated, go to [a Web site that discusses this product].'' The referenced Web page provides a detailed summary of the examined environmental attributes. A reference to a Web site is appropriate because the additional information provided on the Web site is not necessary to prevent the advertisement from being misleading. As always, the marketer also should ensure that the advertisement does not imply other deceptive claims, and that the certifier's criteria are sufficiently rigorous to substantiate all material claims reasonably communicated by the certification.

Example 8: Great Paper Company sells photocopy paper with packaging that has a seal of approval from the No Chlorine Products Association, a non-profit third-party association. Great Paper Company paid the No Chlorine Products Association a reasonable fee for the certification. Consumers would reasonably expect that marketers have to pay for certification. Therefore, there are no material connections between Great Paper Company and the No Chlorine Products Association. The claim would not be deceptive.

§ 260.7 Compostable Claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is compostable.

(b) A marketer claiming that an item is compostable should have competent and reliable scientific evidence that all the materials in the item will break down into, or otherwise become part of, usable compost (*e.g.,* soil-conditioning material, mulch) in a safe and timely manner (*i.e.,* in approximately the same time as the materials with which it is composted) in an appropriate composting facility, or in a home compost pile or device.

(c) A marketer should clearly and prominently qualify compostable claims

[45] Voluntary consensus standard bodies are ''organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. * * * A voluntary consensus standards body is defined by the following attributes: (i) Openness, (ii) balance of interest, (iii) due process, (iv) an appeals process, (v) consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus members are given an opportunity to change their votes after reviewing the comments.'' Memorandum for Heads of Executive Departments and Agencies on Federal Participation in the Development and Use of Voluntary Consensus Assessment Activities, February 10, 1998, Circular No. A–119 Revised, Office of Management and Budget at *http://www.whitehouse.gov/omb/circulars_a119*.

to the extent necessary to avoid deception if:

(1) The item cannot be composted safely or in a timely manner in a home compost pile or device; or

(2) The claim misleads reasonable consumers about the environmental benefit provided when the item is disposed of in a landfill.

(d) To avoid deception about the limited availability of municipal or institutional composting facilities, a marketer should clearly and prominently qualify compostable claims if such facilities are not available to a substantial majority of consumers or communities where the item is sold.

Example 1: A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive, provided the manufacturer has substantiation that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device. If so, the extent of local municipal or institutional composting facilities is irrelevant.

Example 2: A garden center sells grass clipping bags labeled as ''Compostable in California Municipal Yard Trimmings Composting Facilities.'' When the bags break down, however, they release toxins into the compost. The claim is deceptive if the presence of these toxins prevents the compost from being usable.

Example 3: A manufacturer makes an unqualified claim that its package is compostable. Although municipal or institutional composting facilities exist where the product is sold, the package will not break down into usable compost in a home compost pile or device. To avoid deception, the manufacturer should clearly and prominently disclose that the package is not suitable for home composting.

Example 4: Nationally marketed lawn and leaf bags state ''compostable'' on each bag. The bags also feature text disclosing that the bag is not designed for use in home compost piles. Yard trimmings programs in many communities compost these bags, but such programs are not available to a substantial majority of consumers or communities where the bag is sold. The claim is deceptive because it likely conveys that composting facilities are available to a substantial majority of consumers or communities. To avoid deception, the marketer should clearly and prominently indicate the limited availability of such programs. A marketer could state ''Appropriate facilities may not exist in your area,'' or provide the approximate percentage of communities or consumers for which such programs are available.

Example 5: A manufacturer sells a disposable diaper that states, ''This diaper can be composted if your community is one of the 50 that have composting facilities.'' The claim is not deceptive if composting facilities are available as claimed and the manufacturer has substantiation that the diaper can be converted safely to usable compost in solid waste composting facilities.

Example 6: A manufacturer markets yard trimmings bags only to consumers residing in particular geographic areas served by county yard trimmings composting programs. The bags meet specifications for these programs and are labeled, ''Compostable Yard Trimmings Bag for County Composting Programs.'' The claim is not deceptive. Because the bags are compostable where they are sold, a qualification is not needed to indicate the limited availability of composting facilities.

