



Federal Register

9-24-02

Vol. 67 No. 185

Pages 59769-60098

Tuesday

Sept. 24, 2002



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- WHEN:** September 24, 2002—9:00 a.m. to noon
- WHERE:** Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538; or
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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 201

[Docket No. LS-02-12]

Enforcement of the Varietal Labeling Provisions of the Federal Seed Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Policy statement.

SUMMARY: The purpose of this policy statement is to make clear that the Agricultural Marketing Service (AMS) has a comprehensive compliance program in place that monitors and tests seed shipped in interstate commerce for truthful varietal labeling.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC-East, Beltsville, Maryland 20705-2325; Telephone: (301) 504-9237; Fax: (301) 504-8098; E-mail: Richard.Payne2@usda.gov.

SUPPLEMENTARY INFORMATION: Occasionally issues or questions relating to Federal Seed Act (FSA) enforcement have been raised by the public. Recently, numerous interested parties, including officials of the National Cattlemen's Beef Association and Mississippi State University, have expressed concern that with the expiration of the Plant Variety Protection Certificate issued under the Plant Variety Protection Act for the Marshall variety of annual ryegrass, inferior seed of other varieties may be marketed as Marshall annual ryegrass. The purpose of this policy statement is to make clear that AMS views the varietal mislabeling of seed as a serious violation of the FSA. AMS has a comprehensive program in place that

consists of monitoring and testing seed lots to determine if they have the correct varietal labeling. A range of options are available that AMS will use to enforce the varietal labeling provisions of the FSA. Persons with knowledge of labeling violations of seed shipped in interstate commerce are invited to report them to AMS.

Federal Seed Act Policy: The Federal Seed Act (FSA) (7 U.S.C. 1551-1611) is a truth-in-labeling law that regulates the labeling of seed in interstate commerce. The FSA is enforced with the aid of State seed control programs as authorized under cooperative agreements between State Departments of Agriculture and USDA's AMS. Qualified seed inspectors, authorized by AMS' Seed Regulatory and Testing Branch (SRTB), draw official seed samples. A portion of the official sample is tested by the State seed laboratory. If the test results are out of tolerance with labeled information, a portion of the official sample, sampling documentation, test results, and a copy of the seed label are sent to the SRTB. If a subsequent test of the official sample by the SRTB confirms the State's test results, an investigation of the seed shipment is undertaken.

Many State seed control laboratories, as well as the SRTB, also conduct laboratory tests to determine if seed shipments are labeled with the correct variety name. Official instructions for conducting these tests are contained in the FSA regulations (7 CFR 201.58a).

Each year the SRTB conducts trueness-to-variety (TTV) field tests to determine the accuracy of variety labeling of seed lots shipped in interstate commerce. Varietal identification may be based on seedling, growing plant, or mature plant characteristics (7 CFR 201.58a). The authority for making tests and applying tolerances to determine the accuracy of labeling is contained in section 403 of the FSA (7 U.S.C. 1593). The officially drawn samples, submitted by state seed control programs, are grouped and planted by variety along with an authentic sample of the variety in question by a university or State Department of Agriculture agronomist by contractual arrangement. In addition, the agronomist assists the SRTB staff in evaluating the samples for correct varietal labeling. Approximately 2,000 samples are evaluated annually in the

TTV field testing program. The kinds of seed tested include field crops, vegetables, forages, and turf grasses. Shipments of mislabeled seed are investigated as potential FSA violations.

Interstate seed shippers are required to keep receiving and shipping records that include the variety name for each lot of seed they ship in interstate commerce (7 CFR 201.7). These records are routinely examined during investigations of other FSA violations to determine if the variety shipped was correctly labeled.

AMS considers violations of the FSA labeling provisions as serious violations of law and is committed to vigorous enforcement of the FSA through the full range of available enforcement authorities.

Enforcement actions typically involve the assessment of a monetary penalty against seed companies that ship mislabeled seed in violation of the FSA. The amount of the monetary penalty depends on the severity of the violation and the number of violations the company has had in the past. If the violation is considered minor, and the company has had no other violations in the past five years, a letter of warning will be sent to the company. If the violation is considered a major violation or the company has a history of violations, the company will be notified of the violations and given an opportunity to respond. If, after considering the company's response, AMS continues to believe that a violation of the FSA has occurred, monetary penalties as provided by section 406 of the FSA (7 U.S.C. 1596) will be assessed. The amount of the penalty for each violation depends upon a violator's compliance history and the seriousness of the violation.

In addition to monetary penalty actions, the FSA provides additional enforcement authorities which AMS will consider in appropriate cases. Section 405 of the FSA (7 U.S.C. 1595) authorizes the Department of Agriculture to bring a proceeding in Federal district court to seize any seed sold or transported in interstate commerce in violation of the FSA. If the court finds in favor of the USDA, the seed can be sold, destroyed, or returned to the owner after payment of all costs and the execution of a bond ensuring that seed will not be sold in violation of the provisions of the FSA.

Section 409 of the FSA (7 U.S.C. 1599) authorizes the USDA to initiate an administrative proceeding against anyone who violates any FSA provision or regulation, and to issue an order to cease and desist from continuing such violation. In the event the violator does not cease and desist, the order may be enforced in the Federal courts pursuant to section 411 of the FSA (7 U.S.C. 1601).

If a violation is knowingly committed, sections 406(a) (7 U.S.C. 1596(a)) and 407 of the FSA (7 U.S.C. 1957) allow the USDA to initiate criminal charges against such violators. This criminal provision also applies to violations which are the result of gross negligence or the result of the violator's failure to make a reasonable effort to be informed of the pertinent facts. Violators of this provision may be punished by a fine of \$1,000 for the first offense, and \$2,000 for each subsequent offense. In addition, civil settlements described in section 406(b) of the FSA (7 U.S.C. 1596(b)) apply to violations that are not deemed to be due to gross negligence. Violators of this provision shall forfeit not less than \$25 or more than \$500 for each violation.

AMS is committed to enforcement of the labeling provisions of the FSA through its ongoing program of testing and monitoring, and encourages persons with knowledge of FSA violations to report them to: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC-East, Beltsville, Maryland 20705-2325; Telephone: (301) 504-9237; Fax: (301) 504-8098; E-mail: Richard.Payne2@usda.gov.

Dated: September 17, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-24186 Filed 9-23-02; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 771

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1941

RIN 0560-AG69

Boll Weevil Eradication Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This action is being taken to finalize provisions of the interim regulations published May 16, 1997, that implemented the Boll Weevil Eradication Loan Program. This rule also implements changes intended to continue to assist in the eradication of the boll weevil, and promote cooperation between the United States Department of Agriculture (USDA) and State chartered organizations with regard to boll weevil eradication.

DATES: This rule is effective September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Richard W. Sharp, Senior Loan Officer, Funds Management/Direct Loans Branch, Farm Service Agency (FSA). Telephone: 202-690-0651; facsimile: 202-690-1117; e-mail: Richard_Sharpe@wdc.usda.gov

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities. This program applies only to chartered organizations whose primary mission is the eradication of the boll weevil. These loans cannot be made to small entities or individuals. Thus, a Regulatory Flexibility Analysis is not required.

Environmental Impact Statement

A Finding Of No Significant Impact was published for the interim rule on April 21, 1997. There is no significant change in this final rule. Therefore, no

further environmental assessments are required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. All State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule. This rule will not affect agreements entered into prior to the effective date of the rule. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before bringing any action for judicial review.

Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments as well as in the private sector. This rule contains no Federal mandates, under the regulatory provisions of title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

FSA has reviewed this rule to determine the applicability of the Paperwork Reduction Act of 1995. In accordance with 5 CFR 1320.3(c)(4), there are fewer than 10 persons or organizations from which the collection of information can reasonably be expected within a 12-month period. The information requirements of this program do not impact a substantial majority of the industry, nor do the requirements meet the rule of general applicability. Therefore, the provisions of 5 CFR part 1320 do not apply to this rule.

New CFR Part

This rule will relocate the Boll Weevil Eradication Loan Program from 7 CFR part 1941, subpart C, to 7 CFR part 771. This will better organize the regulation and incorporate it with the other FSA regulations.

Discussion of the Final Rule

A total of 24 responses were received on the interim rule. Comments were received from two Congressional Representatives, five agricultural businesses, one cotton industry firm, 14 boll weevil organizations, and two farmers. All comments were positive and highly supportive of the program. All comments praised the Government's entry into the boll weevil eradication process with the creation of the Boll Weevil Eradication Loan Program. The Agency received no substantive comments recommending change.

The Boll Weevil Eradication Loan Program became effective upon publication of the May 16, 1997, interim rule. The Animal and Plant Health Inspection Service (APHIS) provides eligible grower organizations: (1) Equipment; (2) technical and administrative support; and (3) cost-sharing not to exceed 30 percent of the program costs. Program costs not provided by APHIS must be paid by the eligible grower organizations through the collection of producer assessments. FSA's funding is needed by the grower organizations to finance the high initial costs of the eradication program. Full producer assessments, without the FSA loan program, would create significant financial hardships for most of the cotton producers. The APHIS Boll Weevil Eradication Program and the FSA Boll Weevil Eradication Loan Program have both been very successful.

Although the FSA program has been substantially successful, two changes need to be made to the loan program. The changes are based upon a House of Representatives Committee on Appropriations recommendation in connection with the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Public Law 106-78) (2000 Act). In House Report 106-157, page 44, the Committee on Appropriations directed the Secretary of Agriculture to consider all eligible applicants, private or state-run, organized to eradicate the boll weevil, to be determined potential candidates for the boll weevil eradication loan program. The Committee also recommended that candidates be considered eligible for FSA's boll weevil eradication loan program whether or not they are financially capable of securing operating funds elsewhere.

These two changes are made in the final rule at § 771.2 by adding a definition of "State Organization" and in § 771.4 by adding that an eligible applicant may be a state organization. The no credit elsewhere requirement

has been removed from the latter section.

These recommendations have merit based upon 5 years of joint APHIS and FSA experience in the eradication program. When this loan program began, all boll weevil eradication programs were private non-profit corporations. This fact has changed. The structure of all of the individual state-run boll weevil organizations is extremely similar. All State agricultural departments/authorities have various amounts of oversight authority for their respective boll weevil program. Most eradication finances go through an accounting review tied loosely to the State's treasury. Some operations require state approval of FSA loans. The eradication of the boll weevil is in the public's interest, whether the operation is private or public, therefore this recommendation was adopted. As to the second recommendation, there are a small number of boll weevil eradication organizations within the boundaries of the United States. States tend to have varying amounts of funding available to the eradication organizations depending upon the economic status of the state and the economic times. State organizations generally will be able to obtain credit elsewhere. The purpose of the loan program is the elimination of all boll weevils. All qualified boll weevil eradication programs should have equal access to FSA funding regardless of whether funding is available elsewhere. Therefore, this eligibility requirement has been eliminated. These changes are made in the final rule at §§ 771.2 and 771.4.

Justification for Effective Date

An immediate effective date for this rule is justified under 5 U.S.C. 553(d)(1) because the rule relieves two restrictions for boll weevil eradication loan applicants. The requirement that the applicant be a non-profit corporation has been modified to also allow state organizations to qualify for loans. The requirement that applicants be unable to obtain credit elsewhere also has been removed.

List of Subjects

7 CFR Part 771

Loan programs—agriculture, Pesticides and pests, Cotton.

7 CFR Part 1941

Loan programs—agriculture, Pesticides and pests, Cotton.

FSA adopts the interim rule published on May 16, 1997 (62 FR 26918-26921) as final with changes discussed above.

Accordingly, 7 CFR Chapters VII and XVIII are amended as follows:

7 CFR Chapter VII

1. Part 771 is added to chapter VII, subchapter D, to read as follows:

PART 771—BOLL WEEVIL ERADICATION LOAN PROGRAM

Sec.

- 771.1 Introduction.
- 771.2 Abbreviations and definitions.
- 771.3 [Reserved]
- 771.4 Eligibility requirements.
- 771.5 Loan purposes.
- 771.6 Environmental requirements.
- 771.7 Equal opportunity and non-discrimination requirements.
- 771.8 Other Federal, State, and local requirements.
- 771.9 Interest rates, terms, security requirements, and repayment.
- 771.10 [Reserved]
- 771.11 Application.
- 771.12 Funding applications.
- 771.13 Loan closing.
- 771.14 Loan monitoring.
- 771.15 Loan servicing.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and Pub. L. 104-180, 110 Stat. 1569.

§ 771.1 Introduction.

The regulations in this part set forth the terms and conditions under which loans are made through the Boll Weevil Eradication Loan Program. The regulations in this part are applicable to applicants, borrowers, and other parties involved in the making, servicing, and liquidation of these loans. The program's objective is to assist producers and state government agencies in the eradication of boll weevils from cotton producing areas.

§ 771.2 Abbreviations and definitions.

The following abbreviations and definitions apply to this part:

(a) Abbreviations:

APHIS means the Animal and Plant Health Inspection Service of the United States Department of Agriculture, or any successor Agency.

FSA means the Farm Service Agency, its employees, and any successor agency.

(b) Definitions:

Extra payment means a payment derived from the sale of property serving as security for a loan, such as real estate or vehicles. Proceeds from program assessments and other normal operating income, when remitted for payment on a loan, will not be considered as an extra payment.

Non-profit corporation means a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate whose net earnings are not distributable

to any private shareholder or individual, and which qualifies under the Internal Revenue Service code.

Restructure means to modify the terms of a loan. This may include a modification of the interest rate and/or repayment terms of the loan.

Security means assets pledged as collateral to assure repayment of a loan in the event of default on the loan.

State organization means a quasi-state run public operation exclusively established and managed by state and/or non-state employees, with all employees currently dedicated to the specific task of eliminating the boll weevil from the cotton growing area of the state.

§ 771.3 [Reserved]

§ 771.4 Eligibility requirements.

- (a) An eligible applicant must:
- (1) Meet all requirements prescribed by APHIS to qualify for cost-share grant funds as determined by APHIS, (FSA will accept the determination by APHIS as to an organization's qualification);
 - (2) Have the appropriate charter and/or legal authority as a non-profit corporation or as a State organization specifically organized to operate the boll weevil eradication program in any State, biological, or geographic region of any State in which it operates;
 - (3) Possess the legal authority to enter into contracts, including debt instruments;
 - (4) Operate in an area in which producers have approved a referendum authorizing producer assessments and in which an active eradication or post-eradication program is underway or scheduled to begin no later than the fiscal year following the fiscal year in which the application is submitted;
 - (5) Have the legal authority to pledge producer assessments as security for loans from FSA.
- (b) Individual producers are not eligible for loans.

§ 771.5 Loan purposes.

- (a) Loan funds may be used for any purpose directly related to boll weevil eradication activities, including, but not limited to:
- (1) Purchase or lease of supplies and equipment;
 - (2) Operating expenses, including but not limited to, travel and office operations;
 - (3) Salaries and benefits.
- (b) Loan funds may not be used to pay expenses incurred for lobbying, public relations, or related activities, or to pay interest on loans from the Agency.

§ 771.6 Environmental requirements.

No loan will be made until all Federal and state statutory and regulatory

environmental requirements have been complied with.

§ 771.7 Equal opportunity and non-discrimination requirements.

No recipient of a boll weevil eradication loan shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

§ 771.8 Other Federal, State, and local requirements.

- (a) In addition to the specific requirements in this subpart, loan applications will be coordinated with all appropriate Federal, State, and local agencies.
- (b) Borrowers are required to comply with all applicable:
- (1) Federal, State, or local laws;
 - (2) Regulatory commission rules; and
 - (3) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:
 - (i) Borrowing money, pledging security, and raising revenues for repayment of debt;
 - (ii) Accounting and financial reporting; and
 - (iii) Protection of the environment.

§ 771.9 Interest rates, terms, security requirements, and repayment.

- (a) *Interest rate.* The interest rate will be fixed for the term of the loan. The rate will be established by FSA, based upon the cost of Government borrowing for instruments on terms similar to that of the loan requested.
- (b) *Term.* The loan term will be based upon the needs of the applicant to accomplish the objectives of the loan program as determined by FSA, but may not exceed 10 years.

- (c) *Security requirements.* (1) Loans must be adequately secured as determined by FSA. FSA may require certain security, including but not limited to the following:
- (i) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by State law;
 - (ii) Investments and deposits of the applicant; and
 - (iii) Capital assets or other property of the applicant or its members.
- (2) In those cases in which FSA and another lender will hold assignments of the same revenue as collateral, the other lender must agree to a prorated distribution of the assigned revenue.

The distribution will be based upon the proportionate share of the applicant's debt the lender holds for the eradication zone from which the revenue is derived at the time of loan closing.

(d) *Repayment.* The applicant must demonstrate that income sources will be sufficient to meet the repayment requirements of the loan and pay operating expenses.

§ 771.10 [Reserved]

§ 771.11 Application.

A complete application will consist of the following:

- (a) An application for Federal assistance (available in any FSA office);
- (b) Applicant's financial projections including a cash flow statement showing the plan for loan repayment;
- (c) Copies of the applicant's authorizing State legislation and organizational documents;
- (d) List of all directors and officers of the applicant;
- (e) Copy of the most recent audited financial statements along with updates through the most recent quarter;
- (f) Copy of the referendum used to establish the assessments and a certification from the Board of Directors that the referendum passed;
- (g) Evidence that the officers and employees authorized to disburse funds are covered by an acceptable fidelity bond;
- (h) Evidence of acceptable liability insurance policies;
- (i) Statement from the applicant addressing any current or pending litigation against the applicant as well as any existing judgments;
- (j) A copy of a resolution passed by the Board of Directors authorizing the officers to incur debt on behalf of the borrower;
- (k) Any other information deemed to be necessary by FSA to render a decision.

§ 771.12 Funding applications.

Loan requests will be processed based on the date FSA receives the application. Loan approval is subject to the availability of funds. However, when multiple applications are received on the same date and available funds will not cover all applications received, applications from active eradication areas, which FSA determines to be most critical for the accomplishment of program objectives, will be funded first.

§ 771.13 Loan closing.

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The borrower, through its

authorized representatives will execute all loan instruments and legal documents required by FSA to evidence the debt, perfect the required security interest in property and assets securing the loan, and protect the Government's interest, in accordance with applicable State and Federal laws.

(c) *Loan agreement.* A loan agreement between the borrower and FSA will be required. The agreement will set forth performance criteria and other loan requirements necessary to protect the Government's financial and programmatic interest and accomplish the objectives of the loan. Specific provisions of the agreement will be developed on a case-by-case basis to address the particular situation associated with the loan being made. However, all loan agreements will include at least the following provisions:

(1) The borrower must submit audited financial statements to FSA at least annually;

(2) The borrower will immediately notify FSA of any adverse actions such as:

(i) Anticipated default on FSA debt;

(ii) Potential recall vote of an assessment referendum; or

(iii) Being named as a defendant in litigation;

(3) Submission of other specific financial reports for the borrower;

(4) The right of deferral under 7 U.S.C. 1981a; and

(5) Applicable liquidation procedures upon default.

(d) *Fees.* The borrower will pay all fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by FSA employees.

§ 771.14 Loan monitoring.

(a) *Annual and periodic reviews.* At least annually, the borrower will meet with FSA representatives to review the financial status of the borrower, assess the progress of the eradication program utilizing loan funds, and identify any potential problems or concerns.

(b) *Performance monitoring.* At any time FSA determines it necessary, the borrower must allow FSA or its representative to review the operations and financial condition of the borrower. This may include, but is not limited to, field visits, and attendance at Foundation Board meetings. Upon FSA request, a borrower must submit any financial or other information within 14 days unless the data requested is not available within that time frame.

§ 771.15 Loan servicing.

(a) *Advances.* FSA may make advances to protect its financial interests and charge the borrower's account for the amount of any such advances.

(b) *Payments.* Payments will be made to FSA as set forth in loan agreements and debt instruments. The funds from extra payments will be applied entirely to loan principal.

(c) *Restructuring.* The provisions of 7 CFR part 1951, subpart S, are not applicable to loans made under this section. However, FSA may restructure loan debts; provided:

(1) The Government's interest will be protected;

(2) The restructuring will be performed within FSA budgetary restrictions; and

(3) The loan objectives cannot be met unless the loan is restructured.

(d) *Default.* In the event of default, FSA will take all appropriate actions to protect its interest.

7 CFR Chapter XVIII

PART 1941—OPERATING LOANS

2. The authority citation for Part 1941 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart C—[Removed]

3. Subpart C is removed.

Signed at Washington, DC, on September 18, 2002.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 02-24191 Filed 9-19-02; 3:06 pm]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM228, Special Conditions No. 25-213-SC]

Special Conditions: Raytheon Aircraft Company Model HS.125 Series 700A Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Duncan Aviation. These

airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modifications, under three separate supplemental type certificate (STC) projects, incorporate the installation of a Collins FDS2000 Electronic Flight Instrument System (EFIS), a dual Collins AHS-3000A Attitude Heading Reference System (AHARS), and a dual IS&S Air Data System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 17, 2002. Comments must be received on or before October 24, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM228, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM228. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-2145; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific

portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the ADDRESSES section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 14, 2002, Duncan Aviation, Inc., P.O. Box 81887, Lincoln, Nebraska 68501, applied for three supplemental type certificates (STCs) to modify Raytheon Aircraft Company Model HS.125 Series 700A airplanes approved under Type Certificate No. A3EU. The HS.125 Series 700A airplanes are executive type transports that have two aft mounted turbine engines, a maximum passenger load of 15 passengers, and a maximum operating speed of 280 to 320 KTS depending on the fuel loading configuration. The modifications, under three separate supplemental type certificate (STC) projects, incorporate the installation of a Collins FDS2000 Electronic Flight Instrument System (EFIS), a dual Collins AHS-3000A Attitude Heading Reference System (AHARS), and a dual Innovative Solutions & Support, Inc. (IS&S) Air Data System.

The Collins FDS2000 (EFIS) Flight Display System provides the aircraft interface, data processing, display processing and display control to replace four existing electro-mechanical Attitude Direction/Horizontal Situation indicators (ADI/HSI). In doing this, this equipment provides critical functions, display of aircraft pitch and roll, and essential functions (display of heading and navigation). The dual Collins AHS-3000A Attitude Heading Reference System (AHARS) is a solid state strap-

down attitude/heading reference system which provides measurements of the aircraft pitch, roll, and heading Euler angles for use by cockpit displays, flight control and management systems, and other avionics equipment. The dual IS&S Air Data System replaces the existing pilot and copilot pneumatic altimeters with IS&S Air Data/Altimeter units. These advanced systems use electronics to a far greater extent than the original flight and navigation systems and may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF). This disruption of signals could result in loss of either attitude, altimeter, heading, or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Duncan Aviation, Inc. must show that the Raytheon Aircraft Company Model HS.125 Series 700A airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified Raytheon Aircraft Company Model HS.125 Series 700A airplanes includes CAR. 10, British Civil Airworthiness Requirements (1st November 1963), and Special Conditions notified by the United States Government to Government of the United Kingdom including Validation Arrangements (V.A.) Note 1, Issue 1 dated April 19, 1961. This certification is equivalent to CAR.4b dated December 1953, Amendment 4b-1 through 4b-11, exclusive of CAR 4b.350 (e) and includes Special Regulation SR.422B. Other applicable amendments, Federal Aviation Regulations, and special conditions are noted in Type Certificate Data Sheet (TCDS) A3EU.

If the Administrator finds that the applicable airworthiness regulations (that is, CAR 4b or 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Aircraft Company Model HS.125 Series 700A airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon Aircraft Company Model HS.125 Series 700A airplanes must comply with the fuel vent and exhaust emission requirement

of 14 CFR part 34 and the noise certification requirement of part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Duncan Aviation, Inc. apply at a later date for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design features, these special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The Raytheon Aircraft Company Model HS.125 Series 700A airplanes will incorporate, under three separate supplemental type certificate (STC) projects, the installation of a Collins FDS-2000 Electronic Flight Instrument System (EFIS), a dual Collins AHS-3000A Attitude Heading Reference System (AHARS), and a dual IS&S Air Data System. Because these advanced systems use electronics to a far greater extent than the original flight and navigation systems, they may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. Accordingly, these instruments are considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified to include the new flight and navigation systems. These special conditions will require that the new Collins FDS-2000 Flight Display System, the Dual Collins AHS-3000A Attitude/Heading Reference System and the Dual IS&S Air Data Systems, which

perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200

Frequency	Field strength (volts per meter)	
	Peak	Average
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Duncan Aviation, Inc. to include the Collins FDS–2000 Flight Display System, the Dual Collins AHS–3000A Attitude/Heading Reference System and the Dual IS&S Air Data System. Should Duncan Aviation, Inc. apply at a later date for a supplemental type certificate to modify any other model already included on Type Certificate A3EU to incorporate the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

Conclusion

This action affects only certain design features on Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Duncan Aviation, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Raytheon Aircraft Company Model HS.125 Series 700A airplanes modified by Duncan Aviation, Inc.

1. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF). Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on September 17, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24242 Filed 9–23–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–37–AD; Amendment 39–12884; AD 2002–19–04]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 390 airplanes. This AD requires you to replace the inboard fuel probe mounting brackets with ones of improved design. This AD is the result of reports of a design problem with the fuel probe

assembly brackets. The actions specified by this AD are intended to correct the required air gap clearance between the fuel probe and the adjacent wing fuel tank access panel, which could result in arcing between the two conductive materials in the event of a lightning strike. This could serve as an ignition source inside the fuel tank and result in fire or explosion.

DATES: This AD becomes effective on October 4, 2002.

The Director of the Office of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 4, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before November 8, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-37-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2002-CE-37-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-37-AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: James P. Galstad, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4135; facsimile: (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received a report that, during factory testing on a Model 390 airplane, serial number RB-16, the inboard forward fuel probe of both the left and right wing did not have proper clearance between the inboard fuel probe and the adjacent fuel access panel domed nutplate. Allowances for the nutplates were omitted from the design

of the fuel probe brackets. Specific air gap clearance between the inboard fuel probe and the adjacent fuel access panel domed nutplate is necessary in order to prevent possible arcing between the two conductive materials.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in arcing between the two conductive materials in the event of a lightning strike. This could serve as an ignition source inside the fuel tank and result in fire or explosion.

Is There Service Information That Applies to This Subject?

Raytheon has issued Mandatory Service Bulletin SB 28-3537, Rev. 1, Revised: August, 2002.

The service bulletin includes procedures for replacing the inboard fuel probe mounting brackets with ones of improved design.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information and determined that:

- The unsafe condition referenced in this document exists or could develop on other Raytheon Model 390 airplanes of the same type design; and
- AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to replace the inboard fuel probe mounting brackets with ones of improved design.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in fire or explosion, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002-CE-37-AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action

involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2002-19-04 Raytheon Aircraft Company:
Amendment 39-12884; Docket No. 2002-CE-37-AD.

(a) *What airplanes are affected by this AD?*
This AD applies to Model 390 airplanes, serial numbers RB-4 through RB-15, RB-19

through RB-32, and RB-34 through RB-40, that are certificated in any category.

(b) *Who must comply with this AD?*
Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?*
The actions specified by this AD are intended to correct the air gap clearance between the fuel probe and the adjacent wing fuel tank access panel, which could result in arcing between the two conductive materials in the event of a lightning strike. This could serve as an ignition source inside the fuel tank and result in fire or explosion.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Replace the existing upper and lower fuel probe brackets with new upper and lower fuel probe brackets, part numbers 390-920304-001/002 (upper) and 390-920305-001/002 (lower), or FAA-approved equivalent part numbers.	Within the next 50 hours time-in-service after October 4, 2002 (the effective date of this AD).	In accordance with Raytheon Aircraft Mandatory Service Bulletin SB 28-3537, Rev. 1, Revised: August, 2002.
(2) Do not install upper and lower fuel probe brackets that are not part numbers 390-920304-001/002 (upper) and 390-920305-001/002 (lower), or FAA-approved equivalent part numbers.	As of October 4, 2002 (the effective date of this AD).	Not applicable.

Note 1: The compliance time of this AD differs from that specified in Raytheon Aircraft Mandatory Service Bulletin SB 28-3537, Rev. 1, Revised: August, 2002. This AD takes precedence over any other information on the affected airplanes.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

- (1) Your alternative method of compliance provides an equivalent level of safety; and
- (2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) *Where can I get information about any already-approved alternative*

methods of compliance? Contact James P. Galstad, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4135; facsimile: (316) 946-4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?*
Actions required by this AD must be done in accordance with Raytheon Aircraft Mandatory Service Bulletin SB 28-3537, Rev. 1, Revised: August, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on October 4, 2002.

Issued in Kansas City, Missouri, on September 13, 2002.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-23880 Filed 9-23-02; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-SW-11-AD; Amendment 39-12886; AD 2002-19-06]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model EC 155B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model

EC 155B helicopters with certain SMD45H multi-functional displays. This action requires replacing the "AC" SMD45H multi-functional display interconnection board (interconnection board) of the affected displays with a "BC" interconnection board. This amendment is prompted by an incident of smoke in a cockpit caused by overheating of the interconnection board. The actions specified in this AD are intended to prevent an electrical discontinuity in the grounding plane inside the SMD45H multi-functional display, which can result in overheating of the interconnection board, smoke in the cockpit, and subsequent loss of control of the helicopter.

DATES: Effective October 9, 2002.

Comments for inclusion in the Rules Docket must be received on or before November 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002-SW-11-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Jorge Castillo, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 222-5127, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model EC 155B helicopters. The DGAC advises that a manufacturing anomaly on the "AC" interconnection board of certain display screens might cause discontinuity inside the grounding plane and result in overheating of the board and smoke in the cockpit. One case of smoke in the cockpit occurred at the manufacturer's facility.

Eurocopter has issued Alert Telex No. 04A004, dated November 22, 2001, which specifies replacement of SMD45H screens equipped with interconnection boards that might show some non-conformities with the manufacturing requirements. The DGAC classified this alert telex as mandatory and issued AD 2001-617-004(A), dated December 26, 2001, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United

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

This unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, this AD is being issued to prevent an electrical discontinuity inside the grounding plane, which can result in overheating of the interconnection board, smoke in the cockpit, and subsequent loss of control of the helicopter. This AD requires, within 30 days after the effective date of this AD, replacing the "AC" interconnection board of the affected displays with a "BC" interconnection board. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, replacing the "AC" interconnection board of the affected displays with a "BC" interconnection board is required within 30 days, and this AD must be issued immediately.

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

The FAA estimates that 2 helicopters will be affected by this AD, that it will take approximately 1 work hour to accomplish the interconnection board replacement, and that the average labor rate is \$60 per work hour. Required parts cost approximately \$200 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$520.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All

communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002-SW-11-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002-19-06 **Eurocopter France:**
Amendment 39-12886. Docket No. 2002-SW-11-AD.

Applicability: Model EC 155B helicopters, with SMD45H multi-functional displays, part numbers C19209VF11, C19209VG11, C19267EF10, C19267EG10, C19267VF11, or C19267VG11, having serial numbers from 201 through 284 inclusive, which are *not* followed by the letter "M", installed, certificated in any category.

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

Compliance: Required within 30 days, unless accomplished previously.

To prevent an electrical discontinuity in the grounding plane inside the SMD45H multi-functional display, which can result in overheating of the interconnection board, smoke in the cockpit, and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace the "AC" interconnection board of the affected SMD45H multi-functional display with a "BC" interconnection board.

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

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

(c) Special flight permits will not be issued.

(d) This amendment becomes effective on October 9, 2002.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2001-617-004(A), dated December 26, 2001.

Issued in Fort Worth, Texas, on September 13, 2002.

Eric Bries,

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

[FR Doc. 02-24181 Filed 9-23-02; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION**17 CFR Part 240****General Rules and Regulations,
Securities Exchange Act of 1934***CFR Correction*

In Title 17 of the Code of Federal Regulations, part 240 to end, revised as of April 1, 2002, § 240.15d-5, paragraph (c), is corrected by removing the words "and Form 10-SB".

[FR Doc. 02-55520 Filed 9-23-02; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 655****RIN 1205-AB30****Labor Certification and Petition
Process for the Temporary
Employment of Nonimmigrant Aliens
in Agriculture in the United States;
Delegation of Authority To Adjudicate
Petitions; Withdrawal of Final Rule**

AGENCY: Employment and Training Administration, Labor.

ACTION: Withdrawal of final rule.

SUMMARY: The Department of Labor (Department or DOL) is withdrawing its Final Rule published in the **Federal Register** at 65 FR 43538 (July 13, 2000) pertaining to the delegation of authority from the Immigration and Naturalization Service (INS) to the Department of Labor (Department or DOL) to adjudicate petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States.

DATES: The final rule amending 20 CFR part 655, published at 65 FR 43538 (July

13, 2000) and deferred at 65 FR 67628 (November 13, 2000) and 66 FR 49275 (September 27, 2001), is withdrawn as of September 24, 2002.

FOR FURTHER INFORMATION CONTACT:

Charlene G. Giles, Team Leader, Sections H-2A and H-2B, Division of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, Room C-4318, 200 Constitution Avenue NW, Washington, DC 20210. Telephone (202) 693-2950 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In 2000, the INS published a Final Rule transferring to the Secretary of Labor the authority to adjudicate petitions for temporary agricultural workers and the authority to decide appeals on these decisions and to make determinations for revocation of petition approvals. 65 FR 43528 (July 13, 2000). It had an effective date of November 13, 2000. The Department of Labor published a Final Rule implementing and accepting that delegation. 65 FR 43538 (July 13, 2000). It also had an effective date of November 13, 2000.

Subsequently, the INS deferred through October 1, 2001, the effective date of the delegation. 65 FR 67616 (November 13, 2000). DOL also deferred through October 1, 2001, its acceptance of the delegation. 65 FR 67628 (November 13, 2000). The Department invited comments on the deferral of the effective date, but no comments were received in response to the invitation.

When the delegation originally was made, the Department had published a companion Notice of Proposed Rulemaking (NPRM) setting forth implementation measures necessary for the successful implementation of the delegation of authority to adjudicate petitions. 65 FR 43545 (July 13, 2000). Among the implementation measures was a new form, Form ETA 9079, Application for Alien Employment Certification and H-2A Petition, which consolidated two current forms, Form ETA 750 (Application for Alien Employment Certification) and INS I-129 (Petition for Nonimmigrant Workers). The NPRM also set forth the implementation of a new fee schedule to collect a combined fee for processing the petition and labor certification application. It was contemplated that under the administrative procedures arrived at by INS and the Department's Employment and Training Administration (ETA) to implement the delegation of the petition authority from INS to DOL, that DOL would collect the petition fee on behalf of INS and would have been reimbursed by INS for the

costs involved in processing the H-2A petition. An INS companion NPRM provided, among other things, that all petition requests and extensions of stay and change of status petitions must be filed with DOL and the current INS petition fee would be collected by DOL as part of a combined fee. 65 FR 43535 (July 13, 2000).

Later in 2000, DOL reopened and extended the comment period on its NPRM. 65 FR 50170 (August 17, 2000). The INS also reopened and extended the comment period on its NPRM. 65 FR 50166 (August 17, 2000).

Commenters raised a number of issues about the proposed rules. However, the documents received by the Department during the extended comment period did not provide sufficient information to permit the Department to draft a Final Rule concerning a number of issues, such as the design of the new form and the fee structure. For that reason, the Department again deferred the effective date of the final rule until September 27, 2002 (66 FR 49275, September 27, 2001). The Department also held two informal public briefings on November 8, 2001, and November 16, 2001, to give agricultural employers and workers, their representatives, and other interested parties an opportunity to communicate their views directly to the Department regarding the proposal to delegate authority from INS to the Department to adjudicate petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States. 66 FR 49329 (September 27, 2001). The attendees at the briefings overwhelmingly disapproved of the proposed transfer of authority between the two agencies. They stated that the proposed transfer of authority to adjudicate the agricultural petitions of the nonimmigrant workers would complicate the certification process, rather than streamline it. The agricultural employers and workers, and their representatives at the briefings, expressed the view that, even if the transfer of authority were made, DOL does not have adequate resources to handle the increased workload.

Agricultural employers and workers and their representatives strongly opposed DOL's proposal to replace the existing two forms which are used in the certification and petition process (Form ETA 750 and Form ETA I-129), with one consolidated form, Form ETA 9079. Both groups cited increased difficulties with the new form, such as requiring the employer to obtain the foreign agricultural worker's signature

as well as the requirement to accurately describe the terms and conditions of employment of complex agricultural occupations. Other criticisms made by both groups was DOL's assumption that all farmers would have access to computers which would be necessary to have to complete the new form. Agricultural employers also indicated that the proposed fee structure would be unfavorable to small farmers, and they wished that no changes be made to the fee structure system.

The Department of Labor reviewed the concerns of the agricultural employers and workers, and determined that the concerns expressed by both groups have merit. The Department has concluded that it is in the best interests of agricultural employers and workers to withdraw the Final Rule from the CFR.

The July 13, 2000, Final Rule can be withdrawn without further notice and comment rulemaking, since the delegation of authority to adjudicate petitions from the Attorney General to the Secretary of Labor constitutes a rule of agency procedure within the subsection 5 U.S.C. 553(b)(A) exception to the APA's notice and comment procedures. While procedural rules which have substantial impact should be published for notice and comment all the Final Rule essentially would have done is transfer a function from the one agency to another, permitting employers to omit one step in the process of importing foreign agricultural workers; and this rule nullifies that transfer, maintaining the status quo.

Accordingly, for all of the foregoing reasons the Department withdraws the Final Rule published at 65 FR 45358 (July 13, 2000).

Executive Order 12866

The Department has determined that this Rule should be treated as a "significant regulatory action," within the meaning of Executive Order 12866, because of the inter-agency coordination with INS. However, this rule is not an "economically significant regulatory action" because it would not have an economic effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Unfunded Mandates Reform Act of 1995

This Final Rule will not result in the expenditure by State, local and tribal

governments in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this Rule (5 U.S.C. 533(b)), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* pertaining to regulatory flexibility analysis, do not apply to this Final Rule. *See* 5 U.S.C. 603(a).

However, at the time the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Chief Counsel for Advocacy did not submit a comment.

Executive Order 13132

This Final Rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

Paperwork Reduction Act

The withdrawal of the Final Rule does not have any implications under the Paperwork Reduction Act of 1995.

Catalogue of Federal Domestic Assistant Number

This program is listed in the *Catalogue of Federal Domestic Assistance* as Number 17.202 "Certification of Foreign Workers for Temporary Agricultural Employment."

Signed at Washington, DC, this 18th day of September, 2002.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 02-24189 Filed 9-23-02; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****25 CFR Part 11**

RIN 1076-AE19

Law and Order on Indian Reservations**AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Final rule and request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is amending its regulations to add the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony (Western Region, Nevada) to the listing of Courts of Indian Offenses. This amendment will set up a Court of Indian Offenses with jurisdiction over the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony to protect lives and property.

DATES: *Effective Date:* This rule is effective on September 30, 2002.

Comment Date: Comments must be received on or before November 25, 2002.

ADDRESSES: Send comments on this rule to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street NW, MS 4660, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sharlot Johnson, Tribal Government Officer, Western Regional Office, Bureau of Indian Affairs, 400 N. Fifth Street, Phoenix, Arizona 85004, (602) 379-6786; or Ralph Gonzales, Branch of Judicial Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street NW., MS 4660 Washington, DC 20240, (202) 208-4401.

SUPPLEMENTARY INFORMATION: The authority to issue this rule is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." See *Tillett v. Hodel*, 730 F. Supp. 381 (W.D. Okla. 1990), *aff'd*, 931 F.2d 636 (10th Cir. 1991) *United States v. Clapox*, 13 Sawy. 349, 35 F. 575 (D. Ore. 1888). This rule is published in exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs.

On September 18, 2001, the Bureau of Indian Affairs published a temporary final rule (66 FR 48085) amending its regulations contained in 25 CFR part 11 to add the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony (Western Region, Nevada) to the list of Courts of Indian Offenses. This amendment established a Court of

Indian Offenses for a period not to exceed one year. The purpose of establishing a Court of Indian Offenses at the Fallon Reservation and Colony was to protect persons, land, lives and property of people residing there, until the tribe reassumed its Law and Order program. The tribe has not established a tribal court to exercise jurisdiction at Fallon Reservation and Colony consistent with 25 CFR 11.100(c). Therefore a Court of Indian Offenses is established for an indefinite period at Fallon Reservation and Colony until such time as the tribe establishes a tribal court. The jurisdiction of the Court of Indian Offenses will remain the same as published in the **Federal Register** on September 18, 2001 at 66 FR 48085.

BIA's action provided a 60-day public comment period ending November 19, 2001. During the comment period, BIA received 86 form letters. Commenters stated that they accept the BIA's emergency amendment establishing a CFR Court at Fallon. In addition, the commenters indicated that we should eliminate the tribal court. The tribal government created the tribal court as an exercise of its inherent sovereignty. Therefore, we cannot eliminate the tribal court in response to the comments. We can only establish a CFR Court when it is necessary to protect lives and property where a tribal court has not been established or a tribal court fails to perform this function. This amendment permanently establishes a CFR Court until such time as the tribal government establishes a tribal court consistent with the regulations contained in part 11.100(c).

Determination To Publish a Final Rule Effective Immediately

In accordance with the requirements of the Administrative Procedure Act (5 U.S.C. 553(B)), we have determined that publishing a proposed rule would be impractical because of the risk to public safety as well as further risk of exposure of the Federal Government to a lawsuit for failure to execute diligently its trust responsibility and to provide adequate judicial services for law enforcement on trust land. The Bureau of Indian Affairs Law Enforcement Services has reassumed the Law Enforcement Program from the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony, and a CFR Court is a necessary judicial forum within the reservation for the adjudication of criminal cases. For these reasons, an immediate effective date is in the public interest and in the interest of the tribe not to delay implementation of this amendment. We are therefore

publishing this change as a final rule with request for comments.

BIA has determined it appropriate to make the rule effective immediately by waiving the U.S.C. 553(d) requirement of publication 30 days in advance of the effective date. This is because of the critical need to expedite establishment of this court to fill the void in law enforcement at the Fallon Reservation and Colony. Therefore, this final rule is effective immediately.

We invite comments on any aspect of this rule and we will revise the rule if comments warrant. Send comments on this rule to the address in the **ADDRESSES** section.

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The establishment of this Court of Indian Offenses is estimated to cost less than \$200,000 annually to operate. The cost associated with the operation of this court will be with the Bureau of Indian Affairs.

(b) This rule will not create inconsistencies with other agencies' actions. The Department of the Interior, through the Bureau of Indian Affairs, has the sole responsibility and authority to establish Courts of Indian Offenses on Indian reservations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The establishment of this Court of Indian Offenses will not affect any program rights of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony. Its primary function will be to administer justice for misdemeanor offenses within the tribe's reservation and colony. The court's jurisdiction will be exercised as provided in 25 CFR part 11.

(d) This rule will not raise novel legal or policy issues. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States

Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States v. Clapox*, 35 F. 575 (D. Ore. 1888).

Regulatory Flexibility Act

The Department of the Interior, BIA, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The amendment to 25 CFR 11.100(a) will establish a Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area at Fallon, Nevada. Accordingly, there will be no impact on any small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. The establishment of this Court of Indian Offenses is estimated to cost less than \$200,000 annually to operate. The cost associated with the operation of this court will be with the Bureau of Indian Affairs.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This is a court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony and will not have any cost or price impact on any other entities in the geographical region.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This is a court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony, Fallon, Nevada, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The establishment of this Court of Indian Offenses will not have jurisdiction to affect any rights of the small governments. Its primary function will be to administer justice for misdemeanor offenses within the Fallon Indian Reservation and Colony. Its jurisdiction will be limited to criminal offenses provided in 25 CFR part 11.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year; i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The amendment to 25 CFR 11.100(a) will establish a Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area at Fallon, Nevada. Accordingly, there will be no jurisdictional basis for the CFR Court to affect adversely any property interest because the court's jurisdiction is limited to personal jurisdiction over Indians.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule concerns only courts established for tribes by the Federal Government at the tribe's request and does not infringe on states' judicial systems. If the tribe chooses, they can establish their own judicial system apart from any State or local government in accordance with 25 CFR 11.100(c).

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the

Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States v. Clapox*, 35 F. 575 (D. Ore. 1888). Part 11 also requires the establishment of an appeals court; hence, the judicial system defined in Executive Order 12988 does not involve this judicial process.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act. The information collection is not covered by an existing OMB approval. An OMB form 83-1 has not been prepared and has not been approved by the Office of Policy Analysis. No information is being collected as a result of this court exercising its limited criminal misdemeanor jurisdiction over Indians within the exterior boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The establishment of this Court of Indian Offenses conveys personal jurisdiction over the criminal misdemeanor actions of Indians within the exterior boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony and does not have any impact on the environment.

Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. The amendment to 25 CFR 11.100(a) does not apply to any of the 562 federally recognized tribes, except the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony. The tribe agreed to the establishment of the provisional Court of Indian Offenses until the Secretary determines that enforcement of the criminal offenses contained in part 11 of the Code of Federal Regulations is no longer

justified. The Department of the Interior, in establishing this provisional court, is fulfilling its trust responsibility and complying with the unique government-to-government relationship that exists between the Federal Government and Indian tribes.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

For the reasons stated in the preamble, we are amending part 11, chapter I of title 25 of the Code of Federal Regulations, as set forth below.

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

1. The authority citation for part 11 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

2. Section 11.100 is amended by adding new paragraph (a)(15) to read as follows:

§ 11.100 Listing of Courts of Indian Offenses.

(a) * * *

(15) Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony (land in trust for the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony).

* * * * *

Dated: September 13, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02-24241 Filed 9-23-02; 8:45 am]

BILLING CODE 4310-4J-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 6

Protection and Security of Vessels, Harbors, and Waterfront Facilities

CFR Correction

In Title 33 of the Code of Federal Regulations, parts 1 to 124, revised as of July 1, 2001, § 6.01-4 is corrected to read as follows:

§ 6.01-4 Waterfront facility.

Waterfront facility. “Waterfront facility,” as used in this part, means all piers, wharves, docks, or similar structures to which vessels may be secured and naval yards, stations, and installations, including ranges; areas of land, water, or land and water under and in immediate proximity to them; buildings on them or contiguous to

them and equipment and materials on or in them.

[EO 13143, 64 FR 68273, Dec. 6, 1999]

[FR Doc. 02-55521 Filed 9-23-02; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL-7381-4]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for regulations for Motor Vehicle Emission and Fuel Economy Compliance.

EFFECTIVE DATE: This final rule is effective September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Richard W. Nash, Certification and Compliance Division, 2565 Plymouth Road, Ann Arbor MI 48103, (734) 214-4412, nash.dick@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements approved by OMB on July 18, 2002 under control number 2060-0104. The affected regulations are codified at 40 CFR parts 85, 86 and 600. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency’s regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB’s implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is “good cause” under section

553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

Congressional Review Act

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. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 24, 2002. EPA will submit a report containing this

40 CFR citation	OMB control No.
* * * * *	
Fuel Economy of Motor Vehicles	
600.005-87	2060-0104
* * * * *	
600.006-89	2060-0104
* * * * *	
600.206-93	2060-0104
* * * * *	
600.207-93	2060-0104
* * * * *	
600.305-77	2060-0104
* * * * *	
600.307-95	2060-0104
* * * * *	
600.310-86	2060-0104
* * * * *	
600.313-01	2060-0104
* * * * *	
600.314-01	2060-0104
* * * * *	
600.510-93	2060-0104
* * * * *	

[FR Doc. 02-24229 Filed 9-23-02; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 134 & KY 136—200235(a); FRL-7381-2]

Approval and Promulgation of Implementation Plans for Kentucky: Vehicle Emissions Control Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) of the Commonwealth of Kentucky amending Kentucky rules 401 KAR 65:001 and 401 KAR 65:010. These changes affect military personnel with vehicles required to undergo vehicle emissions tests. The EPA also proposes to approve into the Kentucky SIP revisions to the Air Pollution Control District of Jefferson County’s regulations 8.01 and 8.02, which affect vehicle emission test centers and owners of certain vehicles registered in the County.

DATES: This direct final rule is effective November 25, 2002 without further notice, unless EPA receives adverse comment by October 24, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. (404/562-9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

Copies of the Commonwealth’s submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. (Michele Notarianni, 404/562-9031, *notarianni.michele@epa.gov*)
 Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403. (502/573-3382)

Air Pollution Control District of Jefferson County, 850 Barrett Avenue—Suite 200, Louisville, Kentucky 40204. (502/574-6000)

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at address listed above or 404-562-9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Today’s Action
- II. Final Action
- III. Administrative Requirements

I. Today’s Action

The EPA is approving revisions to rules 401 KAR 65:001, “Definitions for 401 KAR Chapter 65”, and 401 KAR 65:010, “Vehicle emission control programs”, into the Kentucky SIP. The Kentucky Natural Resources and Environmental Protection Cabinet submitted these revisions to EPA on September 5, 2001. The revisions establish guidelines for a fee exemption for vehicles belonging to military personnel during the applicable testing period, move the definitions for Kentucky’s vehicle emissions control programs from 401 KAR 65:010 into 401 KAR 65:001, and make administrative clarifications to the definitions in 401 KAR 65:001. The effect of this action is that military personnel who reside in vehicle testing program areas will not have to pay the exemption certificate fee when their vehicle is outside the program area during the required testing

period. Vehicle testing programs in Kentucky exist in those areas which are designated one-hour ozone nonattainment (except marginal) areas or attainment areas that were previously designated nonattainment for the one-hour national ambient air quality standard and continue to operate a testing program to maintain attainment status or to meet other applicable mandates.