§ 260.8 Degradable claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is degradable, biodegradable, oxo-degradable, oxo-biodegradable, or photodegradable. The following guidance for degradable claims also applies to biodegradable, oxo-degradable, oxo-biodegradable, and photodegradable claims.

(b) A marketer making an unqualified degradable claim should have competent and reliable scientific evidence that the entire item will completely break down and return to nature (*i.e.,* decompose into elements found in nature) within a reasonably short period of time after customary disposal.

(c) It is deceptive to make an unqualified degradable claim for items entering the solid waste stream if the items do not completely decompose within one year after customary disposal. Unqualified degradable claims for items that are customarily disposed in landfills, incinerators, and recycling facilities are deceptive because these locations do not present conditions in which complete decomposition will occur within one year.

(d) Degradable claims should be qualified clearly and prominently to the extent necessary to avoid deception about:

(1) The product's or package's ability to degrade in the environment where it is customarily disposed; and

(2) The rate and extent of degradation.

Example 1: A marketer advertises its trash bags using an unqualified ''degradable'' claim. The marketer relies on soil burial tests to show that the product will decompose in the presence of water and oxygen. Consumers, however, place trash bags into the solid waste stream, which customarily terminates in incineration facilities or landfills where they will not degrade within one year. The claim is, therefore, deceptive.

Example 2: A marketer advertises a commercial agricultural plastic mulch film with the claim ''Photodegradable,'' and clearly and prominently qualifies the term with the phrase ''Will break down into small pieces if left uncovered in sunlight.'' The advertiser possesses competent and reliable scientific evidence that within one year, the product will break down, after being exposed to sunlight, into sufficiently small pieces to become part of the soil. Thus, the qualified claim is not deceptive. Because the claim is qualified to indicate the limited extent of breakdown, the advertiser need not meet the consumer expectations for an unqualified photodegradable claim, *i.e.,* that the product will not only break down, but also will decompose into elements found in nature.

Example 3: A marketer advertises its shampoo as ''biodegradable'' without qualification. The advertisement makes clear that only the shampoo, and not the bottle, is biodegradable. The marketer has competent and reliable scientific evidence demonstrating that the shampoo, which is customarily disposed in sewage systems, will break down and decompose into elements found in nature in a reasonably short period of time in the sewage system environment. Therefore, the claim is not deceptive.

Example 4: A plastic six-pack ring carrier is marked with a small diamond. Several state laws require that the carriers be marked with this symbol to indicate that they meet certain degradability standards if the carriers are littered. The use of the diamond by itself, in an inconspicuous location, does not constitute a degradable claim. Consumers are unlikely to interpret an inconspicuous diamond symbol, without more, as an unqualified photodegradable claim.[46]

Example 5: A fiber pot containing a plant is labeled ''biodegradable.'' The pot is customarily buried in the soil along with the plant. Once buried, the pot fully decomposes during the growing season, allowing the roots of the plant to grow into the surrounding soil. The unqualified claim is not deceptive.

§ 260.9 Free-of claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service is free of, or does not contain or use, a substance. Such claims should be clearly and prominently qualified to the extent necessary to avoid deception.

(b) A truthful claim that a product, package, or service is free of, or does not contain or use, a substance may nevertheless be deceptive if:

(1) The product, package, or service contains or uses substances that pose the same or similar environmental risks as the substance that is not present; or

(2) The substance has not been associated with the product category.

(c) Depending on the context, a free-of or does-not-contain claim is appropriate even for a product, package, or service that contains or uses a trace amount of a substance if:

(1) The level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level[47];

[46] The Guides' treatment of unqualified degradable claims is intended to help prevent deception and is not intended to establish performance standards to ensure the degradability of products when littered.

[47] ''Trace contaminant'' and ''background level'' are imprecise terms, although allowable manufacturing ''trace contaminants'' may be

(2) The substance's presence does not cause material harm that consumers typically associate with that substance; and

(3) The substance has not been added intentionally to the product.

Example 1: A package of t-shirts is labeled ''Shirts made with a chlorine-free bleaching process.'' The shirts, however, are bleached with a process that releases a reduced, but still significant, amount of the same harmful byproducts associated with chlorine bleaching. The claim overstates the product's benefits because reasonable consumers likely would interpret it to mean that the product's manufacture does not cause any of the environmental risks posed by chlorine bleaching. A substantiated claim, however, that the shirts were ''bleached with a process that releases 50% less of the harmful byproducts associated with chlorine bleaching'' would not be deceptive.

Example 2: A manufacturer advertises its insulation as ''formaldehyde free.'' Although the manufacturer does not use formaldehyde as a binding agent to produce the insulation, tests show that the insulation still emits trace amounts of formaldehyde. The seller has substantiation that formaldehyde is present in trace amounts in virtually all indoor and (to a lesser extent) outdoor environments and that its insulation emits less formaldehyde than is typically present in outdoor environments. Further, the seller has substantiation that the trace amounts of formaldehyde emitted by the insulation do not cause material harm that consumers typically associate with formaldehyde. In this context, the trace levels of formaldehyde emissions likely are inconsequential to consumers. Therefore, the seller's free-of claim would not be deceptive.

§ 260.10 Non-toxic claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service is non-toxic. Non-toxic claims should be clearly and prominently qualified to the extent necessary to avoid deception.

(b) A non-toxic claim likely conveys that a product, package, or service is non-toxic both for humans and for the environment generally. Therefore, marketers making non-toxic claims should have competent and reliable scientific evidence that the product, package, or service is non-toxic for humans and for the environment or should clearly and prominently qualify their claims to avoid deception.

Example: A marketer advertises a cleaning product as ''essentially non-toxic'' and ''practically non-toxic.'' The advertisement likely conveys that the product does not pose any risk to humans or the environment, including household pets. If the cleaning product poses no risk to humans but is toxic to the environment, the claims would be deceptive.

§ 260.11 Ozone-safe and ozone-friendly claims.

It is deceptive to misrepresent, directly or by implication, that a product, package, or service is safe for, or friendly to, the ozone layer or the atmosphere.

Example 1: A product is labeled ''ozone-friendly.'' The claim is deceptive if the product contains any ozone-depleting substance, including those substances listed as Class I or Class II chemicals in Title VI of the Clean Air Act Amendments of 1990, Public Law. 101–549, and others subsequently designated by EPA as ozone-depleting substances. These chemicals include chlorofluorocarbons (CFCs), halons, carbon tetrachloride, 1,1,1-trichloroethane, methyl bromide, hydrobromofluorocarbons, and hydrochlorofluorocarbons (HCFCs).

Example 2: An aerosol air freshener is labeled ''ozone-friendly.'' Some of the product's ingredients are volatile organic compounds (VOCs) that may cause smog by contributing to ground-level ozone formation. The claim likely conveys that the product is safe for the atmosphere as a whole, and, therefore, is deceptive.

§ 260.12 Recyclable claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item.

(b) Marketers should clearly and prominently qualify recyclable claims to the extent necessary to avoid deception about the availability of recycling programs and collection sites to consumers.

(1) When recycling facilities are available to a substantial majority of consumers or communities where the item is sold, marketers can make unqualified recyclable claims. The term ''substantial majority,'' as used in this context, means at least 60 percent.

(2) When recycling facilities are available to less than a substantial majority of consumers or communities where the item is sold, marketers should qualify all recyclable claims. Marketers may always qualify recyclable claims by stating the percentage of consumers or communities that have access to facilities that recycle the item. Alternatively, marketers may use qualifications that vary in strength depending on facility availability. The lower the level of access to an appropriate facility is, the more strongly the marketer should emphasize the limited availability of recycling for the product. For example, if recycling facilities are available to slightly less than a substantial majority of consumers or communities where the item is sold, a marketer may qualify a recyclable claim by stating: ''This product [package] may not be recyclable in your area,'' or ''Recycling facilities for this product [package] may not exist in your area.'' If recycling facilities are available only to a few consumers, marketers should use stronger clarifications. For example, a marketer in this situation may qualify its recyclable claim by stating: ''This product [package] is recyclable only in the few communities that have appropriate recycling facilities.''

(c) Marketers can make unqualified recyclable claims for a product or package if the entire product or package, excluding minor incidental components, is recyclable. For items that are partially made of recyclable components, marketers should clearly and prominently qualify the recyclable claim to avoid deception about which portions are recyclable.