The EPA is also approving into the Kentucky SIP revisions to the Air Pollution Control District of Jefferson County’s regulations 8.01, “Mobile Source Emissions Control Requirements,” and 8.02, “Vehicle Emissions Testing Procedure.” The Kentucky Natural Resources and Environmental Protection Cabinet submitted these revisions to EPA on January 24, 2002. These revisions include specific procedures for on-board diagnostics (OBD) testing and delay the implementation start date for OBD testing from the January 1, 2001, date currently in the Kentucky SIP until January 1, 2002. The new test procedures apply to model year 1996 and newer, light-duty vehicles and trucks and to model year 1997 and newer, light-duty diesel vehicles and trucks manufactured with certified OBD systems. The OBD test would replace the current tailpipe test emissions test, evaporative system test, and equipment visual inspection for these newer vehicles. As specifically provided for under the rules, the start date for OBD testing was delayed to July 1, 2002.

II. Final Action

EPA is approving into the Kentucky SIP revisions to Rules 401 KAR 65:001 and 401 KAR 65:010, and Air Pollution Control District of Jefferson County Regulations 8.01 and 8.02, because they are consistent with the requirements of the Clean Air Act and EPA policy.

EPA is approving the aforementioned changes to the SIP. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 25, 2002 without further notice unless the Agency receives adverse comments by October 24, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will

not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 25, 2002 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism

implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 5, 2002.

A. Stanley Meiburg,
Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

2. Section 52.920 paragraph (c) is amended:

a. Under Table “EPA—APPROVED KENTUCKY REGULATIONS FOR KENTUCKY”, Chapter 65, by revising the entries for 401 KAR 65:001 and 401 KAR 65:010.

b. Under “EPA—APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY”, Reg 8, by revising the entries for 8.01 and 8.02.

The revisions read as follows:

§ 52.920 Identification of plan.

* * * * *
(c) * * *

EPA—APPROVED KENTUCKY REGULATIONS FOR KENTUCKY

Regulation	Title/subject	State effective date	EPA approval date	Federal Register notice
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EPA—APPROVED KENTUCKY REGULATIONS FOR KENTUCKY—Continued

Regulation	Title/subject	State effective date	EPA approval date	Federal Register notice
*	*	*	*	*
Chapter 65 Mobile Source Related Emissions				
401 KAR, 65:001	Definitions for 401, KAR Chapter 65	8/15/01	September 24, 2002	[Insert FR page citation]
*	*	*	*	*
401 KAR, 65:010	Vehicle emission control programs	8/15/01	September 24, 2002	[Insert FR page citation]

EPA—APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Regulation	Title/subject	District effective date	EPA approval date	Federal Register notice
*	*	*	*	*
Reg 8 Mobile Source Emissions Control				
8.01	Mobile Source Emissions Control Requirements	11/21/01	September 24, 2002	[Insert FR page citation]
8.02	Vehicle Emissions Testing Procedure	11/21/01	September 24, 2002	[Insert FR page citation]
*	*	*	*	*

* * * * *

[FR Doc. 02-24091 Filed 9-23-02; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-7382-4]

RIN 2060-AE78

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On June 14, 2002, the EPA promulgated amendments to the national emission standards for secondary aluminum production as a direct final rule along with a parallel proposal to be used as a basis for final action in the event we received any adverse comments. On August 13, 2002, we withdrew the direct final rule amendments because one commenter submitted adverse comments on certain amendments. This action promulgates final amendments to the national emission standards for secondary aluminum production based on the June 14, 2002 proposal which accompanied the direct final rule.

EFFECTIVE DATE: November 25, 2002.

ADDRESSES: Docket A-2002-05, containing supporting information used in developing these final rule amendments, is available for public inspection and copying between 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding Federal holidays, at the following address: U.S. EPA, Air and Radiation Docket and Information Center, Room B-108, 1301 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, U.S. EPA, Minerals and Inorganic Chemicals Group (C504-05), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-0296, facsimile number (919) 541-5600, electronic mail address: schaefer.john@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of the administrative record compiled by EPA in the development of these final rule amendments. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review.

Other material related to this rulemaking is available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN help line at (919) 541-5384.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 25, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to these final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rule amendments may not be challenged

separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Regulated Entities. Entities potentially regulated by this action are secondary aluminum production facilities (including those collocated at primary aluminum production facilities) using clean charge, post-consumer scrap,

aluminum scrap, ingots, foundry returns, dross, or molten metal as the raw material, and performing one or more of the following processes: aluminum scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (i.e., melting, holding, refining, fluxing, or alloying), in-line fluxing, or dross

cooling. Affected sources at facilities that are major sources of HAP are regulated under the final rule. In addition, emissions of dioxins and furans from affected sources at facilities that are area sources of hazardous air pollutants are also regulated. Regulated categories and entities include:

Category	NAICS code	SIC Code	Examples of regulated entities
Industry	331314	3341	Secondary smelting and alloying of aluminum facilities. Secondary aluminum production facility affected sources that are collocated at:
	331312	3334	Primary aluminum production facilities.
	331315	3353	Aluminum sheet, plate, and foil manufacturing facilities.
	331316	3354	Aluminum extruded product manufacturing facilities.
	331319	3355	Other aluminum rolling and drawing facilities.
	331521	3363	Aluminum die casting facilities.
	331524	3365	Aluminum foundry facilities.
State/local/tribal governments	Not affected.
Federal government	Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the Agency is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1500 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The following outline is provided to aid in reading this preamble to these final rule amendments.

- I. Background
- II. Response to Comments on Amendments to the NESHAP for Secondary Aluminum Production
- III. Administrative Requirements
 - A. Executive Order 12866, Regulatory Planning and Review
 - B. Executive Order 13132, Federalism
 - C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
 - D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
 - E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
 - F. Unfunded Mandates Reform Act of 1995
 - G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
 - H. Paperwork Reduction Act
 - I. National Technology Transfer and Advancement Act of 1995
 - J. Congressional Review Act

I. Background

On March 23, 2000, we promulgated the national emission standards for hazardous air pollutants (NESHAP) for secondary aluminum production (40 CFR 63, subpart RRR) at 63 FR 15710. These standards were established under the authority of section 112(d) of the CAA to reduce emissions of hazardous air pollutants (HAP) from major and area sources.

After promulgation of the NESHAP for secondary aluminum production, two petitions for judicial review of the standard were filed in the D.C. Circuit Court of Appeals. The first of these petitions was filed by the American Foundrymen's Society, the North American Die Casting Association, and the Non-Ferrous Founders' Society. *American Foundrymen's Society v. U.S. Environmental Protection Agency*, Civ. No 00-1208 (D.C. Cir.). A second petition for judicial review was filed by the Aluminum Association. *The Aluminum Association v. U.S. Environmental Protection Agency*, No. 00-1211 (D.C. Cir.). There was no significant overlap in the issues presented by the two petitions, and the cases have never been consolidated. However, we did enter into separate settlement discussions with the petitioners in each case.

The *Foundrymen's* case presented issues concerning the applicability of subpart RRR to aluminum die casters and aluminum foundries which were first considered during the initial rulemaking. Because aluminum die casters and foundries sometimes conduct the same type of operations as other secondary aluminum producers, we originally intended to apply the

standards to these facilities, but only in those instances when they conduct such operations. However, representatives of the affected facilities argued that they should not be considered to be secondary aluminum producers and should be wholly exempt from the rule. During the rulemaking, we decided to permit die casters and foundries to melt contaminated internal scrap without being considered to be secondary aluminum producers, but their representatives insisted that too many facilities would still be subject to the rule. At the time of promulgation of the standards, in response to a request by the die casters and foundries, we announced we would withdraw the standards as applied to die casters and foundries and develop separate maximum achievable control technology (MACT) standards for those facilities.

After the *Foundrymen's* case was filed, we negotiated an initial settlement agreement in that case which established a process to effectuate our commitment to develop new MACT standards. In that first settlement, EPA agreed that it would stay the current standard for those facilities, collect comprehensive data to support alternate standards, and promulgate alternate standards. We then published a proposal to stay the standards and an advance notice of proposed rulemaking (ANPR) concerning new standards. However, during the process of preparing for information collection, the petitioners concluded that the present rule was not as sweeping in applicability as they had feared, and the parties then agreed to explore an alternate approach to settlement based

on clarifications of the current standards.

We subsequently reached agreement with the *Foundrymen's* petitioners on a new settlement. Pursuant to that settlement, we agreed to propose changes in the applicability of the present standards which would permit customer returns without solid paints or coatings to be treated like internal scrap, and would permit facilities operated by the same company at different locations to be aggregated for purposes of determining what is internal scrap. Those revisions were addressed in a separate proposed rule (67 FR 41125, June 14, 2002).

In the *Foundrymen's* settlement, we also agreed to defer the compliance date for new sources constructed or reconstructed at existing aluminum die casters, aluminum foundries, and aluminum extruders until the compliance date for existing sources so that the related rulemaking on general applicability issues could be completed first. This element of that settlement is the only one which is implemented by this final rule.

As required by section 113(g) of the CAA, we provided notice and an opportunity for comment concerning the *Foundrymen's* settlement (67 FR 9972, March 5, 2002). We received three adverse comments on the settlement, although none of the comments addressed the only element in the settlement which is implemented by this final rule. After reviewing the comments, we decided to proceed with settlement. A copy of the comments and our responses to them is available in the docket for this rule.

In separate discussions, we also agreed on a settlement of the *Aluminum Association* case. That settlement required that we propose a number of substantive clarifications and revisions of the standards. The substantive changes have been addressed in the same separate proposed rule as the applicability changes for aluminum die casters and foundries. The *Aluminum Association* settlement also required that we propose to clarify and simplify the compliance dates for the standards and to defer certain early compliance obligations until after the substantive rulemaking can be completed. The compliance issues are addressed by amendments in this final rule.

Pursuant to CAA section 113(g), we also provided notice and an opportunity for public comment concerning the *Aluminum Association* settlement (67 FR 16374, April 5, 2002). We received one adverse comment concerning that settlement. After reviewing that comment, we decided to proceed with

settlement. A copy of that comment and our response to it is available in the docket for this rule.

We originally published the amendments adopted by this final rule as a direct final rule (67 FR 41118, June 14, 2002). The intent of these amendments is to eliminate confusion and to clarify various compliance dates in the promulgated standard, to encourage early performance tests, and to permit some basic applicability questions for aluminum die casters, foundries, and extruders to be resolved before the compliance date for new sources constructed or reconstructed at existing facilities. Therefore, we decided to utilize a direct final rule so that these changes could become effective as quickly as possible.

Along with the direct final rule, we published a proposed rule to serve as the basis for final action in the event that we received any adverse comment on the proposed rule. We received a letter from one commenter expressing opposition to six of the amendments in the direct final rule. We also received a letter from another commenter expressing support for all of the amendments in the direct final rule. Because of the receipt of adverse comment, we published a notice withdrawing the direct final rule at 63 FR 52616. In view of the relationship between those amendments concerning which we received adverse comment and some of the remaining amendments, and to avoid the possibility of confusion resulting from partial adoption of the amendments, we decided to withdraw all amendments contained in the direct final rule. Today's final rule amendments serve as our final administrative action concerning all of the amendments set forth in the direct final rule and parallel proposal.

II. Response to Comments on Amendments to the NESHAP for Secondary Aluminum Production

We received one letter in which a commenter expressed opposition to six specific amendments set forth in the direct final rule. Our responses to these adverse comments are set forth below. We also received one other letter expressing support for all of the amendments in the direct final rule. Both letters are available in the docket.

One of the commenters opposed the proposed new 40 CFR 63.1501(c), which would defer the compliance date for affected sources which are constructed or reconstructed at an existing aluminum die casting facility, aluminum foundry, or aluminum extruder, and which meet the current applicability criteria for the secondary

aluminum standards, until March 24, 2003 (the compliance date for existing sources) or startup, whichever is later. The commenter stated that these sources are able to achieve compliance with MACT as originally promulgated, that any major sources excluded from the source category will still be required to achieve a MACT level of control, and that, if EPA later promulgates less stringent standards for these sources, they will be permitted to demonstrate compliance with those standards.

We believe that the commenter misconstrued the very narrow purpose of this provision. We proposed in a separate rulemaking at 63 FR 41118 to make some modest adjustments in the applicability criteria for aluminum die casting facilities, aluminum foundries, and aluminum extruders. Those proposed applicability changes would permit customer returns without any solid paints or coatings to be treated like internal scrap and would permit facilities operated by the same company at different locations to be aggregated for purposes of determining what is internal scrap in determining which facilities are subject to the standards. The only purpose of the amendment in 40 CFR 63.1501(c) is to defer the compliance date for affected sources which are constructed or reconstructed at existing facilities until after the scope of the applicability criteria has been clearly resolved. We do not think it is reasonable to require sources which may no longer be covered by the applicability criteria after we complete action on the other rule proposed at 63 FR 41125 to undertake compliance activities during this brief interim period. If the newly constructed or reconstructed sources remain within the applicability criteria after the separate rulemaking has been concluded, such sources will be subject to the same substantive control requirements.

The same commenter also expressed opposition to the proposed amendments to § 63.1505(c), (d), (e), (f), and (k) that would change the compliance date for certain existing sources to a single certain date, rather than requiring compliance to begin immediately after a successful performance test. The commenter opposed the changes because they would permit facilities to shut down control devices even though they have demonstrated the capacity to meet the standards.

While we understand the concern that reductions in HAP emissions may be deferred by affected facilities, the commenter has not addressed the reasons why we decided it is necessary to make these changes. The change to a single definite compliance date for

certain existing sources is an integral part of a larger set of changes which are intended to resolve confusion and facilitate rational planning for compliance at the affected facilities. In particular, the existing rule is confusing because a facility could be unable to finalize its required operation, maintenance, and monitoring (OM&M) plan until after completing, and then evaluating the results, of an initial performance test. The existing rule could also discourage facilities from conducting early performance tests, even though such early tests could facilitate identification and correction of problems before the compliance date.

We did not receive adverse comment on any of the other amendments previously set forth in the direct final rule. However, we decided to withdraw all of the amendments, in view of the relationship between the amendments concerning which we received adverse comment and some of the remaining amendments, and the potential for confusion which would be associated with partial promulgation. In today's action, we have decided to adopt all of the amendments as proposed. We hereby incorporate by reference the explanation we previously provided for those amendments on which no adverse comment was received.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

These final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the amendments. Thus, Executive Order 13132 does not apply to these final rule amendments.

C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." These final rule amendments do not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the amendments. Thus, Executive Order 13175 does not apply to the final rule amendments.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk

addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These final rule amendments are not subject to Executive Order 13045, because they are not an economically significant regulatory action as defined by Executive Order 12866, and because the rule and amendments are based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use

These final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small

governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these final rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor do the amendments significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to these final rule amendments.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule amendments on small entities, small entities are defined as: (1) A small business that has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, the EPA has concluded that this action will not have a significant impact on a substantial number of small entities because the intent of these amendments is to eliminate confusion and to clarify various compliance dates in the promulgated standard, to encourage early performance tests, and to permit some basic applicability questions for aluminum die casters, foundries, and

extruders to be resolved before the compliance date for new sources constructed or reconstructed at existing facilities.

H. Paperwork Reduction Act

This action does not impose any new information collection burden. Today's action consists primarily of clarifications to the final rule that impose no new information collection requirements on industry or EPA. Therefore, the existing ICR has not been revised. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control No. 2060-0433 (EPA ICR no. 1894.02). A copy of the ICR document may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at auby.susan@epamail.epa.gov, or by calling (202) 566-1672. A copy may also be downloaded from the Internet at <http://www.epa.gov/icr>.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical

standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Because today's action contains no new test methods, sampling procedures or other technical standards, there is no need to consider the availability of voluntary consensus standards.

J. Congressional Review Act

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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the 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**. These final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). These amendments will be effective on November 25, 2002.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 18, 2002.

Christine T. Whitman,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart RRR—[Amended]

2. Section 63.1501 is revised to read as follows:

§ 63.1501 Dates.

(a) The owner or operator of an existing affected source must comply

with the requirements of this subpart by March 24, 2003.

(b) Except as provided in paragraph (c) of this section, the owner or operator of a new affected source that commences construction or reconstruction after February 11, 1999 must comply with the requirements of this subpart by March 24, 2000 or upon startup, whichever is later.

(c) The owner or operator of any affected source which is constructed or reconstructed at any existing aluminum die casting facility, aluminum foundry, or aluminum extrusion facility which otherwise meets the applicability criteria set forth in § 63.1500 must comply with the requirements of this subpart by March 24, 2003 or upon startup, whichever is later.

3. Section 63.1505 is amended by:

a. Revising the introductory text of paragraphs (b), (c), (d), and (e);

b. Revising paragraph (f)(2); and

c. Revising the introductory text of paragraphs (g), (h), and (k).

The revisions read as follows:

§ 63.1505 Emission standards for affected sources and emission units.

* * * * *

(b) *Aluminum scrap shredder.* On and after the compliance date established by § 63.1501, the owner or operator of an aluminum scrap shredder at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere:

* * * * *

(c) *Thermal chip dryer.* On and after the compliance date established by § 63.1501, the owner or operator of a thermal chip dryer must not discharge or cause to be discharged to the atmosphere emissions in excess of:

* * * * *

(d) *Scrap dryer/delacquering kiln/decoating kiln.* On and after the compliance date established by § 63.1501:

* * * * *

(e) *Scrap dryer/delacquering kiln/decoating kiln: alternative limits.* The owner or operator of a scrap dryer/delacquering kiln/decoating kiln may choose to comply with the emission limits in this paragraph (e) as an alternative to the limits in paragraph (d) of this section if the scrap dryer/delacquering kiln/decoating kiln is equipped with an afterburner having a design residence time of at least 1 second and the afterburner is operated at a temperature of at least 750 °C (1400 °F) at all times. On and after the compliance date established by § 63.1501:

* * * * *

(f) *Sweat furnace.* * * *

(2) On and after the compliance date established by § 63.1501, the owner or operator of a sweat furnace at a secondary aluminum production facility that is a major or area source must not discharge or cause to be discharged to the atmosphere emissions in excess of 0.80 nanogram (ng) of D/F TEQ per dscm (3.5×10^{-10} gr per dscf) at 11 percent oxygen (O₂).

(g) *Dross-only furnace.* On and after the compliance date established by § 63.1501, the owner or operator of a dross-only furnace at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere:

* * * * *

(h) *Rotary dross cooler.* On and after the compliance date established by § 63.1501, the owner or operator of a rotary dross cooler at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere:

* * * * *

(k) *Secondary aluminum processing unit.* On and after the compliance date established by § 63.1501, the owner or operator must comply with the emission limits calculated using the equations for PM and HCl in paragraphs (k)(1) and (2) of this section for each secondary aluminum processing unit at a secondary aluminum production facility that is a major source. The owner or operator must comply with the emission limit calculated using the equation for D/F in paragraph (k)(3) of this section for each secondary aluminum processing unit at a secondary aluminum production facility that is a major or area source.

* * * * *

4. Section 63.1506 is amended by revising paragraph (a)(1) to read as follows:

§ 63.1506 Operating requirements.

(a) *Summary.* (1) On and after the compliance date established by § 63.1501, the owner or operator must operate all new and existing affected sources and control equipment according to the requirements in this section.

* * * * *

5. Section 63.1510 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 63.1510 Monitoring requirements.

(a) *Summary.* On and after the compliance date established by § 63.1501, the owner or operator of a

new or existing affected source or emission unit must monitor all control equipment and processes according to the requirements in this section. Monitoring requirements for each type of affected source and emission unit are summarized in Table 3 to this subpart.

(b) *Operation, maintenance, and monitoring (OM&M) plan.* The owner or operator must prepare and implement for each new or existing affected source and emission unit, a written operation, maintenance, and monitoring (OM&M) plan. The owner or operator of an existing affected source must submit the OM&M plan to the responsible permitting authority no later than the compliance date established by § 63.1501(a). The owner or operator of any new affected source must submit the OM&M plan to the responsible permitting authority within 90 days after a successful initial performance test under § 63.1511(b), or within 90 days after the compliance date established by § 63.1501(b) if no initial performance test is required. Each plan must contain the following information:

* * * * *

6. Section 63.1511 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 63.1511 Performance test/compliance demonstration general requirements.

(a) *Site-specific test plan.* Prior to conducting any performance test required by this subpart, the owner or operator must prepare a site-specific test plan which satisfies all of the requirements, and must obtain approval of the plan pursuant to the procedures, set forth in § 63.7(c).

(b) *Initial performance test.* Following approval of the site-specific test plan, the owner or operator must demonstrate initial compliance with each applicable emission, equipment, work practice, or operational standard for each affected source and emission unit, and report the results in the notification of compliance status report as described in § 63.1515(b). The owner or operator of any existing affected source for which an initial performance test is required to demonstrate compliance must conduct this initial performance test no later than the date for compliance established by § 63.1501(a). The owner or operator of any new affected source for which an initial performance test is required must conduct this initial performance test within 90 days after the date for compliance established by § 63.1501(b). Except for the date by which the performance test must be conducted, the owner or operator must conduct each performance test in accordance with the requirements and procedures set forth

in § 63.7(c). Owners or operators of affected sources located at facilities which are area sources are subject only to those performance testing requirements pertaining to D/F. Owners or operators of sweat furnaces meeting the specifications of § 63.1505(f)(1) are not required to conduct a performance test.

* * * * *

7. Section 63.1515 is amended by removing the first sentence in the

introductory text of paragraph (b) and adding, in its place, two new sentences to read as follows:

§ 63.1515 Notifications.

* * * * *

(b) *Notification of compliance status report.* Each owner or operator of an existing affected source must submit a notification of compliance status report within 60 days after the compliance date established by § 63.1501(a). Each owner or operator of a new affected

source must submit a notification of compliance status report within 90 days after conducting the initial performance test required by § 63.1511(b), or within 90 days after the compliance date established by § 63.1501(b) if no initial performance test is required. * * *

* * * * *

8. Appendix A to subpart RRR is amended by revising the entries for § 63.7(a)–(h) and § 63.9(h)(1)–(3) to read as follows:

APPENDIX A TO SUBPART RRR OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
* * * * *	* * * * *	* * * * *	* * * * *
§ 63.7(a)–(h)	Performance Test Requirements-Applicability and Dates.	Yes	Except § 63.1511 establishes dates for initial performance tests.
* * * * *	* * * * *	* * * * *	* * * * *
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes	Except § 63.1515 establishes dates for notification of compliance status reports.

* * * * *

[FR Doc. 02–24227 Filed 9–23–02; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 67, No. 185

Tuesday, September 24, 2002

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM-35-13]

National Registry of Radiation Protection Technologists; Withdrawal of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is notifying the public of the withdrawal of a petition for rulemaking (PRM-35-13) submitted by the National Registry of Radiation Protection Technologists (NRRPT). The petitioner requested that the NRC amend its regulations to accept NRRPT registration in lieu of the requirement for 200 hours of classroom training specified in 10 CFR 35.900(b)(1), and to accept the NRRPT registration as a substitute for 9 of the 12 months experience required in 10 CFR 35.900(b)(2) as a radiation safety technologist at a medical institution under the supervision of the Radiation Safety Officer (RSO). Since the receipt of the petition, the NRC has revised 10 CFR part 35, essentially in its entirety. The final rule was published in the **Federal Register** on April 24, 2002 (67 FR 20251-20397). On August 7, 2002, the petitioner formally withdrew its petition.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's e-mail acknowledging the petitioner's request to withdraw the petition may be examined at the NRC Public Document Room, Room O1F23, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking Web site.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text

and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Patricia L. Eng, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7206, e-mail ple@nrc.gov.

SUPPLEMENTARY INFORMATION:

On February 8, 1996, (61 FR 4754), the NRC published a notice of receipt of a petition for rulemaking PRM 35-13 in the **Federal Register**. The petition was submitted by the National Registry of Radiation Protection Technologists. The petition requested that the NRC amend its regulations to accept NRRPT registration in lieu of the requirement for 200 hours of classroom training specified in 10 CFR 35.900(b)(1), and to accept the NRRPT registration as a substitute for 9 of the 12 months experience required in 10 CFR 35.900(b)(2) as a radiation safety technologist at a medical institution under the supervision of the Radiation Safety Officer. Since the receipt of the petition, the NRC has revised 10 CFR part 35, essentially in its entirety. The final rule was published in the **Federal Register** on April 24, 2002 (67 FR 20251-20397). On August 7, 2002, the petitioner informed the NRC that it wished to withdraw its petition. Based on the petitioner's request, the NRC is withdrawing this petition for rulemaking.

Dated at Rockville, Maryland, this 18th day of September 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02-24221 Filed 9-23-02; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-SW-40-AD]

RIN 2120-AA64

Airworthiness Directives; MD Helicopters, Inc. Model 369D, 369E, 369F, and 369FF Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD) for the specified MD Helicopters, Inc. (MDHI) helicopters. That AD currently requires identifying the part number (P/N) of the bolts that attach the tail rotor gearbox to the tailboom and replacing any bolt of inadequate grip length with an airworthy bolt. That AD also requires adding an additional washer if more than four threads protrude from the nutplate. This action would contain the same requirements as the existing AD but would reduce the applicability to only certain tailboom serial numbers and parts modified in accordance with either Supplemental Type Certificate (STC) SH5055NM or SH4801NM. The action would also correct a typographical error and clarify that a slippage mark needs to be reapplied to each bolt regardless of the outcome of the required torque test. This proposal is prompted by the need to reduce the applicability and to correct and clarify other portions of the existing AD. The actions specified by the proposed AD are intended to prevent loss of a tail rotor gearbox due to bolts of inadequate grip length and subsequent loss of control of the helicopter.