(d) If any component significantly limits the ability to recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable material, but, because of its shape, size, or some other attribute, is not accepted in recycling programs, should not be marketed as recyclable.[48]

Example 1: A packaged product is labeled with an unqualified claim, ''recyclable.'' It is unclear from the type of product and other context whether the claim refers to the product or its package. The unqualified claim likely conveys that both the product and its packaging, except for minor, incidental components, can be recycled. Unless the manufacturer has substantiation for both messages, it should clearly and prominently qualify the claim to indicate which portions are recyclable.

Example 2: A nationally marketed plastic yogurt container displays the Resin Identification Code (RIC)[49] (which consists of a design of arrows in a triangular shape containing a number in the center and an abbreviation identifying the component plastic resin) on the front label of the container, in close proximity to the product name and logo. This conspicuous use of the RIC constitutes a recyclable claim. Unless recycling facilities for this container are available to a substantial majority of consumers or communities, the manufacturer should qualify the claim to disclose the

defined according to the product area concerned. What constitutes a trace amount or background level depends on the substance at issue, and requires a case-by-case analysis.

[48] Batteries labeled in accordance with the Mercury-Containing and Rechargeable Battery Management Act, 42 U.S.C. 14322(b), are deemed to be in compliance with these Guides.

[49] The RIC, formerly known as the Society of the Plastics Industry, Inc. (SPI) code, is now covered by ASTM D 7611.

limited availability of recycling programs. If the manufacturer places the RIC, without more, in an inconspicuous location on the container (*e.g.,* embedded in the bottom of the container), it would not constitute a recyclable claim.

Example 3: A container can be burned in incinerator facilities to produce heat and power. It cannot, however, be recycled into another product or package. Any claim that the container is recyclable would be deceptive.

Example 4: A paperboard package is marketed nationally and labeled either ''Recyclable where facilities exist'' or ''Recyclable B Check to see if recycling facilities exist in your area.'' Recycling programs for these packages are available to some consumers, but not available to a substantial majority of consumers nationwide. Both claims are deceptive because they do not adequately disclose the limited availability of recycling programs. To avoid deception, the marketer should use a clearer qualification, such as one suggested in § 260.12(b)(2).

Example 5: Foam polystyrene cups are advertised as ''Recyclable in the few communities with facilities for foam polystyrene cups.'' A half-dozen major metropolitan areas have established collection sites for recycling those cups. The claim is not deceptive because it clearly discloses the limited availability of recycling programs.

Example 6: A package is labeled ''Includes some recyclable material.'' The package is composed of four layers of different materials, bonded together. One of the layers is made from recyclable material, but the others are not. While programs for recycling the 25 percent of the package that consists of recyclable material are available to a substantial majority of consumers, only a few of those programs have the capability to separate the recyclable layer from the non-recyclable layers. The claim is deceptive for two reasons. First, it does not specify the portion of the product that is recyclable. Second, it does not disclose the limited availability of facilities that can process multi-layer products or materials. An appropriately qualified claim would be ''25 percent of the material in this package is recyclable in the few communities that can process multi-layer products.''

Example 7: A product container is labeled ''recyclable.'' The marketer advertises and distributes the product only in Missouri. Collection sites for recycling the container are available to a substantial majority of Missouri residents but are not yet available nationally. Because programs are available to a substantial majority of consumers where the product is sold, the unqualified claim is not deceptive.

Example 8: A manufacturer of one-time use cameras, with dealers in a substantial majority of communities, operates a take-back program that collects those cameras through all of its dealers. The manufacturer reconditions the cameras for resale and labels them ''Recyclable through our dealership network.'' This claim is not deceptive, even though the cameras are not recyclable through conventional curbside or drop-off recycling programs.

Example 9: A manufacturer advertises its toner cartridges for computer printers as ''Recyclable. Contact your local dealer for details.'' Although all of the company's dealers recycle cartridges, the dealers are not located in a substantial majority of communities where cartridges are sold. Therefore, the claim is deceptive. The manufacturer should qualify its claim consistent with § 260.11(b)(2).

Example 10: An aluminum can is labeled ''Please Recycle.'' This statement likely conveys that the can is recyclable. If collection sites for recycling these cans are available to a substantial majority of consumers or communities, the marketer does not need to qualify the claim.

§ 260.13 Recycled content claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled content. Recycled content includes recycled raw material, as well as used,[50] reconditioned, and re-manufactured components.

(b) It is deceptive to represent, directly or by implication, that an item contains recycled content unless it is composed of materials that have been recovered or otherwise diverted from the waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer). If the source of recycled content includes pre-consumer material, the advertiser should have substantiation that the pre-consumer material would otherwise have entered the waste stream. Recycled content claims may—but do not have to—distinguish between pre-consumer and post-consumer materials. Where a marketer distinguishes between pre-consumer and post-consumer materials, it should have substantiation for any express or implied claim about the percentage of pre-consumer or post-consumer content in an item.

(c) Marketers can make unqualified claims of recycled content if the entire product or package, excluding minor, incidental components, is made from recycled material. For items that are partially made of recycled material, the marketer should clearly and prominently qualify the claim to avoid deception about the amount or percentage, by weight, of recycled content in the finished product or package.

(d) For products that contain used, reconditioned, or re-manufactured components, the marketer should clearly and prominently qualify the recycled content claim to avoid deception about the nature of such components. No such qualification is necessary where it is clear to reasonable consumers from context that a product's recycled content consists of used, reconditioned, or re-manufactured components.

Example 1: A manufacturer collects spilled raw material and scraps from the original manufacturing process. After a minimal amount of reprocessing, the manufacturer combines the spills and scraps with virgin material for use in production of the same product. A recycled content claim is deceptive since the spills and scraps are normally reused by industry within the original manufacturing process and would not normally have entered the waste stream.

Example 2: Fifty percent of a greeting card's fiber weight is composed from paper that was diverted from the waste stream. Of this material, 30% is post-consumer and 20% is pre-consumer. It would not be deceptive if the marketer claimed that the card either ''contains 50% recycled fiber'' or ''contains 50% total recycled fiber, including 30% post-consumer fiber.''

Example 3: A paperboard package with 20% recycled fiber by weight is labeled ''20% post-consumer recycled fiber.'' The recycled content was composed of overrun newspaper stock never sold to customers. Because the newspapers never reached consumers, the claim is deceptive.

Example 4: A product in a multi-component package, such as a paperboard box in a shrink-wrapped plastic cover, indicates that it has recycled packaging. The paperboard box is made entirely of recycled material, but the plastic cover is not. The claim is deceptive because, without qualification, it suggests that both components are recycled. A claim limited to the paperboard box would not be deceptive.

Example 5: A manufacturer makes a package from laminated layers of foil, plastic, and paper, although the layers are indistinguishable to consumers. The label claims that ''one of the three layers of this package is made of recycled plastic.'' The plastic layer is made entirely of recycled plastic. The claim is not deceptive, provided the recycled plastic layer constitutes a significant component of the entire package.

Example 6: A frozen dinner package is composed of a plastic tray inside a cardboard box. It states ''package made from 30% recycled material.'' Each packaging component is one-half the weight of the total package. The box is 20% recycled content by weight, while the plastic tray is 40% recycled content by weight. The claim is not deceptive, since the average amount of recycled material is 30%.

Example 7: A manufacturer labels a paper greeting card ''50% recycled fiber.'' The manufacturer purchases paper stock from several sources, and the amount of recycled fiber in the stock provided by each source varies. If the 50% figure is based on the annual weighted average of recycled material purchased from the sources after accounting for fiber loss during the papermaking production process, the claim is not deceptive.

Example 8: A packaged food product is labeled with a three-chasing-arrows symbol

[50] The term ''used'' refers to parts that are not new and that have not undergone any remanufacturing or reconditioning.

(a Möbius loop) without explanation. By itself, the symbol likely conveys that the packaging is both recyclable and made entirely from recycled material. Unless the marketer has substantiation for both messages, the claim should be qualified. The claim may need to be further qualified, to the extent necessary, to disclose the limited availability of recycling programs and/or the percentage of recycled content used to make the package.

Example 9: In an office supply catalog, a manufacturer advertises its printer toner cartridges ''65% recycled.'' The cartridges contain 25% recycled raw materials and 40% reconditioned parts. The claim is deceptive because reasonable consumers likely would not know or expect that a cartridge's recycled content consists of reconditioned parts. It would not be deceptive if the manufacturer claimed ''65% recycled content; including 40% from reconditioned parts.''