DATES: Comments must be received by November 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001-SW-40-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the

Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712-4137, telephone (562) 627-5228, fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001-SW-40-AD." The postcard will be date stamped and returned to the commenter.

Discussion

On June 18, 2002, the FAA issued AD 2002-13-05, Amendment 39-12793 (67 FR 43227, June 27, 2002), for specified MDHI model helicopters with a tailboom modified according to either Aerometals STC SH5055NM or SH4801NM. These STC's were formerly owned by Yehmert Helicopters, Inc. That action was prompted by the discovery that the maintenance instructions

supplied to installers of STC SH5055NM and SH4801NM incorrectly specified the tail rotor gearbox attaching bolt as S/B NAS 1304-25, which has an inadequate grip length. That condition, if not corrected, could result in loss of a tail rotor gearbox and subsequent loss of control of the helicopter.

Before its issuance, the FAA solicited comments to the proposed AD by a Notice of Proposed Rulemaking that was published in the **Federal Register** on December 27, 2001 (66 FR 66821). One commenter stated that the applicability of the AD should be limited to certain part-numbered tailbooms with serial number (S/N) 5001-5032 specified in the FAA-approved Aerometals Service Bulletin. We did not agree with the commenter and, except for minor editorial changes, issued the AD as it had been proposed.

Since the issuance of AD 2002-13-05, the FAA has determined that we inappropriately responded to the comment and that the commenter's concern was valid. We are now proposing to reduce the applicability of AD 2002-13-05 to include only certain tailboom serial numbers and parts that are modified in accordance with either STC SH5055NM or SH4801NM. We have also found that the P/N for washer, P/N AN960D416, was incorrect where referenced in Figure 1 and that clarification that a slippage mark needs to be reapplied to each bolt regardless of the outcome of the required torque test is necessary.

The unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs. Therefore, the actions required by AD 2002-13-05 will remain the same, but this proposed AD would reduce the applicability of AD 2002-13-05, correct the P/N for the washer, and clarify that a slippage mark must be reapplied to each bolt regardless of the outcome of the required torque test.

The FAA estimates that this proposed AD would affect 500 helicopters of U.S. registry. It would take approximately 1/2 work hour per helicopter to determine whether a helicopter has been modified by either STC and 1 work hour to inspect and replace the bolts for each of approximately 40 helicopters modified by the STC's. The average labor rate is \$60 per work hour. Required parts would cost approximately \$40 per helicopter. Based on these figures, the total cost impact of the proposed AD on

U.S. operators is estimated to be \$19,000.

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

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

ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-12793 (67 FR 43227, June 27, 2002), and by adding a new airworthiness directive (AD), to read as follows:

MD Helicopters, Inc.: Docket No. 2001-SW-40-AD. Revises AD 2002-13-05, Amendment 39-12793.

Applicability: The following MD Helicopters, Inc. helicopter models, certificated in any category:

Helicopter model	With	Modified in accordance with
(1) 369D, 369E, 369F, 369FF	Tailboom, serial number (S/N) 5001-5032	Aerometals Supplemental Type Certificate (STC) SH5055NM.
(2) 369D and 369E	Tail Rotor Gearbox Attach Bolts	Aerometals STC SH4801NM.

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

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

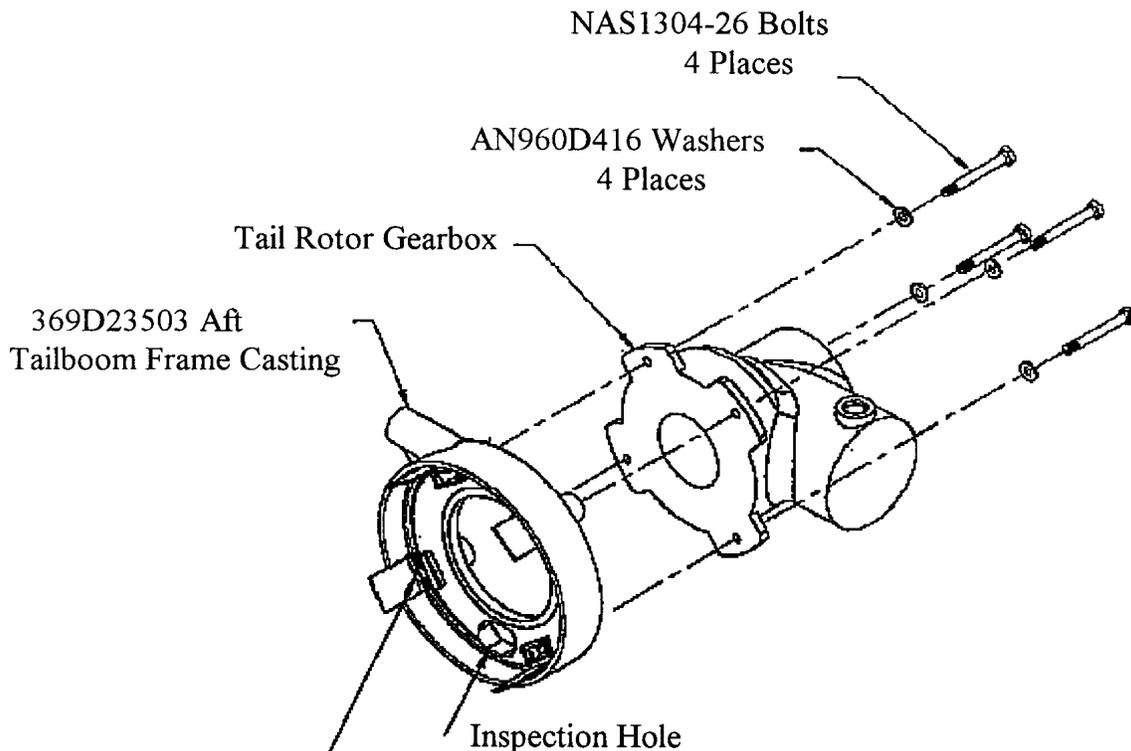
To prevent loss of the tail rotor gearbox due to attaching bolts of inadequate grip length and subsequent loss of control of the helicopter, accomplish the following:

- (a) Within 25 hours time-in-service (TIS):
- (1) For each tail rotor gearbox attaching bolt (bolt):
 - (i) Determine the part number (P/N).
 - (ii) If the P/N cannot be determined or if the bolt is not P/N NAS1304-26, before further flight, replace the bolt with bolt, P/N NAS1304-26.

(iii) Torque the bolt to 100-110 in-lbs and apply a slippage mark.

(2) Remove the tailboom control rod and determine the number of bolt threads protruding from each nutplate on the internal surface of the aft tailboom frame casting, P/N 369D23503, as shown in Figure 1 of this AD. At least one thread must protrude. If more than four threads protrude, add an additional washer, P/N AN960D416, under the bolt head. Torque the bolt to 100-110 in-lbs, and reapply a slippage mark. See Figure 1:

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Inspect this area of each bolt.
Bolt must protrude at least one thread past end of nutplate 4 places.

Figure 1 - Inspection Location

(b) Between 2 and 10 hours TIS after accomplishing the requirements of paragraph (a) of this AD, inspect the torque on each bolt by applying 100 in-lbs. If any bolt movement occurs, retorque the bolt to 100–110 in-lbs. Reapply a slippage mark to the bolt regardless of the outcome of the torque test. Reinspect the torque between 2 and 10 hours TIS thereafter until no bolt movement occurs.

Note 2: Aerometals Service Bulletin SB-001, dated August 3, 2000, pertains to the subject of this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(d) Special flight permits will not be issued.

Issued in Fort Worth, Texas, on September 13, 2002.

Eric D. Bries,

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

[FR Doc. 02-24182 Filed 9-23-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AB24

Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Modification of Fee Structure; Withdrawal of Proposed Rule

AGENCY: Employment and Training Administration, Labor.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Labor is withdrawing its proposed rule published in the **Federal Register** on July 13, 2001 (65 FR 43545), which would have required employers seeking to temporarily employ nonimmigrant farmworkers to submit, at the time of filing, a new consolidated application form, fees for the labor certification, and the associated H-2A petition. For the reasons discussed below, the Department has decided to withdraw

the proposed rule and to terminate the rulemaking.

DATES: This withdrawal is made on September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Charlene G. Giles, Team Leader, Division of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, Room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693-2950 (this is not toll-free number).

SUPPLEMENTARY INFORMATION: The Department is withdrawing a proposed rule related to the temporary employment of nonimmigrant agriculture (H-2A) workers in the United States. The proposed amendment would have required an employer seeking a temporary alien agricultural labor certification to submit with a consolidated application form the fees for labor certification and the associated H-2A petition. The proposal also would have modified the fee structure for issuing H-2A labor certifications. Agricultural employers and workers and their representatives strongly opposed DOL's proposal to consolidate into a proposed new Form 9079 the existing two forms (Form ETA 750 and Form I-129) used by DOL for the certification process and by the Immigration and Naturalization Service (INS) for the H-2A visa petition process. Both groups of commenters cited increased difficulties with the new form, such as the requirement that the employer obtain the foreign agricultural worker's signature and the requirement to accurately state the terms and conditions of employment of complex agricultural occupations.

The proposed rule also would have established a three-tiered labor certification fee based upon the number of temporary workers for which each agricultural employer was applying. Agricultural employers commented that the proposed three-tiered fee structure would be unfavorable to small farmers, and they recommended that no such change be made.

Based upon the Department's review of the rulemaking record as a whole, the Department has decided to withdraw the proposed rule and terminate the rulemaking action.

Signed at Washington DC, this 18th day of September, 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 02-24190 Filed 9-23-02; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-126024-01]

RIN 1545-AW72

Reporting of Gross Proceeds Payments to Attorneys; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under sections 6041 and 6045 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for September 30, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on May 17, 2002, (67 FR 35064), announced that a public hearing was scheduled for September 30, 2002, at 10 a.m., Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. The subject of the public hearing is proposed regulations under sections 6041 and 6045 of the Internal Revenue Code. The public comment period for these proposed regulations expired on August 15, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of September 18, 2002, no one has requested to speak. Therefore, the public hearing scheduled for September 30, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02-24249 Filed 9-23-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF JUSTICE**28 CFR Part 16****[AAG/A Order No. 288–2002]****Privacy Act of 1974; Implementation****AGENCY:** Department of Justice.**ACTION:** Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a new Privacy Act system of records entitled "Personnel Investigation and Security Clearance Records for the Department of Justice (DOJ), DOJ–006," as described in today's notice section of the **Federal Register**, from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5) and (8); and (g). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). The Department also proposes to delete as obsolete provisions exempting two former Justice Management Division systems of records entitled "Security Clearance Information System (SCIS) (JUSTICE/JMD–008)," and "Freedom of Information/Privacy Act Records System (JUSTICE/JMD–019)." The records in JMD–019 are now covered by DOJ–004.

DATES: Submit any comments by October 24, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information, Sunshine Act and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, and 9701.

2. Section 16.76 is amended by removing paragraphs (c), (d), (e), (f), (g) and (h).

3. Section 16.132 is added to read as follows:

§ 16.132 Exemption of Department of Justice System—Personnel Investigation and Security Clearance Records for the Department of Justice (DOJ), DOJ–006.

(a) The following Department of Justice system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k): Personnel Investigation and Security Clearance Records for the Department of Justice (DOJ), DOJ–006. These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(b) Exemption from the particular subsections is justified for the following reasons:

(1) *Subsection (c)(3)*. To provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation, and thereby seriously impede law enforcement or counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures.

(2) *Subsection (c)(4)*. This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1)*. Disclosure of records in the system could reveal the identity of confidential sources and result in an unwarranted invasion of the privacy of others. Disclosure may also reveal information relating to actual or potential criminal investigations. Disclosure of classified national security information would cause damage to the national security of the United States.

(4) *Subsection (d)(2)*. Amendment of the records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsections (d)(3) and (4)*. These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1)*. It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely

and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) *Subsection (e)(2)*. To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations.

(8) *Subsection (e)(3)*. To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(9) *Subsection (e)(5)*. It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) *Subsection (e)(8)*. To serve notice could give persons sufficient warning to evade investigative efforts.

(11) *Subsection (g)*. This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: September 12, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–24207 Filed 9–23–02; 8:45 am]

BILLING CODE 4410–FB–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[KY 134 & KY 136–200235(b); FRL–7381–3]

Approval and Promulgation of Implementation Plans for Kentucky: Vehicle Emissions Control Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the State Implementation Plan (SIP) of the Commonwealth of Kentucky amending Kentucky rules 401 KAR 65:001 and 401 KAR 65:010. These changes affect military personnel with vehicles required to undergo vehicle emissions tests. The EPA also proposes to approve into the Kentucky SIP revisions to the Air Pollution Control District of Jefferson County's regulations 8.01 and

8.02, which affect vehicle emission test centers and owners of certain vehicles registered in the County. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before October 24, 2002.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. (404/562-9031 (phone) or notarianni.michele@epa.gov (e-mail).)

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,
Region 4, Air Planning Branch, 61
Forsyth Street, SW, Atlanta, Georgia
30303-8960. (Michele Notarianni,
404/562-9031,
notarianni.michele@epa.gov)

Commonwealth of Kentucky, Division
for Air Quality, 803 Schenkel Lane,
Frankfort, Kentucky 40601-1403.
(502/573-3382)

Air Pollution Control District of
Jefferson County, 850 Barrett
Avenue—Suite 200, Louisville,
Kentucky 40204. (502/574-6000)

FOR FURTHER INFORMATION CONTACT:
Michele Notarianni at address listed
above or 404/562-9031 (phone) or
notarianni.michele@epa.gov (e-mail).

SUPPLEMENTARY INFORMATION: For
additional information, see the direct
final rule which is published in the
Rules Section of this **Federal Register**.

Dated: September 5, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02-24092 Filed 9-23-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapters 1, 2, and 5

Federal Acquisition Regulation; Federal Acquisition Regulation Supplements; Contract Closeout

AGENCIES: Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Advance notice of proposed
rulemaking.

SUMMARY: The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council are
requesting comments from both
Government and industry on how the
Federal Acquisition Regulation (FAR),
Defense FAR Supplement (DFARS), and
General Services Administration
Acquisition Regulation (GSAR) can be
revised to facilitate timely contract
closeout.

DATES: Comments are due on or before
November 25, 2002.

ADDRESSES: Interested parties should
submit written comments to: General
Services Administration, FAR
Secretariat (MVA), 1800 F Street, NW.,
Room 4035, ATTN: Laurie Duarte,
Washington, DC 20405.

Address e-mail comments submitted
via the Internet to:
ANPR.contractcloseout@gsa.gov.

Please cite ANPR Contract Closeout in
all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr.
Rick Laysar at (703) 602-0293.

SUPPLEMENTARY INFORMATION: Although
the vast majority of contracts are
generally closed timely, there is a
backlog of contracts that have not been
closed out within the timeframes
required by FAR 4.804, Closeout of
contract files. The Department of
Defense has analyzed the contract
closeout process to identify obstacles to
timely contract closeout. Many causes of
the backlog have been identified and are
being focused upon. Some of the causes
include process related delays like late
submittal of final vouchers, final price
redetermination proposals, royalty/
patents submittals and approvals, final
audits, overhead rate negotiations,
disposition of Government property and
classified materials; other causes
include lack of contract funding and
agency resources.

In this advance notice of proposed
rulemaking we are seeking input on
whether any FAR, DFARS, or GSAR
requirements can be considered for
change to help facilitate the contract
closeout process. In order to ensure that
the FAR, DFARS, and GSAR do not
unduly impede timely closeout of
contracts, an interagency team has been
established that will review the FAR,
DFARS, and GSAR relating to contract
closeout to determine what changes, if
any, can be made to facilitate timely
contract closeout. FAR, DFARS, and
GSAR requirements relating to contract
closeout that are not required by statute,
not needed to ensure adequately
standardized Government business
practices, or not needed to protect the
public interest will be considered for
revision or elimination.

Dated: September 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02-24173 Filed 9-23-02; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA-02-12845]

RIN 2127-AH71

Federal Motor Vehicle Safety Standards; Accelerator Control Systems; Correction

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

ACTION: Notice of proposed rulemaking
(NPRM); correction.

SUMMARY: This document corrects the
proposed regulatory text to a proposed
rule published in the **Federal Register**
of July 23, 2002 (67 FR 48117),
regarding the Federal motor vehicle
safety standard for accelerator control
systems. This correction provides
correct references in four places to
provisions in the test procedures. The
comments to the proposed rule were
due by September 23, 2002. Because of
the changes in this correction
document, we extend the comment
period to October 7, 2002.

DATES: You should submit your
comments early enough to ensure that
Docket Management receives them not
later than October 7, 2002.

ADDRESSES: You should mention the
docket number of this document in your
comments and submit your comments

in writing to: Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC, 20590.

You may call the Docket at 202-366-9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366-4171. His FAX number is (202) 493-2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366-2992. Her FAX number is (202) 366-3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

Correction

In the proposed rule document 02-18477, beginning on page 48129 in the issue of Tuesday, July 23, 2002, make the following corrections:

§ 571.124 [Corrected]

1. On page 48129, in the second column, in § 571.124, in paragraph S6.4.4, in the seventh line, correct "S6.4.8" to read "S6.4.6".

2. On the same page, in the second column, in § 571.124, in paragraph S6.4.7, in the fourth line, correct "S6.4.6" to read "S6.4.5.1".

3. On the same page, in the second column, in § 571.124, in paragraph S6.4.8, in the first line, correct "S6.4.9" to read "S6.4.7".

4. On the same page, in the second column, in § 571.124, in paragraph S6.4.8, in the sixth line, correct "S6.4.7" to read "S6.4.5.2".

Issued on: September 18, 2002.

Noble N. Bowie,

Acting Associate Administrator for Rulemaking.

[FR Doc. 02-24123 Filed 9-23-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 02-13393; Notice 1]

RIN 2127-A171

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Notice of proposed rulemaking; response to petitions for rulemaking.

SUMMARY: This document responds to petitions for rulemaking from the Alliance of Automobile Manufacturers, Toyota, and DaimlerChrysler requesting changes in the advanced air bag final rule that we published in May 2000. The requirements of that rule are being phased in during two stages, the first of which takes place from September 1, 2003 to August 31, 2006.

In response to the petitions, we are proposing in this document to reduce the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the phase-in, *i.e.*, from September 1, 2003 through August 31, 2004, from 35 percent to 20 percent. This proposed change reflects the technical challenges being faced by the vehicle manufacturers in meeting the new requirements and the fact that two of the automotive suppliers have dropped plans to offer devices that suppress the passenger air bag when a child is present. We are otherwise either denying the petitions or, as to certain requests, dismissing them because the agency has subsequently considered or is considering the same requests in the context of another rulemaking proceeding.

In addition, in response to a petition for rulemaking from Porsche, we are considering possible adjustments in the alternative phase-in requirements available to limited line manufacturers.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than October 24, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at <http://dms.dot.gov>. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590:

For technical issues:

Mr. Louis Molino, Office of Crashworthiness Standards, NPS-11, telephone (202) 366-2264, facsimile (202) 493-2739.

For legal issues:

Mr. Edward Glancy, Office of the Chief Counsel, NCC-20, telephone (202) 366-2992, facsimile (202) 366-3820.

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I. Background: The Advanced Air Bag Final Rule

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a rule to require advanced air bags. (Docket No. NHTSA 00-7013; Notice 1.) The rule amended Standard No. 208, *Occupant Crash Protection*, to require that future air bags be designed so that, compared to current air bags, they create less risk of serious air bag-induced injuries, particularly for small women and young children, and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology.

To achieve these goals, the rule added a wide variety of new requirements, test procedures, and injury criteria, based on the use of an assortment of new dummies. Among other things, it replaced the current optional sled test with a rigid barrier crash test for assessing the protection of unbelted occupants.

The issuance of the rule completed the implementation of our 1996 comprehensive plan for reducing air bag risks. It was also required by the Transportation Equity Act for the 21st Century (TEA 21), which was enacted in 1998. That Act required us to issue a rule amending Standard No. 208:

to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants

from injuries and deaths caused by air bags, *by means that include advanced air bags.* (Emphasis added.)

The rule will improve protection and minimize risk by requiring new tests and injury criteria and specifying the use of an entire family of test dummies: the existing dummy representing 50th percentile adult males, and new dummies representing 5th percentile adult females, 6-year-old children, 3-year-old children, and 1-year-old infants. With the addition of those dummies, Standard No. 208 will more fully reflect the range in sizes of vehicle occupants.

The rule will be phased in during two stages. The first stage phase-in will improve protection by requiring vehicles to be certified as passing the unbelted test requirements¹ for both the 5th percentile adult female and 50th percentile adult male dummies in a 32–40 km/h (20–25 mph) rigid barrier crash, and belted test requirements² for the same two dummies in a rigid barrier crash with a maximum test speed of 48 km/h (30 mph). In addition, the first stage will minimize the risk of injury from air bags by requiring vehicles to include technologies that will minimize the risk of air bag-induced injuries for young children and small adults.

During the first stage phase-in, from September 1, 2003 to August 31, 2006, increasing percentages of motor vehicles will be required to meet requirements for minimizing air bag risks, primarily by either automatically turning off the air bag when young children are present or deploying the air bag more benignly so that it is much less likely to cause serious or fatal injury to out-of-position occupants.³ If they so wish, manufacturers may choose to use a combination of those approaches. All of the petitions addressed in this notice asked for modifications to the risk minimization requirements.

Manufacturers that decide to turn off the passenger air bag will use weight sensors and/or other means of detecting the presence of young children. To test the ability of those means to detect the presence of children, the rule specifies that child dummies be placed in child seats that are, in turn, placed on the passenger seat in both proper and (to

simulate misuse) improper ways. It also specifies tests that are conducted with unrestrained child dummies sitting, kneeling, standing, or lying on the passenger seat.

The ability of air bags to deploy in a low-risk manner will be tested using child dummies on the passenger side and the small adult female dummy on the driver side. For manufacturers that decide to design their passenger air bags to deploy in a low risk manner, the rule specifies that unbelted child dummies be placed against the instrument panel in two different positions. The air bag is then deployed with the dummies in each position. This placement was specified because pre-crash braking can cause unrestrained children to move forward into or near the instrument panel before the air bag deploys. The ability of driver air bags to deploy in a low risk manner will be tested by placing the 5th percentile adult female dummy against the steering wheel in two different positions and then deploying the air bag with the dummy in each position.

The second stage phase-in will require vehicles to be certified as passing the belted test requirements for the 50th percentile adult male dummy at a test speed up to 56 km/h (35 mph). This requirement will provide improved protection for belted occupants.

On December 18, 2001, we published in the **Federal Register** (66 FR 65376) a final rule that responded to petitions for reconsideration of the advanced air bag final rule. We granted portions of the petitions and denied other portions of the petitions. We made several changes to the advanced air bag final rule in response to the petitions. These changes included a number of refinements to the positioning procedures for the low risk deployment tests and, to a lesser degree, for the automatic suppression tests. We also changed the test duration for the low risk deployment tests. In addition, the test used for determining the stage(s) of the air bag to be used for the passenger side low risk tests was modified. Other changes included modifying the definition of “small volume manufacturer” for the purpose of the rule’s phase-in schedule and adding an option to use human children instead of the newborn or 12-month-old dummies to test a vehicle’s occupant recognition system.

II. Petitions for Rulemaking

In October 2001, NHTSA received three petitions for rulemaking requesting changes in the advanced air bag final rule that we published in May 2000. The Alliance of Automobile Manufacturers (Alliance), Toyota, and

DaimlerChrysler submitted these petitions.⁴

A. Alliance Petition

The Alliance made four requests in its petition for rulemaking.

First, that organization requested that implementation of the static out-of-position requirements using dummies representing 6-year-old children be temporarily deferred for three years. The Alliance argued that the development of occupant classification technologies has not advanced as rapidly as expected, and that prototype occupant classification systems currently available for installation in September 2003 are not able to consistently and reliably distinguish between the Hybrid III 6-year-old child dummy and the Hybrid III 5th percentile adult female dummy. That organization argued that manufacturers choosing suppression as the means to reduce the risk to children are faced with the probability that, in the real world, the air bag will not deploy in some instances when it is potentially beneficial for a small adult, or will deploy in some instances when it is not wanted because a child is present. The Alliance argued that a delay in the requirements using dummies representing 6-year-old children would permit optimization of the advanced air bag system to make it more likely that the air bag will deploy when it is needed for small adults in the real world.

Second, the Alliance asked that the specified 300 millisecond time period for measuring injury criteria in the low risk deployment tests be adjusted to 10 milliseconds after dummy interaction with the air bag ceases, to facilitate the adoption of low risk deployment air bags as either a compliance option or as a redundant protection system for vehicles certified under the suppression option.