Example 10: A store sells both new and used sporting goods. One of the items for sale in the store is a baseball helmet that, although used, is no different in appearance than a brand new item. The helmet bears an unqualified ''Recycled'' label. This claim is deceptive because reasonable consumers likely would believe that the helmet is made of recycled raw materials, when it is, in fact, a used item. An acceptable claim would bear a disclosure clearly and prominently stating that the helmet is used.

Example 11: An automotive dealer, automobile recycler, or other qualified entity recovers a serviceable engine from a wrecked vehicle. Without repairing, rebuilding, re-manufacturing, or in any way altering the engine or its components, the dealer attaches a ''Recycled'' label to the engine, and offers it for sale in its used auto parts store. In this situation, an unqualified recycled content claim likely is not deceptive because reasonable consumers in the automotive context likely would understand that the engine is used and has not undergone any rebuilding.

Example 12: An automobile parts dealer, automobile recycler, or other qualified entity purchases a transmission that has been recovered from a salvaged or end-of-life vehicle. Eighty-five percent of the transmission, by weight, was rebuilt and 15% constitutes new materials. After rebuilding [51] the transmission in accordance with industry practices, the dealer packages it for resale in a box labeled ''Rebuilt Transmission,'' or ''Rebuilt Transmission (85% recycled content from rebuilt parts),'' or ''Recycled Transmission (85% recycled content from rebuilt parts).'' Given consumer perception in the automotive context, these claims are not deceptive.

§ 260.14 Refillable claims.

It is deceptive to misrepresent, directly or by implication, that a package is refillable. A marketer should not make an unqualified refillable claim unless the marketer provides the means for refilling the package. The marketer may either provide a system for the collection and refill of the package, or offer for sale a product that consumers can purchase to refill the original package.

Example 1: A container is labeled ''refillable three times.'' The manufacturer has the capability to refill returned containers and can show that the container will withstand being refilled at least three times. The manufacturer, however, has established no collection program. The unqualified claim is deceptive because there is no means to return the container to the manufacturer for refill.

Example 2: A small bottle of fabric softener states that it is in a ''handy refillable container.'' In the same market area, the manufacturer also sells a large-sized bottle that consumers use to refill the smaller bottles. The claim is not deceptive because there is a reasonable means for the consumer to refill the smaller container.

§ 260.15 Renewable energy claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is made with renewable energy or that a service uses renewable energy. A marketer should not make unqualified renewable energy claims, directly or by implication, if fossil fuel, or electricity derived from fossil fuel, is used to manufacture any part of the advertised item or is used to power any part of the advertised service, unless the marketer has matched such non-renewable energy use with renewable energy certificates.

(b) Research suggests that reasonable consumers may interpret renewable energy claims differently than marketers may intend. Unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable energy claims. For instance, marketers may minimize the risk of deception by specifying the source of the renewable energy (*e.g.,* wind or solar energy).

(c) It is deceptive to make an unqualified ''made with renewable energy'' claim unless all, or virtually all, of the significant manufacturing processes involved in making the product or package are powered with renewable energy or non-renewable energy matched by renewable energy certificates. When this is not the case, marketers should clearly and prominently specify the percentage of renewable energy that powered the significant manufacturing processes involved in making the product or package.

(d) If a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.

Example 1: A marketer advertises its clothing line as ''made with wind power.'' The marketer buys wind energy for 50% of the energy it uses to make the clothing in its line. The marketer's claim is deceptive because reasonable consumers likely interpret the claim to mean that the power was composed entirely of renewable energy. If the marketer stated, ''We purchase wind energy for half of our manufacturing facilities,'' the claim would not be deceptive.

Example 2: A company purchases renewable energy from a portfolio of sources that includes a mix of solar, wind, and other renewable energy sources in combinations and proportions that vary over time. The company uses renewable energy from that portfolio to power all of the significant manufacturing processes involved in making its product. The company advertises its product as ''made with renewable energy.'' The claim would not be deceptive if the marketer clearly and prominently disclosed all renewable energy sources. Alternatively, the claim would not be deceptive if the marketer clearly and prominently stated, ''made from a mix of renewable energy sources,'' and specified the renewable source that makes up the greatest percentage of the portfolio. The company may calculate which renewable energy source makes up the greatest percentage of the portfolio on an annual basis.

Example 3: An automobile company uses 100% non-renewable energy to produce its cars. The company purchases renewable energy certificates to match the non-renewable energy that powers all of the significant manufacturing processes for the seats, but no other parts, of its cars. If the company states, ''The seats of our cars are made with renewable energy,'' the claim would not be deceptive, as long as the company clearly and prominently qualifies the claim such as by specifying the renewable energy source.

Example 4: A company uses 100% non-renewable energy to manufacture all parts of its product, but powers the assembly process entirely with renewable energy. If the marketer advertised its product as ''assembled using renewable energy,'' the claim would not be deceptive.

Example 5: A toy manufacturer places solar panels on the roof of its plant to generate power, and advertises that its plant is ''100% solar-powered.'' The manufacturer, however, sells renewable energy certificates based on the renewable attributes of all the power it generates. Even if the manufacturer uses the electricity generated by the solar panels, it has, by selling renewable energy certificates, transferred the right to characterize that electricity as renewable. The manufacturer's claim is therefore deceptive. It also would be deceptive for this manufacturer to advertise that it ''hosts'' a renewable power facility because reasonable consumers likely interpret this claim to mean

[51] The term ''rebuilding'' means that the dealer dismantled and reconstructed the transmission as necessary, cleaned all of its internal and external parts and eliminated rust and corrosion, restored all impaired, defective or substantially worn parts to a sound condition (or replaced them if necessary), and performed any operations required to put the transmission in sound working condition.

that the manufacturer uses renewable energy. It would not be deceptive, however, for the manufacturer to advertise, ''We generate renewable energy, but sell all of it to others.''

§ 260.16 Renewable materials claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is made with renewable materials.

(b) Research suggests that reasonable consumers may interpret renewable materials claims differently than marketers may intend. Unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable materials claims. For example, marketers may minimize the risk of unintended implied claims by identifying the material used and explaining why the material is renewable.

(c) Marketers should also qualify any ''made with renewable materials'' claim unless the product or package (excluding minor, incidental components) is made entirely with renewable materials.

Example 1: A marketer makes the unqualified claim that its flooring is ''made with renewable materials.'' Reasonable consumers likely interpret this claim to mean that the flooring also is made with recycled content, recyclable, and biodegradable. Unless the marketer has substantiation for these implied claims, the unqualified ''made with renewable materials'' claim is deceptive. The marketer could qualify the claim by stating, clearly and prominently, ''Our flooring is made from 100 percent bamboo, which grows at the same rate, or faster, than we use it.'' The marketer still is responsible for substantiating all remaining express and reasonably implied claims.

Example 2: A marketer's packaging states that ''Our packaging is made from 50% plant-based renewable materials. Because we turn fast-growing plants into bio-plastics, only half of our product is made from petroleum-based materials.'' By identifying the material used and explaining why the material is renewable, the marketer has minimized the risk of unintended claims that the product is made with recycled content, recyclable, and biodegradable. The marketer has adequately qualified the amount of renewable materials in the product.

§ 260.17 Source reduction claims.

It is deceptive to misrepresent, directly or by implication, that a product or package has been reduced or is lower in weight, volume, or toxicity. Marketers should clearly and prominently qualify source reduction claims to the extent necessary to avoid deception about the amount of the source reduction and the basis for any comparison.

Example: An advertiser claims that disposal of its product generates ''10% less waste.'' The marketer does not accompany this claim with a general environmental benefit claim. Because this claim could be a comparison to the advertiser's immediately preceding product or to its competitors' products, the advertiser should have substantiation for both interpretations. Otherwise, the advertiser should clarify which comparison it intends and have substantiation for that comparison. A claim of ''10% less waste than our previous product'' would not be deceptive if the advertiser has substantiation that shows that the current product's disposal contributes 10% less waste by weight or volume to the solid waste stream when compared with the immediately preceding version of the product.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2012–24713 Filed 10–10–12; 8:45 am]

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H.R. 4158/P.L. 112–185
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