Third, the Alliance requested that manufacturers be permitted to provide a manual three-way override switch (on-off-automatic) for passenger-side air bags in vehicles with three-position front seating systems. That petitioner argued that currently available prototype occupant classification systems cannot detect and classify right front occupants consistently and properly when a center occupant is present on a three-position front bench seat. According to the Alliance, the most serious risk is that the sensor will misunderstand the weight distribution of the two passengers and erroneously conclude that one adult is present

⁴ DaimlerChrysler’s petition was submitted on behalf of DaimlerChrysler and Mercedes-Benz USA.

¹ “Unbelted test requirements” are requirements that specify the use of unbelted dummies in testing vehicles.

² “Belted test requirements” are requirements that specify the use of belted dummies in testing vehicles.

³ The rule also establishes very general performance requirements for dynamic automatic suppression systems (DASS) and a special expedited petitioning and rulemaking process for considering procedures for testing advanced air bag systems incorporating a DASS.

instead of two children. Under these circumstances, the sensor will direct the air bag system to deploy when it should have been suppressed. A manual three-way override switch would enable the driver to override the occupancy classification decision by manually setting the switch to "on" or "off."

Fourth, the Alliance petitioned that we revise the first year's phase-in requirement from 35 percent to 10 percent of a manufacturer's production. The petitioner stated that this change is necessitated by the unanticipated technical challenges of making occupant sensing technology work properly in reasonable foreseeable real world conditions, and by the departure from the market of some major suppliers.

B. Toyota Petition

Toyota requested that manufacturers be permitted to provide a manual three-way override switch (on-off-automatic) for passenger-side air bags in all vehicles with advanced air bags. It stated that while occupant classification systems exist which comply with the technical requirements of Standard No. 208, manufacturers have serious concerns with the ability of these systems to adequately characterize all real-world situations. Toyota stated that air bag systems which are designed to assure suppression for six-year-old child dummies while providing deployment for 5th percentile adult female dummies will sometimes suppress the air bag for small statured adults in the real world. That company stated that if manufacturers choose to drop the sensor output to ensure deployment for all adults, the air bag will no longer reliably suppress the air bag for six-year-old children and will in many cases deploy for larger and older children. Toyota argued that, given these limitations, customers should have the ability to override the "decision" made by the suppression system by means of a manual three-way override switch.

C. DaimlerChrysler Petition

DaimlerChrysler requested the following five changes to the advanced air bag requirements:

- (1) Allow passenger air bag "on/off/ auto" switches for vehicles with three-across front seating;
- (2) Allow transponder technology for reliable child restraint system detection;
- (3) Provide at least a 9 mph speed separation between the low risk deployment threshold and lowest speed unbelted rigid barrier test *and* for the 16 mph threshold test, specify the 5th percentile adult female dummy or allow, at the manufacturer's option, the

same dummy as the one used in the static low risk deployment test;

- (4) Revise the "low risk" deployment out-of-position test duration to less than 100 milliseconds; and

- (5) Revise the percentage phase-in requirements from 35–65–100 percent to 10–40–100 percent for Phase I of the new requirements.

III. Response to Petitions and Proposal To Revise Percentage Phase-In Requirement for First Year of Phase-In

A. Requests That Have Been Overtaken by Events

In responding to the petitions for rulemaking, we begin by noting that several of the requests have been overtaken by events. When the three petitions for rulemaking were submitted, *i.e.*, in October of 2001, the agency was still in the process of considering a number of petitions for reconsideration of the May 2000 final rule on advanced air bags. As indicated above, in December of 2001, we published a final rule responding to those petitions for reconsideration. Moreover, we have now received, and are in the process of considering, several petitions for reconsideration of the December 2001 final rule.

One of the issues that we addressed in the December 2001 final rule was the appropriateness of the 300 millisecond time period for measuring injury criteria in the low risk deployment tests. In response to the petitions, we changed that time period. We note, however, that petitions for reconsideration of our December 2001 final rule have requested further changes. Given that we addressed this issue in the December 2001 final rule, subsequent to the filing of the petitions for rulemaking addressed in this document, and are also considering the issue in the context of the petitions for reconsideration of the December 2001 final rule, we are dismissing the Alliance's petition with respect to its second request identified above, and DaimlerChrysler's petition with respect to its fourth request identified above.

We are similarly dismissing DaimlerChrysler's petition with respect to its third request identified above, *i.e.*, its request that we provide at least a 9 mph speed separation between the low risk deployment threshold and lowest speed unbelted rigid barrier test *and* for the 16 mph threshold test, specify the 5th percentile adult female dummy or allow, at the manufacturer's option, the same dummy as the one used in the static low risk deployment test. We addressed these issues in the December 2001 final rule and decided to specify

use of the 5th percentile adult female dummy on the passenger side for the 16 mph threshold test. We are also considering the speed separation issue further in the context of a petition for reconsideration of the December 2001 final rule submitted by DaimlerChrysler.

B. Request for Deferral of Requirements Using 6-year-old Child Dummies

As noted earlier, the Alliance requested that implementation of the static out-of-position requirements using dummies representing 6-year-old children be temporarily deferred for three years. That organization argued that the development of occupant classification technologies has not advanced as rapidly as expected, and that prototype occupant classification systems currently available for installation in September 2003 are not able to consistently and reliably distinguish between the Hybrid III 6-year-old child dummy and the Hybrid III 5th percentile adult female dummy. The Alliance cited a June 2001 report of the United States General Accounting Office, titled "Vehicle Safety: Technologies, Challenges, and Research and Development Expenditures for Advanced Air Bags," in support of this position.

The Alliance argued that manufacturers choosing suppression as the means to reduce the risk to children are faced with the probability that, in the real world, the air bag will not deploy in some instances when it is potentially beneficial for a small adult, or will deploy in some instances when it is not wanted because a child is present. The Alliance argued that a delay in the requirements using dummies representing 6-year-old children would permit optimization of the advanced air bag system to make it more likely that the air bag will deploy when it is needed for small adults in the real world.

According to the Alliance, it is at least 15 times more likely that an adult or teenager will be sitting in front of a passenger-side air bag, when those seating positions are occupied during a frontal crash, than a sub teen (children between 5 and 12 years old). The Alliance stated that this fact, in combination with the current development status of prototype occupant classification technology, leads it to believe that the prudent public policy choice is to suspend temporarily the test requirements applicable to the Hybrid III 6-year-old child dummy, because of the compromise in safety to small adults in the real world under those requirements. The Alliance stated that it

anticipates that improvements in occupant classification sensor technology are likely to permit the test requirements to be met by MY 2007.

In responding to the Alliance, it is helpful to distinguish between compliance issues and real world safety issues. Our concern about compliance issues arises in part from our statutory mandate to ensure that our safety standards are "objective" and "practicable." To the extent that vehicles can't be built to achieve the specified performance requirement or there is uncertainty about what performance is required, the American public does not realize the expected benefit of the performance requirement.

It is our understanding that there are not currently any compliance issues with respect to occupant classification sensors. This understanding is based in part on meetings we have had with vehicle manufacturers to discuss the status of their plans for meeting the advanced air bag requirements, which have included the discussion of confidential information. The Alliance petition notes these meetings. Toyota's petition acknowledged in its discussion of suppression systems that "systems exist which have demonstrated an ability to 'comply' with the technical requirements of FMVSS 208 in a laboratory test environment under tightly controlled test conditions." Thus, we do not understand that there are compliance issues related to the ability of occupant classification sensor technology to distinguish between 6-year-old child dummies and small adult dummies.

However, being able to demonstrate compliance in a laboratory is important primarily because it is expected to translate into effective safety protection to real people in real traffic situations. To the extent that the vehicle manufacturers are suggesting in their petitions that the real world effectiveness of occupant classification sensor technology is inadequately assessed by the current compliance test procedures, we are very concerned.

First, the real world data make it clear that a technology to distinguish between 6-year-old children and small adults is needed, so long as suppression is the selected means for minimizing risks to children. As we discussed in the preamble to the May 2000 final rule on advanced air bags, while air bags have been highly effective in reducing fatalities from frontal crashes, they have sometimes caused fatalities, especially to children, in relatively low speed crashes. As of April 1, 2002, NHTSA's Special Crash Investigation (SCI) program had confirmed a total of 208

fatalities induced by the deployment of an air bag. Of that total, 129 were children, 69 were drivers, and 10 were adult passengers.

Deferring the requirements using the 6-year-old child dummy could eliminate, for the duration of the deferral, nearly two-thirds of the benefits for children age 1 to 12 that we expect from advanced air bags.

In the agency's Final Economic Assessment (FEA), we estimated that, assuming all vehicles in the on-road fleet had pre-MY 1998 air bags, a total of 105 children aged 1 to 12 years old would be projected to be killed by air bags annually. This figure provided a baseline for estimating potential benefits from the various advanced air bag requirements.

The static suppression tests would not address all of the 105 children. First, the tests would only address children who weighed 54 pounds or less, as the 6-year-old child dummy weighs 54 pounds. Since suppression devices classify occupants based on weight or similar factors, they are assumed to be effective for occupants up to the weight of the specified dummy, but not for occupants above that weight. About 83 of the 105 children were estimated to weigh 54 pounds or less. Moreover, eight of these children were estimated to be sitting on the lap of an adult passenger and would thus not likely be identified as a child. Therefore, in the FEA, the agency estimated that the static suppression tests would save 75 children (the 83 children minus the eight on adult laps).

If we deferred the tests using the 6-year-old child dummy, however, the remaining tests would only directly address children who weighed 36 pounds or less, as the 3-year-old child dummy weighs 36 pounds. Of the 75 children aged 1 to 12 who were estimated to be saved by suppression, about 49 weighed between 36 and 54 pounds. If the tests using the 6-year-old child dummy were eliminated, we could no longer assume that these 49 children (nearly two-thirds of the total of 75) would be saved.

We note that, due to a combination of air bag design changes and behavioral changes, the number of children who are being killed by air bags has significantly declined since the pre-MY 1998 period which the FEA used as the baseline for estimating benefits. However, the fact that children weighing between 36 and 54 pounds (children represented by the six-year-old child dummy and not the three-year-old child dummy) represent a high-risk group has not changed. Given that the tests using 6-year-old child

dummies account for nearly two thirds of the benefits for children aged 1 to 12 that we expect from advanced air bags, we are obviously reluctant to defer it. We have, nonetheless, carefully considered the petitioners' arguments that a delay in the requirements using dummies representing 6-year-old children would permit optimization of the advanced air bag system to make it more likely that the air bag will deploy when it is needed for small adults in the real world. After considering these arguments, however, we have concluded that the petitioners have not presented information that would justify a deferral of these requirements.

NHTSA notes that if a manufacturer selects the suppression option for one or more of the child dummies, the vehicle must also meet requirements to help ensure that the air bag is not inappropriately suppressed for small-statured adults. The air bag must be activated during several static tests using a 5th percentile adult female dummy (or a human being of a weight and size similar to that dummy) in the right front passenger seat. Moreover, Standard No. 208 includes high-speed tests using both 5th percentile adult female dummies and 50th percentile adult male dummies.

Given these tests, we believe the current requirements will ensure appropriate air bag protection for those occupants for whom air bags have proven to be a valuable safety measure. We recognize that, assuming a manufacturer selects the suppression option for the six-year-old child dummy, Standard No. 208 does not specify whether the air bag should deploy for occupants between the weight of the six-year-old dummy and the 5th percentile adult female dummy, *i.e.*, between 54 pounds and 108 pounds. The deploy/non-deploy decision for occupants within this weight range is left to the vehicle manufacturer's design choices, including the nominal weight threshold it selects and the technologies it uses, and presumably will also reflect technological limitations. In addition, for whatever occupant weight a manufacturer selects as the nominal threshold for deployment, there will be some gray zone. However, the gray zone issue is not a new one and is comparable to the gray zone issue that exists for deployment/non-deployment based on crash severity.

Similarly, the petitioners have not demonstrated that possible non-deployment of the air bag for adults in non-normal seating positions will create any significant safety problem. We note that DaimlerChrysler submitted a chart,

on a page titled "Known Challenges for Interim Technology," showing four seating positions in which an adult might be classified as a child. These positions can generally be described as the occupant leaning back with his/her feet on top of the dashboard, leaning back with his/her legs braced against the dashboard, leaning back with the seatback in a reclined position, and in a forward position with his/her knees against the dashboard and hands on top of the dashboard. DaimlerChrysler expressed concern that variation in sitting posture may create consumer dissatisfaction and loss of confidence in the system, citing the telltale that illuminates when the passenger air bag is off.

We agree that an air bag should not become deactivated as a result of normally seated adults making minor adjustments in their posture. However, the petitioners are not discussing that situation. The issue is instead one of possible non-deployment of the passenger air bag for adults in non-normal seating positions.

We believe this concern is appropriately addressed by the requirement for a telltale that illuminates when the passenger air bag is off. If a non-normal seating position results in the passenger air bag being deactivated, illumination of the telltale will warn the passenger and encourage him/her to adopt a normal seating position. We also observe that the benefits of air bags to occupants in non-normal seating positions are uncertain. Moreover, with reference to some of the positions cited by DaimlerChrysler, in which the occupant is extremely close to the air bag and even in contact with the air bag cover, suppression of the air bag might be preferable to activation, even for adults.⁵

We note that a supplier and a large-volume vehicle manufacturer have developed an algorithm that minimizes deactivation of the air bag in these types of circumstances. That algorithm is available to petitioners.

We recognize that owners of vehicles equipped with weight-based suppression systems need to be informed about how the systems work, the telltale, and the appropriate action to take when the telltale is illuminated. This type of information should be provided in the owner's manual.

⁵ We note that our DASS requirements contemplate the possibility of air bags being suppressed for adults who are extremely close to the air bag.

C. Requests for Expanded Availability of On-Off Switches

Three of the petitioners requested expanded availability of on-off switches. The Alliance and Daimler Chrysler requested that manufacturers be permitted to provide a manual three-way override switch (on-off-automatic) for passenger-side air bags in vehicles with three-position front seating systems, while Toyota requested that manufacturers be permitted to provide these switches on all vehicles with advanced air bags.

The Alliance argued that currently available prototype occupant classification systems cannot detect and classify right front occupants consistently and properly when a center occupant is present on a three-position front bench seat. According to the petitioner, the most serious risk is that the sensor will misunderstand the weight distribution of the two passengers and erroneously conclude that one adult is present instead of two children. Under these circumstances, the sensor will direct the air bag system to deploy when it should have been suppressed. A manual three-way override switch would enable the driver to override the occupancy classification decision by manually setting the switch to "on" or "off."

Toyota stated that while occupant classification systems exist which comply with the technical requirements of Standard No. 208, manufacturers have serious concerns with the ability of these systems to adequately characterize all real-world situations. Toyota stated that air bag systems which are designed to assure suppression for six-year-old child dummies while providing deployment for 5th percentile adult female dummies will sometimes suppress the air bag for small statured adults in the real world. That company stated that if manufacturers choose to drop the sensor output to ensure deployment for all adults, the air bag will no longer reliably suppress the air bag for six-year-old children and will in many cases deploy for larger and older children. Toyota argued that, given these limitations, customers should have the ability to override the "decision" made by the suppression system by means of a manual three-way override switch.

In addressing the subject of on-off switches, we begin by noting that, as part of our May 2000 decision on advanced air bags, we decided to allow both original equipment and retrofit air bag on-off switches until September 1, 2012, under the same circumstances under which they have been permitted

for the past several years. Thus, during this time period, vehicle manufacturers are permitted to provide as original equipment manual on-off switches for passenger air bags in vehicles without rear seats or with rear seats too small to accommodate a rear facing child safety seat. Similarly, 49 CFR part 595, *Retrofit On-Off Switches for Air Bags*, covers vehicles manufactured during this time period. This regulation exempts, under certain conditions, motor vehicle dealers and repair businesses from the "make inoperative" prohibition in 49 U.S.C. 30122 by allowing them to install retrofit manual on-off switches for passenger and driver air bags in vehicles owned by people whose request for a switch is authorized by NHTSA.

In our May 2000 decision on advanced air bags, we explained that we believe that by the end of the initial phase-in, *i.e.*, August 31, 2006, manufacturers will have developed advanced air bag systems for most vehicles that are sufficiently reliable to obviate the need for manual air bag on-off switches. However, public acceptance of those advanced air bag systems may not be assured. Allowing on-off switches for some period after all vehicles are equipped with advanced air bag systems will provide parents with additional confidence until the reliability of all such systems has been verified based on real-world experience.

We also explained that we continue to believe that allowing manufacturers to install switches indefinitely would be counter-productive. The switches provide an opportunity for misuse. Adults could turn off their passenger air bag systems even though those systems pose virtually no risk to an adult occupant, particularly one who is belted. In such circumstances, the occupant would not receive the benefit of the air bag in a high-speed crash. The same possibility for misuse would exist for children in vehicles certified to the low risk deployment option.

We accordingly decided to allow both original equipment and retrofit air bag on-off switches until September 1, 2012, two years after the end of the second phase-in. This additional time was intended to allow manufacturers to perfect the suppression and low risk deployment systems in all their vehicles. Additionally, it will provide parents with additional time to satisfy themselves that the advanced systems work.

We also noted that there will be some need for deactivation of some sort (via on-off switch or permanently) for at-risk individuals who cannot be accommodated through sensors or other suppression technology (such as

handicapped individuals or individuals with certain medical conditions). We stated that, at this time, we believe such needs can be best accommodated through the permanent deactivation authorization system currently used by NHTSA.

The Alliance, DaimlerChrysler and Toyota petitions all requested expanded availability of on-off switches for advanced air bags, beyond the circumstances that we have previously determined to be appropriate for non-advanced air bags. For reasons discussed below, we believe such expanded availability would adversely affect safety.

We have conducted an analysis of FARS data and the available data concerning the use of existing on-off switches to calculate the potential safety consequences of expanding the availability of on-off switches to permit a manual three-way override switch (on-off-automatic) for passenger-side air bags in vehicles with three-position front seating systems. The misuse rate of existing passenger air bag on-off switches for occupants over 12 years old was 18 percent in a recent NHTSA survey, *i.e.*, the air bag was turned off when it should have been turned on. (Evaluation Note, Preliminary Results of the Survey on the Use of Passenger Air Bag On-Off Switches, Christina Morgan, July 2001, DOT HS 809 306) Our analysis shows that, given this misuse rate, expanding the availability of on-off switches in the manner requested by the Alliance and DaimlerChrysler could result in nearly 100 additional fatalities to teenage and adult passengers each year. This disbenefit would overwhelm any possible benefit that might result from the on-off switch. The potential disbenefits, and net disbenefits, would be even greater for the expanded availability of on-off switches requested by Toyota. A copy of our analysis has been placed in the docket.⁶ (Analysis of Allowing a 3-Way On/Off Override Switch for 3-Position Front Seating Positions)

As to the concerns that Toyota raised about the limitations of occupant classification systems, much of our discussion in the preceding section concerning the request of other petitioners to defer requirements using 6-year-old child dummies is relevant to this topic.

First, the deploy/non-deploy decision for occupants between the weight of the six-year-old dummy and the 5th percentile adult female dummy is left to the vehicle manufacturer's design choices, including the nominal weight

threshold it selects and the technologies it uses, and will include some gray zone. However, the gray zone issue is not a new one and is comparable to the gray zone issue that exists for deployment/non-deployment based on crash severity.

Second, the petitioners have not provided data to demonstrate that possible non-deployment of the air bag for adults in non-normal seating positions will create any significant safety problem. Moreover, this concern is appropriately addressed by the requirement for a telltale that illuminates when the passenger air bag is off.

Third, to the extent vehicle manufacturers using suppression systems wish to reduce the nominal weight threshold for deployment/non-deployment to a level where an air bag might deploy for occupants who are the weight of the six-year-old child dummy, they are free to do so if they certify compliance with the low risk deployment option for the six-year-old child dummy. This option has always been available under the advanced air bag rule.

To the extent Toyota or other vehicle manufacturers wish to ensure provision of air bag deployment for occupants smaller than 5th percentile adult females, whether very small statured adults or children, but find that reducing the nominal weight threshold for deployment/non-deployment might result in deployment for six-year-old children, the appropriate solution is to comply with the low risk deployment option for the six-year-old child dummy. We specifically provided the low risk deployment option for six-year-old (and three-year-old) child dummies in light of possible air bag benefits to small occupants.

Expanded availability of on-off switches that provide the ability to override the suppression system is not an appropriate answer, because of the problem of misuse.

We note that Toyota claimed in its petition that "(a)ccording to FMVSS 208, adults should always receive an air bag while children below age 12 should never receive an air bag." This is an overgeneralization.

Toyota's statement was made in a section of its petition titled "Background-Suppression Systems." Assuming that a vehicle manufacturer selects the suppression option for all of the child dummies, *i.e.*, the infant dummy, three-year-old child dummy, and six-year-old child dummy, suppression is only required for children up to the weight of the six-year-old child dummy, *i.e.*, 54 pounds.

If a manufacturer selects the option to certify to the suppression requirements using human children, suppression is only required for children weighing up to 56 pounds.

Moreover, the activation requirements require activation of the air bag for 5th percentile adult female dummies. These dummies weigh 108 pounds. If a manufacturer selects the option to certify to the activation requirements using human adult females, activation is only required for adult females of weights beginning at 103 pounds.

Standard No. 208 does not specify deployment or non-deployment of the air bag for occupants between the weights of the six-year-old child dummy and the 5th percentile adult female dummy (or between the specified similar weights for human children and human adult females). Thus, manufacturers are free to deploy their air bags for occupants in this weight range, if they believe that is helpful, or not deploy them, if they believe that is appropriate.

The low risk deployment requirements, of course, contemplate the possibility of air bag deployments for children of all ages. The DASS requirements contemplate the possibility of systems that suppress air bag deployments whenever an occupant is extremely close to the air bag, whether that occupant is a child or an adult.

NHTSA's policy concerning air bags and children remains that the back seat is the safest place for children whether or not there is an air bag, and that a rear-facing child seat should *never* be put in the front seat unless an air bag is off.

D. Request for Allowance of Transponder Technology for Reliable Child Restraint System Detection

DaimlerChrysler requested that we allow "transponder-based, tagging detection systems for child restraint systems." It made this request in the context of a stated concern that current sensing systems cannot discriminate adults from children in child restraint systems for all real world conditions. That company stated that transponder technology is the most reliable means to detect child restraints and suppress air bag deployment. The petitioner cited the agency's action in the LATCH rulemaking, in which it recognized the need for both child restraint and motor vehicle manufacturers to take action to protect children, as a model that could be followed in this area.

DaimlerChrysler stated that the same could be done here, where both future vehicles and child restraints would have compatible transponder/receiver

⁶NHTSA-2001-11110-21

devices. The petitioner stated that it takes note of the agency's concern about a transition period, but believes action should be initiated now.

We begin by noting that, if a vehicle manufacturer selects the suppression option for the infant dummy, 3-year-old dummy, and/or 6-year-old dummy, it must certify compliance using the dummy (or a human child) in any child restraint on a specified list of representative child restraints that are appropriate for a child the size of the applicable dummy. We believe the specified child restraints⁷ are adequately representative of the restraints generally being sold to help ensure that the air bag will be suppressed regardless of the particular brand and model child restraint actually being used. Parents or other caregivers will be able to look at the telltale to confirm whether the air bag is suppressed.

In our May 2000 final rule, we addressed a previous request by DaimlerChrysler and one by International Electronics Engineering (IEE) to permit certification to the suppression requirements using tag-based systems. See 65 FR at 30710-12. We recognized that these companies might be correct in saying that tag-type systems could offer greater reliability, assuming that the correct tagged child restraint is also used. We explained, however, that such systems would not ensure safety for the numerous different child restraint designs and potential restraint positions that are used by the general public. We also noted that even making tags widely available, as DaimlerChrysler suggested, would not account for those individuals who do not have a tag on their particular child restraint, either because the restraint is not generally used in a given vehicle, or because they are unaware that the tags are available. Additionally, simply providing the tags would not assure that they were installed on the restraint properly or that the tag was properly aligned when the restraint was set in the vehicle seat.

We stated that technology like the tag-type Mercedes BabySmart appears to provide a reliable method of preventing air bag deployments when used properly. We also stated that while we do not believe that these types of suppression systems alone will adequately meet the needs of motor vehicle safety, we do believe that they

remain an excellent supplement to other systems.

After considering DaimlerChrysler's petition, we do not see any reason to change our position. DaimlerChrysler and other vehicle manufacturers are already allowed to use transponder-based, tagging detection systems for child restraint systems; however, they cannot certify to the suppression requirements based on these systems. Instead, these types of suppression systems must be considered a supplement to other systems that suppress the air bag even if a tag is not present on a child restraint. This is because systems that rely on tagging alone would not ensure safety for the numerous different child restraints that are used by the general public, including older ones. Such systems would also not ensure safety for young children who are not in child restraints.

Finally, to the extent DaimlerChrysler would like us to require tagging in addition to our current requirements, it has not shown a safety need for such a requirement. While that company may be correct that tag-type systems could offer greater reliability, assuming that the correct tagged child restraint is also used, it has not shown any safety problems with the non-tag-based sensing systems now under development.

E. Requests for Revisions to Percentage Phase-in Requirements and Proposal To Revise First-year Percentage

The Alliance petitioned that we revise the first year's phase-in requirement from 35 percent to 10 percent of a manufacturer's production. The petitioner stated that this change is necessitated by the unanticipated technical challenges of making occupant sensing technology work properly in reasonable foreseeable real world conditions, and by the departure from the market of some major suppliers.

The Alliance stated that the difficulties encountered in developing robust occupant classification sensors resulted in two significant manufacturers—Siemens and Bosch—deciding to discontinue the development of promising technologies. The Alliance also stated that one motor vehicle manufacturer invested in and prepared at least three separate occupant classification programs that were scheduled to be introduced into production before December 2000. However, none of the programs made it into production due to various system failures with the developing technologies.

The Alliance stated that, notwithstanding substantial good-faith

efforts to meet and exceed the 35 percent target in the first year, the technical challenges with prototype occupant sensing technology have required some Alliance members to shift compliance strategies. According to the Alliance, this has often required them to start over in testing and qualifying advanced air bag systems with much less lead time to address and solve issues as they arise.

DaimlerChrysler petitioned us to revise the percentage phase-in requirements from 35-65-100 percent to 10-40-100 percent for Phase I of the new requirements. Thus, its request was the same as that of the Alliance for the first year of the phase-in, but it also requested a reduction in the percentage specified for the second year of the phase-in. DaimlerChrysler stated that it was making this request in light of uncertainty surrounding the status of the numerous outstanding petitions to the May 2000 final rule, supplier capacity assurances and the performance capability of current level of technology. According to that company, lack of technology readiness and capacity for meeting the advanced air bag requirements of Standard No. 208 have reduced the production tooling lead-time to a precarious situation.

In considering the petitioners' requests to reduce the percentage phase-in requirements for the first year or two of the phase-in, we believe it is important to take account of both the need to ensure that the industry provides advanced air bags as quickly as is reasonably possible, yet also to avoid a situation in which the industry must put new technologies into vehicles before they have been fully tested.

We recognize that the vehicle manufacturers have made significant efforts to develop effective occupant sensing technology, as part of their efforts to meet the requirements for advanced air bags, and that some of these efforts have been unsuccessful. We have been made aware of many of the details of these efforts in meetings with vehicle manufacturers, but much of this has been confidential information. As noted by the Alliance, however, two significant manufacturers, Siemens and Bosch, decided to discontinue development of certain promising occupant classification technologies. We also note the example cited by the Alliance of one motor vehicle manufacturer investing in and preparing at least three separate occupant classification programs that were scheduled to be introduced into production before December 2000, with none of the programs making it into

⁷ We note that we are considering issues relating to the availability of the specified child restraints in the context of the petitions for reconsideration of our December 2001 final rule.

production due to various system failures with the developing technologies.

While other efforts to develop effective occupant sensing technology have been successful, the unsuccessful ones have diverted scarce resources and placed many vehicle manufacturers at risk of not being able to meet the 35 percent requirement for the first year of the phase-in. Because each vehicle manufacturer has had its own plans to meet the phase-in requirements, they are each affected differently. We observe that one consequence of the longer-than-expected time it has taken to develop effective occupant sensing technology is that manufacturers are less likely to be able to earn significant credits before the phase-in begins. Since the percentage requirements for this phase-in increase quickly, *i.e.*, from 35 percent the first year to 65 percent the second year to 100 percent the third year (credits may be applied toward the 100 percent requirement for this year), the loss of expected credits from the time before the phase-in begins has the effect of requiring a greater percentage of models to be certified to the advanced air bag requirements sooner, including ones that may pose greater technical challenges.

Given the supplier and technical challenges that have been demonstrated by the vehicle manufacturers, we believe some adjustment to the first year percentage phase-in requirement is appropriate. We have tentatively concluded that a reduction in the first year's phase-in requirement from 35 percent to 20 percent of a manufacturer's production strikes a reasonable balance between ensuring that the industry provides advanced air bags as quickly as is reasonably possible, while avoiding a situation in which the industry must put new technologies into vehicles before they have been fully tested. We note that, because of the credit provisions, different vehicle manufacturers could, as a practical matter, use this additional flexibility for different years of the phase-in, as needed. Thus, we believe DaimlerChrysler's request for a reduction of the second year phase-in percentage is unnecessary.

While the petitioners demonstrated unexpected supplier and technical challenges, they did not demonstrate a need to reduce the first year requirement to a percentage as low as the requested 10 percent. We are concerned that such a low percentage would not lead the industry to provide advanced air bags as quickly as is reasonably possible.

We are providing a comment period of 30 days on our proposal to reduce the first year's phase-in requirement from 35 percent to 20 percent of a vehicle manufacturer's production. Given the immediacy of the decisions the vehicle manufacturers need to make concerning the vehicles that will be produced during the first production year, we believe that it is important to resolve the percentage phase-in requirement as soon as possible. For this reason, we believe a comment period of 30 days, rather than a longer one, is in the public interest. We also believe that a 30-day comment period is ample for interested persons to prepare and submit comments on this issue.

IV. Petition for Rulemaking From Porsche Concerning the Alternative Phase-in Available to Limited Line Manufacturers

A phase-in for new requirements generally permits vehicle manufacturers flexibility to choose which of their vehicles will be the first that they redesign to comply with those requirements. However, if a manufacturer produces a very limited number of lines, *e.g.*, one or two, a phase-in would provide little, if any, flexibility.

Accordingly, as part of the advanced air bag final rule, we decided to permit manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of each of the two phase-ins (September 1, 2003 and September 1, 2007) the option of omitting the first year of each phase-in if they achieve full compliance by September 1, 2004, the beginning of the second year of the first phase-in and September 1, 2008, the beginning of the second year of the subsequent phase-in. This option is available only for limited line manufacturers since it would otherwise be possible for the industry as a whole to delay introducing any advanced air bags for a year. The advanced air bag final rule also includes an exclusion from the phase-in requirements for small volume manufacturers. This exclusion is limited to manufacturers that produce or assemble not more than 5,000 vehicles for the U.S. market each year.

On August 19, 2002, we received a petition for rulemaking from Porsche requesting changes in the special phase-in provisions available to limited-line manufacturers. Specifically, Porsche requested that the agency consider adding an additional definition of "carline" specific to Standard No. 208 and providing manufacturers that sell two or fewer carlines in the U.S. the flexibility to comply at the 100 percent

level starting with the third year of the phase-in.

According to Porsche, small limited-line manufacturers like Porsche have and will continue to have difficulties attracting the attention of technology suppliers because of the limited value associated with small development contracts. That company stated that whether or not it produces only 500, 5,000, or 10,000 vehicles on a worldwide basis, it is, in today's world, an extremely small vehicle manufacturer relative to others selling in the U.S. Porsche stated that it is one of the few remaining independent vehicle manufacturers with no direct relationship to any other vehicle manufacturer. It stated that, unlike various other small manufacturers, it does not have a parent company willing to assume its production as part of its fleet compliance schedule.

In light of our proposal to adjust the phase-in requirements applicable to large manufacturers, we believe it is appropriate to consider whether some further type of adjustment is needed for companies like Porsche. Many of the difficulties cited by large-volume manufacturers, such as the technical challenges being faced by the vehicle manufacturers in meeting the new requirements and the fact that two of the automotive suppliers have dropped plans to offer devices that suppress the passenger air bag when a child is present, affect small companies like Porsche.

We note that the specific concerns cited by Porsche relate more to its small size than to the number of carlines it sells. While Porsche is larger than the companies that are traditionally viewed as small volume manufacturers, it is very small compared to the large manufacturers.

We request comments on the need for relief for companies like Porsche, the specific amendments it requested, and alternative ways of providing relief. The agency could, for example, provide a new phase-in option that combines relatively small volume (but volume higher than that specified for exclusion from the phase-in) with small number of carlines. It could also provide a new phase-in option, based solely on relatively small volume (but volume higher than that specified for exclusion from the phase-in). The agency requests that commenters recommending relief address how the agency could ensure that any relief provided is not overly broad. Depending on the comments, the agency may provide some type of relief in the final rule.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this proposed rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This proposed rule was not reviewed under Executive Order 12866, "Regulatory Planning and Review." This action is not "significant" under the Department of Transportation's regulatory policies and procedures.

This document proposes a reduction in the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the phase-in, *i.e.*, from September 1, 2003 through August 31, 2004, from 35 percent to 20 percent. However, the document does not propose any changes in the requirements for vehicles equipped with advanced air bags. Readers who are interested in the costs and benefits of advanced air bags are referred to the agency's Final Economic Assessment (FEA) for the May 2000 final rule. The estimated benefits compared to pre-MY 1998 (pre-depowered air bags) in that rule for the suppression technologies were estimated to be 93 fatalities and 151 AIS 3-5 injuries. These benefits can be considered to accrue over the 20-25 year lifetime of one model year's fleet. Reducing the phase-in schedule for the MY 2004 fleet from 35 percent to 20 percent (a 15 percentage point reduction), would result in the potential loss in benefits over the lifetime of the MY 2004 fleet of 14 lives and 23 AIS 3-5 injuries.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. A Regulatory Flexibility Analysis was prepared for the May 2000 final rule as part of the FEA. This action would not have not have a significant economic impact on small businesses because the only change it would make to the May 2000 final rule is to reduce the percentage of vehicles that must comply with that rule during the first year of the phase-in. Small organizations and small governmental units would not be significantly affected since the potential cost impacts associated with this proposed amendment should only slightly affect the price of new motor vehicles.

C. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). While the May 2000 final rule is likely to result in over \$100 million of annual expenditures by the private sector, the only effect of today's proposed amendment would be to reduce the percentage of vehicles that must comply with that rule during the first year of the phase-in. Accordingly, this proposed rule would not mandate any expenditures by State, local or tribal governments, or by the private sector.

F. Executive Order 12778 (Civil Justice Reform)

The proposed rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other

administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This document does not propose any new information collection requirements.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires Federal agencies to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Has the agency organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could the agency improve clarity by adding tables, lists, or diagrams?
- What else could the agency do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

VI. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may

attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov/>).

On that page, click on "search." On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA-1998-1234," you would type "1234." After typing the docket number, click on "search."

On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 would be amended by revising S14.1.1.1 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *
S14.1.1.1 *Vehicles manufactured on or after September 1, 2003, and before September 1, 2004.* Subject to S14.1.2(a), for vehicles manufactured by a manufacturer on or after September 1, 2003, and before September 1, 2004, the amount of vehicles complying with S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25, shall be not less than 20 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1, 2003, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2001, and before September 1, 2004, or

(b) The manufacturer's production on or after September 1, 2003, and before September 1, 2004.

* * * * *

Issued: September 19, 2002.

Roger A. Saul,

Director, Office of Crashworthiness Standards.

[FR Doc. 02-24236 Filed 9-19-02; 3:57 pm]

BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-A151

Endangered and Threatened Wildlife and Plants; Listing of the Flat-Tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposed listing of the flat-tailed horned lizard (*Phrynosoma mcallii*) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). The purpose of reopening the public comment period is to allow for peer review of the proposed rule (58 FR 62624) and its subsequent withdrawal (62 FR 37852) according to our 1994 Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), additional public comment on the reinstatement of the proposed listing rule, and submission of any additional information that may assist us in making a final listing decision. Comments previously submitted need not be resubmitted as they have been incorporated into the public record and will be fully considered in the final listing determination.

DATES: The public comment period is reopened for a period of 15 days, and we will accept comments until October 9, 2002. Comments must be received by 5 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this action.

ADDRESSES: Comment Submission: If you wish to comment on the reinstated proposed rule or provide additional information concerning the status and distribution of the species, as well as information pertaining to threats to the species or its habitat, you may submit your comments and materials by any one of several methods:

(1) You may submit written comments and information to Field

Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008.

(2) You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA.

(3) You may send comments by electronic mail (e-mail) to fthl@r1.fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include your name and return e-mail address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at telephone number 760/431-9440.

Document Availability: Comments and materials received, as well as supporting documentation used in the preparation of the proposed rule and subsequent withdrawal, and additional information obtained since the time of the withdrawal that will be used for this final determination, are available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, Branch Chief, Division of Listing, or Matt McDonald, Wildlife Biologist, Carlsbad Fish and Wildlife Office (see **ADDRESSES**; telephone 760/431-9440; facsimile 760/431-9624). Information is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:

The flat-tailed horned lizard is a small, cryptically colored lizard that reaches a maximum adult body length (excluding the tail) of approximately 81 millimeters (3.2 inches). The lizard has a flattened body, short tail, and dagger-like head spines like other horned lizards. It is distinguished from other horned lizards in its range by a dark vertebral stripe, two slender elongated occipital spines, and the absence of external ear openings. The upper surface of the flat-tailed horned lizard is pale gray to light rusty brown. The underside is white and unmarked, with the exception of a prominent umbilical scar.

The flat-tailed horned lizard is endemic (restricted) to the Sonoran Desert in southern California and Arizona and northern Mexico. The species inhabits desert areas of southern Riverside, eastern San Diego, and

Imperial Counties in California; southwestern Arizona; and adjacent regions of northwestern Sonora and northeastern Baja California Norte, Mexico. Within the United States, populations of the flat-tailed horned lizard are concentrated in portions of the Coachella Valley, Ocotillo Wells, Anza Borrego Desert, West Mesa, East Mesa, and the Yuma Desert in California; and the area between Yuma and the Gila Mountains in Arizona. The flat-tailed horned lizard occurs at elevations up to 520 meters (m) (1700 feet (ft)) above sea level, but most populations are below 250 m (820 ft) elevation.

According to Hodges (1997), approximately 51.2 percent of the historic range of the flat-tailed horned lizard habitat within the United States remains. This remaining habitat includes an estimated 503,500 hectares (ha) (1,244,00 acres (ac)) of habitat in the United States, of which approximately 56,800 ha (140,300 ac) occur in Arizona and 446,670 ha (1,103,800 ac) occur in California. Within this range, the lizard typically occupies sparsely vegetated, sandy desert flatlands with low plant species diversity, but it is also found in areas with small pebbles or desert pavement, mud hills, dunes, alkali flats, and low, rocky mountains.

Based on information obtained since the withdrawal of the proposed listing rule and the information documented in the proposed rule itself, threats to the flat-tailed horned lizard may include one or more of the following: commercial and residential development; agricultural development; off-highway vehicle activity; energy developments; military activities; introduction of nonnative plants; pesticide use; and border patrol activities along the United States-Mexico border.

In 1982, we first identified the flat-tailed horned lizard as a category 2 candidate species for listing under the Act (47 FR 58454). Service regulations defined category 2 candidate species as "taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support proposed rules." In 1989, we elevated the species to category 1 status (54 FR 554). Category 1 included species "for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule." Subsequently, on November 29, 1993, we published a

proposed rule to list the flat-tailed horned lizard as a threatened species pursuant to the Act (58 FR 62624).

On May 16, 1997, in response to a lawsuit filed by the Defenders of Wildlife to compel us to make a final listing determination on the flat-tailed horned lizard, the District Court in Arizona ordered us to issue a final listing decision within 60 days. A month after the District Court's order, several State and Federal agencies signed a Conservation Agreement (CA) implementing a recently completed range-wide management strategy to protect the flat-tailed horned lizard. Pursuant to the CA, cooperating parties agreed to take voluntary steps aimed at "reducing threats to the species, stabilizing the species' populations, and maintaining its ecosystem."

On July 15, 1997, we issued a final decision to withdraw the proposed rule to list the flat-tailed horned lizard as a threatened species (62 FR 37852). The withdrawal was based on three factors: (1) Population trend data did not conclusively demonstrate significant population declines; (2) some of the threats to the flat-tailed horned lizard habitat had grown less serious since the proposed rule was issued; and (3) the belief that the recently approved "conservation agreement w[ould] ensure further reductions in threats."

Six months following our withdrawal of the proposed listing rule, the Defenders of Wildlife filed a lawsuit challenging our decision. On June 16, 1999, the District Court for the Southern District of California granted summary judgement in our favor upholding our decision not to list the flat-tailed horned lizard. However, on July 31, 2001, the Ninth Circuit Court of Appeals reversed the lower court's ruling and directed the District Court to remand the matter back to us for further consideration in accordance with the legal standards outlined in its opinion. On October 24, 2001, the District Court ordered us to reinstate the previously effective proposed listing rule within 60 calendar days and, thereafter, commence a 12-month statutory time schedule for a final listing decision. On December 26, 2001, we published a notice announcing the reinstatement of the 1993 proposed listing of the flat-tailed horned lizard as threatened and the opening of a 120-day public comment period on the reinstated proposed rule (66 FR 66384). On May 30, 2002, we published a notice announcing the reopening of the public comment period to allow for the submission of additional public comment and information to assist us in making a final listing determination (67 FR 37752).

This notice announces the reopening of the public comment period on this reinstated rulemaking for 15 days to allow for peer review of the proposed rule (58 FR 62624) and its subsequent withdrawal (62 FR 37852) according to our Peer Review Policy (59 FR 34270), accept public comment on the reinstated proposed rule, and collect updated information concerning the species ecology and distribution, threats, conservation/management actions, and any additional available information to assist us in making a final listing determination based on the best scientific and commercial data available.

We are specifically seeking information about the flat-tailed horned lizard and its habitat concerning: (1) Threats to the species as a whole or to local populations and its habitat; (2) the size, number, and distribution of known populations; (3) sufficiency of current conservation/management and/or regulatory mechanisms for the flat-tailed horned lizard and its habitat; and (4) the conservation value of different populations across the range of the species.

Author

The primary author of this notice is Douglas Krofta, Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

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

Dated: September 3, 2002.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02-24025 Filed 9-23-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH02

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Island of Hawaii, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period, and public hearing announcement.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of two public hearings on the proposed critical habitat designations for 47 plants from the island of Hawaii. The comment

period for the proposed critical habitat designations originally closed on July 29, 2002. The comment period was reopened on August 26, 2002, and was scheduled to close on September 30, 2002. We are now announcing two public hearings and are extending the comment period to allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The comment period for this proposal now closes on November 30, 2002. Any comments received by the closing date will be considered in the final decision on this proposal. Two public hearings will be held on the island of Hawaii, on Tuesday, October 29, 2002, in Kailua-Kona from 5:30 p.m. to 8:30 p.m. and on Wednesday, October 30, 2002, in Hilo from 6:00 p.m. to 8:00 p.m. Prior to both public hearings, the Service will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. The Service will also be available for questions after the hearings.

ADDRESSES: The public hearing in Kailua-Kona will be held at the King Kamehameha Hotel, 75-5660 Palani Road, Kailua-Kona, HI. The public hearing in Hilo will be held at the Hawaii Naniloa Resort, 93 Banyon Dr., Hilo, HI. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3-122, P.O. Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address (telephone 808/541-3441; facsimile 808/541-3470).

SUPPLEMENTARY INFORMATION:

The public hearing scheduled in Kailua-Kona for the proposed critical habitat designations for 47 plants from the island of Hawaii announced in this **Federal Register** notice and the public hearing for the proposal to designate critical habitat for Blackburn's sphinx moth announced in a separate **Federal Register** notice are scheduled for the same date, time, and location as a matter of convenience to the public. We will accept comments at the Kailua-Kona public hearing on the proposed critical habitat designations for 47 plants from

the island of Hawaii, as well as the proposal to designate critical habitat for Blackburn's sphinx moth.

Background

On May 28, 2002, we published a proposed critical habitat rule for 47 of the 58 plant species listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), known historically from the island of Hawaii (67 FR 36968).

A total of 58 species historically found on the island of Hawaii were listed as endangered or threatened species under the Act between 1991 and 1996. Some of these species may also occur on other Hawaiian islands. In previously published proposals we proposed that critical habitat was prudent for 31 (*Achyranthes mutica*, *Adenophorus periens*, *Asplenium fragile* var. *insulare*, *Bonamia menziesii*, *Cenchrus agrimonioides*, *Clermontia lindseyana*, *Clermontia peleana*, *Colubrina oppositifolia*, *Ctenitis squamigera*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis cookiana*, *Hedyotis coriacea*, *Hibiscus brakenridgei*, *Ischaemum byrone*, *Isodendron pyrifolium*, *Mariscus fauriei*, *Mariscus pennatifolius*, *Phlegmariurus mannii*, *Phyllostegia parviflora*, *Plantago princeps*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*) of the 58 species reported from the island of Hawaii. No change is made to the 31 proposed prudency determinations in the May 28, 2002, proposed critical habitat rule for plants from Hawaii. In the May 28, 2002, proposal we proposed that designation of critical habitat was not prudent for two species, *Pritchardia affinis* and *Pritchardia schattaueri*, because it would likely increase the threat from vandalism or collection of these species on the island of Hawaii (67 FR 36968). In addition, we proposed that critical habitat designation was not prudent for two species, *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis*, known only from the island of Hawaii, that have not been seen in the wild since 1957 and 1927, respectively, and for which no viable genetic material is known to exist (67 FR 36968). In the May 28, 2002, proposed critical habitat rule, we proposed that designation of critical habitat is prudent for 23 species (*Argyroxiphium kauense*, *Clermontia drepanomorpha*, *Clermontia pyralia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea sticophylla*, *Cyrtandra giffardii*,

Cyrtandra tintinnabula, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Isodendron hosakae*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothocestrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Sicyos alba*, *Silene hawaiiensis*, and *Zanthoxylum dipetalum* var. *tomentosum*) for which prudency determinations had not been made previously (67 FR 36968).

We also proposed designation of critical habitat for 47 plant species (*Achyranthes mutica*, *Adenophorus periens*, *Argyroxiphium kauense*, *Asplenium fragile* var. *insulare*, *Bonamia menziesii*, *Clermontia drepanomorpha*, *Clermontia lindseyana*, *Clermontia peleana*, *Clermontia pyricularia*, *Colubrina oppositifolia*, *Cyanea hamatiflora* ssp. *carlsonii*, *Cyanea platyphylla*, *Cyanea shipmanii*, *Cyanea stictophylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, *Delissea undulata*, *Diellia erecta*, *Flueggea neowawraea*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Hibiscus brakckenridgei*, *Ischaemum byrone*, *Isodendron hosakae*, *Isodendron pyrifolium*, *Mariscus fauriei*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Nothocestrum breviflorum*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Plantago hawaiiensis*, *Pleomele hawaiiensis*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Sicyos alba*, *Silene hawaiiensis*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium arenarium*, *Vigna o-wahuensis*, *Zanthoxylum dipetalum* var. *tomentosum*, and *Zanthoxylum hawaiiense*). Critical habitat is not proposed for 4 (*Cyanea copelandii* spp. *copelandii*, *Ochrosia kilaueaensis*, *Pritchardia affinis*, and *Pritchardia schattaueri*) of the 58 species for the reasons given above. Critical habitat is not proposed for 7 (*Cenchrus agrimonioides*, *Ctenitis squamigera*, *Hedyotis cookiana*, *Mariscus pennatifolius*, *Phlegmariurus manni*, *Phyllostegia parviflora*, and *Plantago princeps*) species which no longer occur on the island of Hawaii, and for which we are unable to determine any habitat that is essential to their conservation on the island of Hawaii.

Twenty-eight critical habitat units, totaling approximately 176,968 hectares (437,285 acres), are proposed for designation for 47 plant species on the island of Hawaii. For locations of these proposed units, please consult the

proposed rule (67 FR 36968) that was published May 28, 2002.

Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. We received two requests from recreational hunting organizations to hold public hearings, however, one of the requests was received more than 45 days after publication of the proposal. In response to the initial request and as a matter of convenience to the public we will hold two public hearings on the dates and at the addresses described in the **DATES** and **ADDRESSES** sections.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with the **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231-2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date.

Information regarding this proposal is available in alternative formats upon request.

Comments from the public regarding this proposed rule are sought, especially regarding:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1);

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act;

(3) Specific information on the amount, distribution, and quality of habitat for the 47 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas, and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (e.g., hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values", and reductions in administrative costs);

(7) Information usable under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat;

(8) The effects of critical habitat designation on military lands, and how it would affect military activities, particularly military activities at the Pohakuloa Training Area lands on the island of Hawaii. Whether there will be a significant impact on military readiness or national security if we designate critical habitat on these facilities. Whether these facilities should be excluded from the designation under section 4(b)(2) of the Act;

(9) Whether Department of Defense lands should be excluded from critical habitat based on an approved Integrated Natural Resource Management Plan (INRMP);

(10) Whether areas which are managed for the conservation of the species should not be included in critical habitat because such areas do not meet the definition of critical habitat contained in section 3(5)(A)(i) of the Act;

(11) Whether areas covered by an approved conservation plan (e.g., Habitat Conservation Plans, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat; and

(12) Whether areas should be excluded under section 4(b)(2) of the Act because critical habitat designation would adversely impact other types of conservation partnerships that are beneficial to the species.

The public comment period for the May 28, 2002, proposal (67 FR 36968) originally closed on July 29, 2002. On August 26, 2002, we published a **Federal Register** notice (67 FR 54766) of the reopening of the comment period for the proposed designations and non-designations of critical habitat for plant species on the island of Hawaii, as well as for the proposed designations and non-designations of critical habitat for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Oahu, and the Northwestern Hawaiian Islands; and we announced that the comment period would close on September 30, 2002. We are now announcing two public hearings and the

extension of the comment period for the proposed designations and non-designations of critical habitat for plant species on the island of Hawaii. We will accept public comments on the proposal for the island of Hawaii until November 30, 2002. The extension of the comment period gives all interested parties the opportunity to comment on the proposal. Comments already submitted on the proposed designations and non-designations of critical habitat for plant species from the island of Hawaii need not be resubmitted as they will be fully considered in the final determinations. Extension of the comment period will enable us to respond to the requests for a public hearing on the proposed action. Written comments should be submitted to the Service office listed in the **ADDRESSES** section. The comment period now closes on November 30, 2002.

Author

The primary author of this notice is Christa Russell (*see* **ADDRESSES** section).

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

Dated: September 16, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02-24248 Filed 9-23-02; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020508114-2114-01; I. D. 030702C]

RIN 0648-AM97

Fisheries of West Coast States and in the Western Pacific; Coral Reef Ecosystems Fishery Management Plan for the Western Pacific

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement those parts of the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region (CREFMP) that have been approved by NMFS. Coral reef ecosystem fisheries in federally managed waters of the western Pacific

U.S. exclusive economic zone (U.S. EEZ) are currently unregulated under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The CREFMP, which was developed by the Western Pacific Fishery Management Council (Council), would apply ecosystem principles to fisheries management to conserve and protect coral reef fisheries, their ecosystems, and associated habitats in the U.S. EEZ around American Samoa, Guam, Hawaii (main Hawaiian Islands), the Commonwealth of the Northern Mariana Islands (CNMI), and the U.S. Pacific remote island areas (PRIA): Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Palmyra Atoll, and Johnston Atoll. **DATES:** Comments must be submitted in writing by October 24, 2002.

ADDRESSES: Written comments should be sent to Dr. Charles Karnella, Pacific Islands Area Office (PIAO), NMFS, 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814. Comments will not be accepted if submitted via e-mail or the internet. Copies of the CREFMP, environmental impact statement (EIS), regulatory impact review (RIR), and initial regulatory flexibility analysis (IRFA) are available at the Council website, www.wpcouncil.org. Requests for a CD or paper copy of these documents can be made by contacting Jarad.Makaiiau@noaa.gov. A copy of the Record of Decision issued by NMFS for the partially approved CREFMP is available at the PIAO website, <http://swr.nmfs.noaa.gov/piao>. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to the NMFS address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC00503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, at (808) 522-8220 or Dr. Charles Karnella, Administrator, PIAO, at (808) 973-2937.

SUPPLEMENTARY INFORMATION: The Council began development of the CREFMP in 1996, with the preparation of an assessment of the coral reef ecosystem resources. Initial scoping hearings were conducted by the Council in June 1999 to obtain public input on a new fishery management plan for these resources. A notice of availability soliciting public comment on the CREFMP's draft environmental impact statement (DEIS) was published in the **Federal Register** on January 12, 2001

(66 FR 1945). Although the comment period ended on February 26, 2001, additional comments were accepted during the month following the closing date.

Four major agency reviews were conducted to ensure completeness, accuracy, and compliance of the draft CREFMP with applicable laws. The Council also conducted 59 public meetings and hearings to receive comments on the draft document. These comments were incorporated into the text of the final CREFMP. The Council adopted the final CREFMP on June 20, 2001, and transmitted it to NMFS on March 8, 2002. A notice of availability was published in the **Federal Register** on March 18, 2002, 67 FR 11971. On June 14, 2002, NMFS partially approved the CREFMP and parallel amendments to the Council's management plans for bottomfish and seamount groundfish fisheries (Bottomfish FMP), pelagic fisheries (Pelagics FMP), precious coral fisheries, and crustacean fisheries of the western Pacific region. The CREFMP was approved, except for that portion of the CREFMP that governs fishing in waters of the U.S. EEZ around the Northwestern Hawaiian Islands (NWHI) west of 160°50' W. long. NMFS disapproved a portion of the plan because it would be inconsistent with, or duplicate, certain provisions of Executive Order 13178 and 13196s, which together establish the NWHI Coral Reef Ecosystem Reserve (Reserve), as authorized by section 6(g) of Public Law 106-513. The Reserve encompasses a portion of the U.S. EEZ around the NWHI from the seaward boundary of the State of Hawaii, out to a distance of 50 nautical miles (nm). Specifically, section 7(b)(5) of Executive Order 13178, one of two executive orders that established the Reserve, prohibits the harvest of almost all living and non-living resources throughout the Reserve, while the CREFMP would actively manage the same species within the same geographical area. The bottomfish fishery in the NWHI will continue to be managed under existing management measures for the Bottomfish FMP, as authorized by the Magnuson-Stevens Act, while the process to designate a national marine sanctuary in the NWHI as directed by section 6(g) of Public Law 106-513, is ongoing. Coral reefs are highly complex, integrated ecosystems. The vast majority of the total area covered by coral reefs under U.S. jurisdiction is located in the western Pacific region and would be managed either by this new fishery management plan or by the NWHI Reserve management regime. The CREFMP

adopts a precautionary approach by addressing the potential for problems before they occur, and by establishing management measures that can be adapted rapidly in response to changes in the fishery. Although state and territorial regulations control most impacts from coral reef ecosystem fisheries in near-shore areas, the CREFMP would complement those regulations by implementing measures to manage coral reef ecosystems in adjacent Federal waters of the U.S. EEZ. In general, these areas have been minimally exploited, but potential fisheries, including those for live fish markets in Southeast Asia, coral and "live rock" for the U.S. aquarium trade, and marine bioprospecting for pharmaceutical uses, may develop and are addressed within the CREFMP.

The CREFMP has eight objectives: (1) Foster sustainable use of coral reef ecosystem resources in an ecologically and culturally sensitive manner; (2) provide a flexible and responsive management program for coral reef ecosystem resources that allows for rapid adjustments to management measures in response to changes in resource abundance, new scientific information, or changes in fishing patterns; (3) establish integrated resource data collection and permitting systems, including a research and monitoring program to collect fishery and other ecological information necessary to make informed management decisions about coral reef ecosystems in the U.S. EEZ; (4) minimize adverse human impacts on coral reef ecosystem resources by establishing new and improving existing marine protected areas (MPAs), managing fishing pressure, controlling wasteful harvest practices, reducing other anthropogenic stressors directly affecting coral reef ecosystem resources (through the conservation and protection of essential fish habitat (EFH) and allowing the recovery of naturally balanced reef ecosystems); (5) improve public and government awareness and understanding of coral reef ecosystems, their vulnerability and resource potential so as to reduce adverse human impacts and foster support for science-based management; (6) facilitate collaborative effort among agencies and organizations concerned with the conservation of coral reef ecosystems in order to share in decision-making, data, and resources needed to effectively monitor the vast and complex coral reef ecosystems managed under the CREFMP; (7) encourage and promote surveillance and enforcement in support of CREFMP management measures; and

(8) provide for sustainable participation by fishing communities in coral reef ecosystem fisheries and, to the extent practicable, minimize adverse economic impacts on such communities.

Relation to Other Laws

In order to ensure consistency between the management regimes of different Federal agencies, NMFS is adding language to the proposed rule that states that unless specifically authorized by the U.S. Fish and Wildlife Service (USFWS), fishing authorized under Subpart J—Western Pacific Coral Reef Ecosystem Fisheries is not allowed within the boundary of a wildlife refuge regardless of whether that refuge was established by action of the President or the Secretary of the Interior. Contact the USFWS at 808-541-1291 for more information and boundary details.

Amendments to Existing FMPs

To ensure consistency with the proposed regulations of the CREFMP, the Council would amend its existing fishery management plans for bottomfish and seamount groundfish fisheries, crustacean fisheries, pelagic fisheries, and precious coral fisheries. Fishing for management unit species (MUS) included in these existing plans would be prohibited in the CREFMP no-take MPAs. The Council initially proposed an insurance requirement for all vessels managed under these fishery management plans while operating in or transiting through the coral reef ecosystem MPAs. This measure was intended to provide the means for mitigating reef damage in the event of a vessel grounding or an oil spill in the coral reef ecosystems, including the possibility for wreck removal and reef recovery activities. The FMP did not set forth the details of this complex and novel issue. As a result, the insurance requirement is not included in this proposed rule; however, the Council will continue to address appropriate means to provide for reef protection. Finally, the MUS list for the Pelagics FMP would be amended to include only the following species of pelagic sharks: *Alopias pelagicus* (pelagic thresher shark), *Alopias superciliosus* (bigeye thresher shark), *Alopias vulpinus* (common thresher shark), *Carcharhinus falciformis* (silky shark), *Carcharhinus longimanus* (oceanic whitetip shark), *Prionace glauca* (blue shark), *Isurus oxyrinchus* (shortfin mako shark), *Isurus paucus* (longfin mako shark), and *Lamna ditropis* (salmon shark). The remaining coastal sharks currently listed as MUS in the Pelagics FMP would become CREFMP MUS. Dogtooth tuna would also change from a Pelagics FMP

MUS to a CREFMP MUS. This revision to the Pelagics FMP MUS would closely reflect the species associated with the respective ecosystems for each plan and provide for more accurate data gathering without affecting fisheries operations.

Management Area

The coral reef ecosystem management area consists of the U.S. EEZ around American Samoa, Guam, Hawaii, PRIA, and the Commonwealth of the Northern Mariana Islands (CNMI). For American Samoa, Guam, and Hawaii, the management area would generally occur between 3 nm and 200 nm from shore; in some areas, the outer boundary of the U.S. EEZ is truncated by adjacent international maritime boundaries. Management measures are proposed only for the "offshore zone", which consists of those waters from 3 to 200 nm. The management area for the PRIA (Kingman Reef, Johnston and Palmyra Atolls, and Jarvis, Howland, Baker, and Wake Islands) begins at the shoreline and extends offshore 200 nm (seaward boundary of the U.S. EEZ). Kingman Reef, Johnston and Palmyra Atolls, and Jarvis, Howland, and Baker Islands are National Wildlife Refuges managed by the USFWS. Fisheries management responsibilities in the PRIA and Rose Atoll will be shared by the Council, NMFS and the USFWS. Because the CNMI EEZ includes all waters from the shoreline to 200 nm, this would comprise the management area. For the purposes of this rule, those waters for which management measures are proposed are collectively termed the "coral reef ecosystem regulatory area", which includes the U.S. EEZ waters of the western Pacific region, with the exception of EEZ waters within 3 miles of the shoreline of the CNMI and the EEZ around the NWHI west of 160°50' W. long.

Coral Reef Ecosystem MUS

CRE-MUS are defined as those taxa listed in Table 1. 2 and 1. 3 of the CREFMP that spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth. These MUS are separated into two lists: "Currently harvested coral reef taxa" (CHCRT) and "potentially harvested coral reef taxa" (PHCRT). CHCRT consists of coral reef associated species, families, or subfamilies, as described in Table 1. 2 to the CREFMP, that have annual landings greater than 454. 54 kg (1,000 lb) as reported on individual state, commonwealth, or territory catch reports or through creel surveys. Fisheries and research data for many of these species have been analyzed by

regional management agencies. PHCRT consists of coral reef associated species, families, or subfamilies, as described in Table 1. 3 to the CREFMP, for which little or no information is available beyond general taxonomic and distribution descriptions. These species have either not been caught in the past or have been harvested annually in amounts less than 454. 54 kg (1,000 lb). Species that occur in the coral reef ecosystem that are not managed, i. e., not listed as management unit species under the Council's other fishery management plans, would be similarly categorized. NMFS is specifically soliciting public comments on these MUS definitions.

Principal Management Measures

The proposed rule contains four types of management measures, (MPAs, permits and monitoring, fishing gear methods, and other management measures) which, unless otherwise specified, would apply throughout the regulatory area.

MPAs

Based on their natural resource values, human use and historic values, impacts of human activities, and management concerns, this rule would establish MPAs within the U.S. EEZ waters around the PRIA and Rose Atoll in American Samoa. Ecologically sensitive areas would be designated as no-take MPAs, in which all harvesting activities would be prohibited. These no-take MPAs would be located in waters of the U.S. EEZ seaward from the shoreline to the 50-fathom (fm) (91.5-m) curve (isobath) at Jarvis, Howland, and Baker Islands, Kingman Reef and Rose Atoll. Low-use MPAs would be located in waters of the U.S. EEZ between the shoreline and the 50-fm (91.5-m) curve around Johnston Atoll, Palmyra Atoll, and Wake Island.

In low-use MPAs, most existing fishing activities, primarily recreational fishing by residents on Palmyra, could be permitted under special permits. The CREFMP does not abolish or amend prohibitions or restrictions on fishing imposed under other Federal laws, such as the National Wildlife Refuge System Administration Act. In other words, no special permits issued under these regulations would allow fishing within the boundary of a national wildlife refuge unless such fishery is also authorized by the USFWS. Fisheries governed under the Council's other fishery management plans and operating in low-use MPAs would continue to abide by the permit and reporting requirements established under those plans. Minimum insurance coverage

against vessel groundings and oil spills is not included in this proposed rule at this time for reasons explained earlier; however, the Council will continue to explore options to help mitigate adverse impacts resulting from potential vessel groundings in the coral reef ecosystems in the U.S. EEZ. Although not an MPA in the sense of having fishing or permitting restrictions, Guam's Southern Banks is designated as a no-anchoring zone.

Permits and Monitoring

In general, any person who harvests coral reef ecosystem MUS in low-use MPAs would be required to have a Federal special permit issued by NMFS. Issuance of special permits would be on a case-by-case basis and based upon several factors including the potential for bycatch, the sensitivity of the area to the type of fishing proposed, and the level of fishing occurring in relation to the level considered sustainable in a low-use MPA. A person permitted and targeting non-CRE MUS under other fishery management plans would not be required to obtain a special permit to fish in low-use MPAs. In addition to the permit requirement for low-use MPAs, special permits would be required for any directed fisheries on PHCRT within the regulatory area. The harvest of live rock and living corals would be prohibited throughout the federally managed U.S. EEZ waters of the region (except 0-3 miles around CNMI); however, under special permits with conditions specified by NMFS following consultation with the Council, indigenous people could be allowed to harvest live rock or coral for traditional uses, and aquaculture operations could be permitted to harvest seed stock. The proposed rule would implement a Federal reporting system for all fishing under special permits. Resource monitoring systems administered by state, territorial, and commonwealth agencies would continue to collect fishery data on the existing coral reef fisheries that do not require special permits.

Fishing Gears and Methods

Fishing gear has the potential to adversely impact coral reef ecosystems. The CREFMP lists both allowable fishing gear types and fishing methods for targeting MUS. The listing of allowable gear types and methods is based on: (1) Impact on habitat; (2) potential for bycatch; and (3) degree to which fish may find refuge from capture. The proposed list of allowable gear types is: (1) Hand harvest; (2) spear; (3) slurp gun; (4) hand/dip net; (5) hoop net for Kona crab; (6) throw net; (7)

barrier net; (8) surround/purse net that is attended at all times; (9) hook-and-line (powered and unpowered handlines, rod and reel, and trolling); (10) crab and fish traps with vessel ID number affixed; and (11) remote operating vehicles/submersibles. New fishing gears that are not included in the allowable gear list may be allowed under the special permit provision. The proposed rule would prohibit SCUBA-assisted spearfishing at night within U.S. EEZ waters around the PRIA.

Other Management Measures

Adaptive Management

A framework process, providing for an administratively simplified procedure to facilitate adjustments to management measures previously analyzed in the CREFMP, is an important component of the CREFMP. These potential framework measures include designating "no-anchoring" zones and establishing mooring buoys, requiring vessel monitoring systems on board fishing vessels, designating areas for the sole use of indigenous peoples, and including species not specifically listed as PHCRT under the "special permit" regime as warranted. A general fishing permit program could also be established for all U.S. EEZ coral reef ecosystem fisheries under the framework process of the CREFMP.

Other Actions

The CREFMP also contains non-regulatory measures consistent with CREFMP objectives that would be undertaken by the Council outside of the regulatory regime. These include a process and criteria for EFH consultations; formal plan team coordination to identify and to address coral reef ecosystem impacts from existing FMPs fisheries; a system to facilitate consistent state and territorial level management; and research and education efforts.

Classification

With the exception of provisions of the CREFMP that have been disapproved, NMFS has determined that the CREFMP and the parallel amendments to the bottomfish and seamount groundfish fisheries, pelagic fisheries, crustacean fisheries, and precious coral fisheries fishery management plans that this rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

The Council prepared an Final Environmental Impact Statement (EIS) for the CREFMP; a notice of availability was published on May 10, 2002 (67 FR

31801). On June 14, 2002, in partially approving the CREFMP, NMFS issued a Record of Decision identifying the selected alternative, a variation of the preferred alternative in the EIS. The intent of the partially approved CREFMP and its proposed implementing rule (i. e., selected alternative) is to prevent harmful activities and adverse impacts to the environment before they occur. This proposed rule is expected to maintain the sustainability of target and non-target species; safeguard against substantial damage to the ocean and coastal habitats and/or EFH; protect endangered or threatened species, marine mammals, and critical habitat; help ensure public health and safety; prevent the occurrence of cumulative adverse effects that could have a substantial effect on the target species or non-target species; promote biodiversity and ecosystem function within the affected area; and minimize, if not eliminate, negative social or economic impacts.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from the Council (see ADDRESSES). A summary of the IRFA follows.

The need for and objectives of this proposed rule are stated in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this document and are not repeated here. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 660.

All commercial fishing operations affected by this proposed rule are considered to be small entities under guidelines issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of \$3.5 million. Based on information provided in the IRFA, this proposed rule would potentially affect 24 to 63 entities, including commercial harvesters of food fish, ornamental fish collectors, charter sportsfishing operations, and research entities. It is difficult to predict how many entities would alter their planned operations by fishing in state waters or moving to other target species to avoid applying for special permits and complying with increased reporting requirements under this proposed rule. However, NMFS believes that initially approximately five special permit applications will be received each year.

It is estimated that the costs to these small entities will primarily consist of a special permit application fee of between \$50 and \$100 per application. It is not anticipated that many additional entities (beyond those holding special permits) will be affected by this measure, as the proposed MPAs are located far from inhabited areas and the majority of other fisheries operate outside of proposed MPA waters utilizing gears that would continue to be allowed under this proposed rule. However, small entities using fish or crab traps to target CRE MUS throughout the regulatory area will be required to affix identification markers to each trap on board a vessel or deployed in the water. Based on similar requirements in other fisheries, the cost of this requirement is anticipated to be minimal, as identification markings may be inexpensively made using permanent ink, paint, or dye. Other, non-quantifiable, potential costs include revenue impacts resulting from the implementation of no-take MPAs. This action has information collection requirements that are addressed elsewhere in this classification section.

Several alternatives to these proposed measures are examined in the IRFA. Please note that the impacts of the proposed measures (selected alternative) will be less than the preferred alternative because the NWHI commercial bottomfish fishery will not be affected under the partially approved CREFMP (see Record of Decision). The first alternative is the no action alternative, which would not impose any economic costs on small entities. This alternative was rejected on the basis that it could lead to unsustainable levels of fishing effort and eventual degradation of coral reef ecosystems and their component resources. The second alternative examined is similar to the selected alternative with the following exceptions. It would not designate any no-take MPAs (low-use MPAs would be designated). It would not implement any prohibitions on nighttime fishing for coral reef ecosystem MUS with SCUBA/hookah gear, and it would not prohibit the take of live rock or coral throughout the regulatory area. This alternative was also rejected on the basis that it would not provide sufficient protection to coral reef ecosystems or their component resources. Finally, the third alternative examined would designate no-take MPAs out to 100 fathoms around all western Pacific islands and atolls (no low-use MPAs would be designated); require general permits for harvest of all CHCRT and special permits for harvest of all PHCRT

throughout the western Pacific U.S. EEZ; prohibit all spearfishing with SCUBA/hookah throughout the U.S. EEZ; and prohibit the take of live rock or coral throughout the U.S. EEZ. This alternative was rejected on the basis that it would unnecessarily impede the sustainable use of coral reef ecosystem resources, as the selected alternative would provide adequate conservation and protection for these resources.

A copy of this analysis is available from the Council for public review and comment.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information is estimated to average 2 hours per response for a permit application, 3 hours for a permit appeal, 30 minutes per day for a fishing record, 15 minutes per day for a transshipment log, 3 minutes for an at-sea notification prior to landing, and 2 minutes per trap to mark fishing gear. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these and any other aspects of the collection regarding these burden estimates or any other aspect of the collection of information to PIAO at the **ADDRESSES** above, and to the OMB at the Office of Information and Regulatory Affairs, OMB, Washington, DC20503 (Attention:NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless the collection of information displays a currently valid OMB Control Number.

On March 7, 2002, an informal Endangered Species Act section 7 consultation was completed by NMFS' Southwest Region, Office of Sustainable Fisheries, and concluded by NMFS'

Southwest Region, Office of Protected Resources regarding the CREFMP. It was determined that the proposed action is not likely to adversely affect any endangered or threatened resources or critical habitat under NMFS's jurisdiction. On May 22, 2002, the USFWS concurred with the determination of NMFS that the activities proposed in the CREFMP are not likely to adversely affect listed species (i. e., seabirds and terrestrial plants) and listed species shared with NMFS (i. e., sea turtles under its jurisdiction).

This proposed rule is consistent with Executive Order 13089, which is intended to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: September 13, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660 FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.11, paragraph (b) is revised, and a new paragraph (c) is added to read as follows:

§ 660.11 Purpose and scope.

* * * * *

(b) Regulations specific to individual fisheries are included in subparts C, D, E, F, and J of this part.

(c) Nothing in subparts C, D, E, F, and J of this part is intended to supercede any valid state or Federal regulations that are more restrictive than those published here.

3. Section 660.12 is amended by revising the introductory text and the definition for "Pacific pelagic management unit species"; and adding definitions for the "Commonwealth of the Northern Mariana Islands (CNMI)", "CNMI offshore area", "Coral reef ecosystem management area", "Coral reef ecosystem management unit species", "Coral reef ecosystem regulatory area", "Hookah breather", "Live rock", "Low use marine protected area", "No-take marine protected area", and "Special permit", alphabetically to § 660.12 to read as follows:

§ 660.12 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, and in § 600. 10, the terms used in subparts B through F and subpart J of this part have the following meanings:

* * * * *

Commonwealth of the Northern Mariana Islands (CNMI) means Northern Mariana Islands.

CNMI offshore area means the portion of the U.S. EEZ around the CNMI extending seaward from

(1) a line drawn 3 nautical miles from the baseline around the CNMI from which the territorial sea is measured, to

(2) the outer boundary of the U.S. EEZ, which to the south means those points which are equidistant between Guam and the island of Rota in the CNMI.

* * * * *

Coral Reef ecosystem management area means the U.S. EEZ waters

surrounding American Samoa, Guam, Hawaii, CNMI and the U.S. Pacific remote island areas (PRIA).

Coral reef ecosystem management unit species (MUS) means all of the taxa listed in Table 1. 2 and 1. 3 of the Coral Reef Ecosystems Fishery Management Plan (CREFMP) that spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth. Table 1. 2 contains a listing of Currently Harvested Coral Reef Ecosystem MUS, and Table 1. 3 contains a listing of Potentially Harvested Coral Reef Ecosystem MUS.

Coral reef ecosystem regulatory area means the U.S. EEZ waters around American Samoa, Guam, Hawaii, CNMI and the PRIA except for the portion of EEZ waters 0–3 miles around the CNMI, and EEZ waters around the NWHI.

* * * * *

Hookah breather means a tethered underwater breathing device that pumps air from the surface through one or more hoses to divers at depth.

* * * * *

Live rock means any natural, hard substrate, including dead coral or rock, to which is attached, or which supports, any living marine life-form associated with coral reefs.

* * * * *

Low use marine protected area (MPA) means an area of the U.S. EEZ where fishing operations have specific restrictions in order to protect the coral reef ecosystem, as specified under area restrictions.

* * * * *

No-take Marine Protected Area (MPA) means an area of the U.S. EEZ that is closed to fishing for or harvesting of MUS from every Western Pacific Council Fishery Management Plan.

* * * * *

Pacific Pelagic Management Unit Species means the following fish:

Common Name	Scientific Name
Mahimahi (dolphinfish)	<i>Coryphaena spp.</i>
Indo-Pacific blue marlin	<i>Makaira mazara</i>
Black marlin	<i>M. indica</i>
Striped marlin	<i>Tetrapturus audax</i>
Shortbill spearfish	<i>T. angustirostris</i>
Swordfish	<i>Xiphias gladius</i>
Sailfish	<i>Istiophorus platypterus</i>
Pelagic thresher shark	<i>Alapiaspelagicus</i>
Bigeye thresher shark	<i>Alopias</i>
Common thresher shark	<i>Alopias vulpinus</i>
Silky shark	<i>Carcharhinus falciformis</i>
Oceanic whitetip shark	<i>Carcharhinus longimanus</i>
Blue shark	<i>Prionace glauca</i>
Shortfin mako shark	<i>Isurus oxyrinchus</i>
Longfin mako shark	<i>Isurus paucus</i>

Common Name	Scientific Name
salmon shark	<i>Lamna ditropis</i>
Albacore	<i>Thunnus alalunga</i>
Bigeye tuna	<i>T. obesus</i>
Yellowfin tuna	<i>T. albacore</i>
Northern bluefin tuna	<i>T. thynnus</i>
Skipjack tuna	<i>Katsuwonus pelamis</i>
Kawakawa	<i>Euthynnus affinis</i>
Wahoo	<i>Acanthocybium solandri</i>
Moonfish	<i>Lampris spp.</i>
Oilfish family	<i>Gempylidae</i>
Pomfret	family Bramidae
Other tuna relatives	<i>Auxis spp.</i> , <i>Scomber spp.</i> ; <i>Allothunus spp.</i>

* * * * *

Special permit means a permit issued to allow fishing for coral reef ecosystem resources in low-use MPAs or to fish for any potentially harvested coral reef taxa.

* * * * *

4. In § 660.13, paragraph (a), the first sentence of paragraph (c)(1), the first and second sentences of paragraph (c)(2), and paragraphs (e), (f)(2), and (g)(1) are revised to read as follows:

§ 660.13 Permits and fees.

* * * * *

(a) *Applicability.* The requirements for permits for specific Western Pacific fisheries are set forth in subparts C, D, E, F and J of this part.

* * * * *

(c) *Application.* (1) A Southwest Regional Federal fisheries permit application form may be obtained from the Pacific Islands Area Office (PIAO) to apply for a permit or permits to operate in any of the fisheries regulated under subparts C, D, E, F, and J of this part.

* * *

(2) A minimum of 15 days should be allowed for processing a permit application for fisheries under subparts C, D, E, and F of this part. A minimum of 60 days should be allowed for processing a permit application for fisheries under subpart J of this part.

* * *

* * * * *

(e) *Issuance.* (1) After receiving a complete application, the Regional Administrator will issue a permit to an applicant who is eligible under §§ 660.21, 660.41, 660.61, and 660.81.

(2) After receiving a complete application, the PIAO Administrator may issue a special permit in accordance with § 660.601(d)(3).

(f) *Fees.* * * *

(2) PIAO will charge a fee for each application for a Hawaii longline limited access permit, a Mau zone limited access permit, and a coral reef ecosystem special permit (including permit transfers and permit renewals). The amount of the fee is calculated in accordance with the procedures of the

NOAA Finance Handbook, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of any of the permits listed in this section.

(g) *Expiration.* (1) Permits issued under subparts C, D, E, F, and J of this part are valid for the period specified on the permit unless transferred, revoked, suspended, or modified under 15 CFR part 904.

* * * * *

5. In § 660.14, paragraphs (a), (b), and (g) are revised and paragraph (f)(4) is added to read as follows:

§ 660.14 Reporting and recordkeeping.

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§ 660.21, 660.41, 660.81, or 660.601 must maintain on board the vessel an accurate and complete record of catch, effort and other data on report forms provided by the PIAO Administrator. All information specified on the forms must be recorded on the forms within 24 hours after completion of each fishing day. Each form must be signed and dated by the fishing vessel operator. For the fisheries managed under §§ 660.21, 660.41, and 660.81, the original logbook form for each day of the fishing trip must be submitted to the PIAO Administrator within 72 hours of each landing of MUS. For the fisheries managed under § 660.601, the original logbook form for each day of the fishing trip must be submitted to the PIAO Administrator within 30 days of each landing of MUS.

(b) *Transshipment logbooks.* Any person subject to the requirements of § 660.21(c) or 660.601(a)(2) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the PIAO Administrator. All information specified on the forms must be recorded on the

forms within 24 hours after the day of transshipment. Each form must be signed and dated by the receiving vessel operator. The original logbook for each day of transshipment activity must be submitted to the PIAO Administrator within 72 hours of each landing of Pacific pelagic management unit species. The original logbook for each day of transshipment activity must be submitted to the PIAO Administrator within 7 days of each landing of coral reef ecosystem MUS.

* * * * *

(f) * * *

(4) *Coral Reef Ecosystem MUS.* Any person who has a special permit and who is required by state laws and regulations to maintain and submit records of catch and effort, landings and sales for coral reef ecosystem MUS by this subpart and subpart J of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer as defined in § 600.10.

(g) *State reporting.* Any person who has a permit under § 660.21, 660.61, or 660.601 of this chapter and who is regulated by state laws and regulations to maintain and submit records of catch and effort, landings and sales for vessels regulated by subparts C, E and J of this part must maintain and submit those records in the exact manner required by state laws and regulations.

6. In § 660.15, paragraphs (f) and (k) are revised and a new paragraph (l) is added to read as follows:

§ 660.15 Prohibitions.

* * * * *

(f) Fail to affix or maintain vessel or gear markings, as required by §§ 660.16, 660.24, 660.47, and 660.605.

* * * * *

(k) Fail to notify officials as required in §§ 660.23, 660.28, 660.43, 660.63, and 660.603.

(l) Fish for, take or retain within a no-take MPA, defined in § 660.18, any Bottomfish MUS, Coral reef ecosystem

MUS, Crustacean MUS, Pelagic MUS, Precious coral MUS or Seamount groundfish.

* * * * *

7. In subpart B, § 660.18 is added to read as follows:

§ 660.18 Area restrictions.

(a) Fishing is prohibited in all no-take MPAs designated in this section.

(b) Anchoring by all fishing vessels over 50 ft (15.25 m) LOA is prohibited in the U.S. EEZ seaward of the Territory of Guam west of 144 °30' E. long, except in the event of an emergency caused by ocean conditions or by a vessel malfunction that can be documented.

(c) *MPAs.*—(1) *No-take MPAs.* The following U.S. EEZ waters in the Western Pacific Region are no-take MPAs:

(i) Landward of the 50-fathom (fm) (91.5-m) curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153;

(ii) Landward of the 50-fm (91.5-m) curve around Rose Atoll, as depicted on National Ocean Survey Chart Number 83484.

(2) *Low-use MPAs.* The following U.S. EEZ waters in the Western Pacific Region are low-use MPAs:

(i) All waters between the shoreline and the 50-fm (91.5-m) curve around Johnston Atoll, Palmyra Atoll, and Wake Island, as depicted on National Ocean Survey Chart Numbers 83637, 83157 and 81664.

(ii) [Reserved]

8. A new subpart J is added to read as follows:

Subpart J—Western Pacific Coral Reef Ecosystem Fisheries

Sec.	
660.601	Relation to other laws
660.602	Permits and fees.
660.603	Prohibitions.
660.604	Notifications.
660.605	Allowable gear and gear restrictions.
660.606	Gear identification.
660.607	Framework for regulatory adjustments.
660.608	Regulatory Area.
660.609	Annual reports.

Subpart J—Western Pacific Coral Reef Ecosystem Fisheries

§ 660.601 Relation to other laws.

To ensure consistency between management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Coral reef ecosystem management area, fishing authorized under this subpart will not

be allowed within the boundary of a national wildlife refuge regardless of whether that refuge was established by action of the President or the Secretary of Commerce.

§ 660.602 Permits and fees.

(a) *Applicability.* Unless otherwise specified in this subpart, § 660.13 applies to coral reef ecosystem permits.

(1) *Special Permit.* Any person of the United States fishing for, taking or retaining coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Coral reef ecosystem MUS in low-use MPAs as defined in § 660.18;

(ii) Potentially harvested coral reef ecosystem MUS in the regulatory area; or

(iii) Coral reef ecosystem MUS in the regulatory area with any gear not specifically allowed in this subpart.

(2) *Transshipment permit.* A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the regulatory area to land or tranship potentially harvested coral reef ecosystem MUS species, or any coral reef ecosystem MUS harvested within low-use MPAs.

(3) *Exceptions.* The following persons are not required to have a permit under this section:

(i) Any person incidentally harvesting coral reef ecosystem MUS while targeting MUS listed under a separate FMP. It will be considered a rebuttable presumption that such a person is targeting coral reef ecosystem MUS if the total weight or number of pieces of landed coral reef ecosystem MUS comprise more than 20 percent of the total landed weight or number of pieces respectively, on any one trip;

(ii) Any person targeting currently harvested coral reef ecosystem species outside of an MPA, who does not retain any incidentally caught potentially harvested coral reef ecosystem MUS; and

(iii) Any person collecting marine organisms for scientific research as described in § 600.745 of this chapter.

(b) *Validity.* Each permit will be valid for fishing only in the fishery management subarea specified on the permit.

(c) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 660.13.

(d) *Low use MPAs special permit.* No direct harvest of coral reef ecosystem MUS species may be conducted in low use MPAs unless authorized by a

special permit issued by the PIAO Administrator in accordance with the criteria and procedures specified in this section.

(1) *Application.* An applicant for a special or transshipment permit issued under this section must complete and submit to the PIAO Administrator, a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (i. e., stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use, and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) *Incomplete applications.* The PIAO Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) If an application contains all of the required information, the PIAO Administrator will forward copies of the application within 30 days to the Council, the U.S. Coast Guard, the fishery management agency of the affected state, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the PIAO Administrator will consult with the Council through the Executive Director, USFWS, and the Director of the affected state fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant,

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested,

(C) The current status of resources to be harvested in relation to the overfishing definition in the FMP,

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity, and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the PIAO Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FMP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the PIAO Administrator to the Council for the rejection.

(iv) If the PIAO Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the PIAO Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (a)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to issues related to, spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The PIAO Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FMP, including but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FMP.

(4) *Appeals of permit actions.* (i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FMP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal

hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) Any time limit prescribed in this section may be extended for good cause, for a period not to exceed 30 days by the Regional Administrator, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 660.603 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any coral reef ecosystem MUS in any low-use MPA as defined in § 660.18(c)(1) and (c)(2) unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in the permit section of these regulations;

(3) The coral reef ecosystem MUS possessed on board the vessel originated outside the regulatory area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the PIAO Administrator.

(2) By means of gear or methods prohibited under § 660.604.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under § 660.13 or § 660.601.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 660.604 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 660.605 Allowable gear and gear restrictions.

(a) Coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

- (1) Hand harvest;
- (2) Spear;
- (3) Slurp gun;
- (4) Hand net/dip net;
- (5) Hoop net for Kona crab;
- (6) Throw net;
- (7) Barrier net;
- (8) Surround/purse net that is attended at all times;
- (9) Hook-and-line (includes handline (powered or not)), rod-and-reel, and trolling);
- (10) Crab and fish traps with vessel ID number affixed; and
- (11) Remote-operating vehicles/submersibles.

(b) Coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ecosystem MUS in the regulatory area is prohibited.

(c) Coral reef ecosystem MUS may not be taken by means of spearfishing with scuba at night (from 6 p. m. to 6 a. m.) in the U.S. EEZ waters around Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Johnston Atoll and Palmyra Atoll.

(d) Existing FMP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(e) Any person who intends to fish with new gear not included in § 660.604

must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the PIAO Administrator after consultation with the Council and the director of the affected state fishery management agency.

§ 660.606 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under § 660.13 or § 660.601 or that is otherwise established to be fishing for coral reef ecosystem MUS in the regulatory area.

(b) *Enforcement action.* (1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the regulatory area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer;

(2) Unattended surround nets or bait seine nets found deployed in the regulatory area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§ 660.607 Framework for regulatory adjustments.

(a) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, or for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions;

(2) Following framework procedures of the CREFMP, the Council may recommend to the Regional Administrator that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(b) *Procedure for new measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions. New measures include but are not limited to catch limits, resource size limits, closures, effort limitations,

reporting and recordkeeping requirements;

(2) Following the framework procedures of the FMP, the Regional Administrator will publicize, including by **Federal Register** document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rule making if approved by the Regional Administrator.

(i) The Regional Administrator will consider the Council's recommendation and supporting rationale and analysis, and, if the Regional Administrator concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Administrator rejects the Council's proposed action, the Regional Administrator will provide a written explanation for the denial within 2 weeks of the decision.

(ii) The Council may appeal denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(iii) The Regional Administrator and the Assistant Administrator will make their decisions in accordance with the Magnuson-Stevens Act, other applicable laws, and the CREFMP.

(iv) To minimize conflicts between the Federal and state/territorial/commonwealth management systems, the Council will use the procedures in paragraph (a)(2) in this section to respond to state/territorial/commonwealth management actions. Council consideration of action would normally begin with a representative of the state, territorial or commonwealth government bringing a potential or actual management conflict or need to the Council's attention.

§ 660.608 Regulatory area.

(a) The regulations in this subpart govern fishing for coral reef ecosystem management unit species by vessels of the United States or persons who operate or are based inside the outer boundary of the U.S. EEZ off:

(1) The Hawaiian Islands Archipelago lying to the east of 160°50' W. long.

- (2) Guam.
 - (3) American Samoa.
 - (4) Offshore area of the CNMI or that portion of the U.S. EEZ around the CNMI between three nautical miles offshore and the outer boundary of the U.S. EEZ.
 - (5) Baker Island, Howland Island, Jarvis Island, Wake Island, Johnston Atoll, Palmyra Atoll and Kingman Reef.
- (b) The inner boundary of the regulatory area is as follows:
- (1) The shoreline of Baker Island, Howland Island, Jarvis Island, Wake Island, Johnston Atoll, Palmyra Atoll and Kingman Reef.
 - (2) The seaward boundaries of the State of Hawaii, the Territory of Guam, the Territory of American Samoa; and

- (3) A line three nautical miles seaward from the shoreline of the CNMI.
- (c) The outer boundary of the regulatory area is the outer boundary of the U.S. EEZ or adjacent international maritime boundaries. The CNMI and Guam regulatory area is divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E.

§ 660.609 Annual reports.

- (a) *Annual reports.* By July 31 of each year, a Council-appointed coral reef ecosystem plan team will prepare an annual report on the fisheries in the management area. The report will contain, among other things, fishery performance data, summaries of new

information and assessments of need for Council action.

(b) *Recommendation for Council action.*

- (1) The Council will evaluate the annual report and advisory body recommendations and may recommend management action by either the state/territorial/commonwealth governments or by Federal regulation;

(2) If the Council believes that management action should be considered, it will make specific recommendations to the PIAO Administrator after considering the views of its advisory bodies.

[FR Doc. 02-24013 Filed 9-23-02; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 67, No. 185

Tuesday, September 24, 2002

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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Mississippi Advisory Committee to the Commission will convene at 4 p.m. and recess at 9 p.m. on Wednesday, October 9, 2002, at the State Capitol, 400 High Street, Room 216, Jackson, Mississippi 39201. The Committee will reconvene at 9:15 a.m. and adjourn at 7:15 p.m. on Thursday, October 10, 2002, at the State Capitol, Room 113. The purpose of the two-day factfinding meeting is to discuss the need to establish a state civil rights agency that would enforce laws that are substantially equivalent to federal civil rights laws. On Friday, October 11, 2002, the Committee will convene at 12 p.m. and adjourn at 3 p.m. at the Hilton Hotel, 1001 East County Line Rd., Jackson, MS, to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913-551-1400 (TDD 913-551-1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 17, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.
[FR Doc. 02-24176 Filed 9-23-02; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091902B]

Proposed Information Collection; Comment Request; Application Form for Membership on a National Marine Sanctuary Advisory Council

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before November 25, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Elizabeth Moore, N/ORM6, 1305 East-West Highway, Silver Spring, Maryland 20910 (telephone 301-713-3125, ext. 170).

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. Councils are individually chartered for each sanctuary to meet the needs of that sanctuary. Once a council has been chartered, the Sanctuary Manager starts a process to recruit members for that Council by providing notice to the public and asking

interested parties to apply for the available seats.

II. Method of Collection

An application form and guidelines for a narrative submission must be submitted to the Sanctuary Manager. Submissions may be made electronically.

III. Data

OMB Number: 0648-0397.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 75.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 75.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 16, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02-24247 Filed 9-23-02; 8:45 am]

BILLING CODE 3510-NK-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 070102D]

Small Takes of Marine Mammals Incidental to Specified Activities; Building Demolition Activities at Mugu Lagoon, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of pinnipeds by harassment incidental to the demolition and removal of buildings located at the entrance of Mugu Lagoon in Point Mugu, CA has been issued to the Department of Navy, Naval Base Ventura County (NBVC).

DATES: Effective September 26, 2002, until September 26, 2003.

ADDRESSES: The application and authorization are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, (301) 713-2322, ext 128 or Christina Fahy, (562) 980-4023.

SUPPLEMENTARY INFORMATION:**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the

permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Summary of Request

Pursuant to section 101(a)(5)(D), NMFS issued an IHA to NBVC on September 26, 2001, for the harassment of small numbers of marine mammals incidental to the demolition and removal of 12 buildings and associated infrastructures located at the entrance of Mugu Lagoon in Point Mugu, CA during a 1-year period (66 FR 50416, October 1, 2001). On April 10, 2002, NMFS received a letter from NBVC requesting that the IHA be re-issued for an additional year to allow the completion of building demolition and removal activities at Mugu Lagoon. These activities are summarized below.

Description of Activities

The demolition site encompasses a total area of approximately 8 acres (3.2 hectares (ha)) at the entrance of Mugu Lagoon in Point Mugu, CA. This proposed authorization is almost identical to that proposed in the October 3, 2001 (66 FR 50416) notice. The single difference is that the current proposal is only for completion of phase two of the demolition activities. Phase one activities, involving cleanup and removal of contaminated building materials, sand, and soil were completed in 2001 and a satisfactory marine mammal monitoring report covering this phase of the work was submitted to NMFS on December 21, 2001.

The second phase of the project, which is scheduled to begin upon completion of the harbor seal pupping season around August 1, 2002, will be

the demolition and removal of the remaining structures using standard construction procedures and equipment. No explosives will be used during the project and demolition crews will work only during daylight periods. NBVC has requested a new authorization to ensure that all phase two activities are in compliance with the MMPA in case work is not completed within the 1-year time period of the authorization ending September 26, 2002. Specific construction equipment to be used during phase two will include: a 973 loader; a 450 Hitachi excavator; a 320 loader; a Case 621 loader; a 710 4-wheel-drive backhoe; a 545D skip loader; a 1000-gallon water truck; a dump truck; and a Bobcat loader. A more detailed description of the work proposed for 2002 is contained in the application (The Environmental Company and LGL Ltd., 2001) which is available upon request (see **ADDRESSES**).

Comments and Responses

On July 30, 2002 (67 FR 49289), NMFS published a notice of receipt and a 30-day public comment period was provided on the application and proposed authorization. A recommendation to issue the requested authorization was received from the Marine Mammal Commission. No other comments were received.

Description of Habitat and Marine Mammals Affected by the Activity

Mugu Lagoon is one of the largest salt marshes in southern California, encompassing approximately 350 acres (142 ha) of water and tidal flats. The beaches around the Mugu Lagoon entrance are used year-round by harbor seals (*Phoca vitulina*) for resting, molting, and breeding. The Navy reported a peak count of 361 adults in the Mugu Lagoon on June 6, 2000 (The Environmental Company and LGL Ltd., 2001). Two other pinniped species are known to occur infrequently in the area of the proposed activity during certain times of the year: northern elephant seals (*Mirounga angustirostris*) and California sea lions (*Zalophus californianus*). When present, these latter species haul out at the mouth of the lagoon and on Family Beach, located south of the demolition project area on the ocean side. Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Hanan (1996), Stewart and Yochem (1994, 1984), Forney et al. (2000), Koski et al. (1998), Barlow et al. (1993), Stewart and DeLong (1995), and Lowry et al. (1992). Please refer to those documents for information on these species.

Isolated observations of cetaceans have occurred in the Mugu Lagoon area. Two gray whale (*Eschrichtius robustus*) strandings have been recorded (one 20 years ago and one in the early 1980s). There is also one recorded observation of a gray whale moving in and out of the entrance to Mugu Lagoon (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 2001). Sightings of Dall's porpoise (*Phocoenoides dalli*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis* or *D. capensis*), and pilot whale (*Globicephala macrorhynchus*) have been made within 3 nautical miles (nm) (5.6 kilometers (km)) of shore in the vicinity of Point Mugu (Koski *et al.*, 1998); however, none of these species would be expected to occur within the lagoon.

Potential Effects of Demolition Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the demolition and removal activities, as well as the increased presence of personnel, may cause short-term disturbance to pinnipeds hauled out closest to the work area. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during the Point Mugu demolition project, sound levels from all equipment (except the concrete breaker used only during the first phase) drops to below 100 decibels, A-weighted (dBA) within 50 feet (ft)(15.2 meters (m)) of the source (CALTRANS, 2001).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a "looming" visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the concrete breaker during phase

one, may elicit such a reaction. In addition, the movements of the large hydraulic arms of the backhoes or the Hitachi excavator may represent a "looming" visual stimulus to seals hauled out in close proximity. Seals exposed to such acoustic and visual stimuli may either exhibit a startle response or leave the haul-out site.

Harbor seals that haul out in Mugu Lagoon have clearly habituated to very loud airborne sounds at this location, as well as to the presence of humans and vehicle movement along the road that passes through the demolition area. For instance, biologists observed harbor seal haul-out sites in Mugu Lagoon during repeated overflights of a F-14a Tomcat jet aircraft in full afterburner as it performed touch-and-go maneuvers at nearby Mugu airfield. No more overt reactions than a momentary elevation of the hind flippers of a single juvenile seal were observed (The Environmental Company and LGL Ltd., 2001). Based on Air Force data, the received sound levels at the Mugu Lagoon haul-out sites under the jet's flight path could have reached a sound exposure level of 117-121 dB re 20 micro-Pascal (Pa) during these maneuvers (from C. Malme, data in the USAF aircraft noise database). In areas where harbor seals are not exposed to regular aircraft noise or other acoustic stimuli, this type of reaction is not typical. For instance, Bowles and Stewart (1980) reported that harbor seals on San Miguel Island, CA reacted to low-altitude jet overflights with alert postures and often with rapid movement across the haul-out sites, especially when aircraft were visible.

For the purposes of their application, NBVC assumes that when behavioral patterns of pinnipeds are disrupted by the demolition activities, they will be taken by harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, then there may be a behavioral response. The probability and degree of response will

also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, may have adverse effects on individuals and are considered a "take" by NMFS because of the potential for injury or death. As described in this document, harbor seals in the Mugu Lagoon are exposed to noise levels far greater than those expected during the demolition activities described in NBVC's application, and there is no evidence that noise-induced injury or deaths have occurred. The effects of the demolition activities are expected to be limited to short-term and localized behavioral changes (The Environmental Group and LGL Ltd., 2001).

According to NBVC's 2001-2002 marine mammal monitoring report, seals present at the haul-out site responded to the front loader back-up alarm (measured at approximately 78 dBA) by raising their heads and looking toward the construction site. During sounding of the alarm, approximately 7 seals in the haul-out moved around the site, but did not enter the water. Shortly after the alarm stopped, the seals resumed their "normal" haul-out behavior. After this occurred, the back-up alarm was disengaged to minimize disturbance.

For a further discussion on the anticipated effects of the planned demolition activities on marine mammals in the area and their food sources, please refer to the application (The Environmental Company and LGL Ltd., 2001). Information in the application and referenced sources is preliminarily adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Taken

NBVC estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	Potential Harassment Takes 2002
Harbor Seals*	288
Northern Elephant Seal*	8
California Sea Lion*	12

* Some individual seals may be harassed more than once

Effects of Demolition Activities on Marine Mammal Habitat

NBVC anticipates no loss or modification to the habitat used by marine mammal populations that haul out within the Mugu Lagoon. Demolition activities will occur on shore above the highest tide mark, and the demolition contractor will ensure that building refuse will not enter the waters of the lagoon (New World Technology, 2001). The tidal patterns in the lagoon and structure of the nearby sandy haul-out areas will not be altered by these shore-based demolition activities.

The pinnipeds that may be present in Mugu Lagoon leave the lagoon area to feed in the open sea (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 1998); therefore, it is not expected that the demolition activities will have any impact on the food or feeding success of these marine mammals.

Possible Effects of Demolition Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and thus there are no anticipated effects on subsistence needs.

Mitigation

No pinniped mortality and no significant long-term effect on the stocks of pinnipeds hauled out in the Mugu Lagoon are expected based on the relatively low levels of sound generated by the demolition equipment (i.e., 100 dBA within 50 ft (15.2 m) from the source) and the relatively short time period over which the project will take place (approximately 8 weeks). However, NBVC does expect that the demolition activities may cause disturbance reactions by some of the pinnipeds on the beaches. To reduce the potential for disturbance from visual and acoustic stimuli associated with the demolition project, NBVC will undertake a variety of mitigation measures. In addition to these measures to be taken by NBVC, the construction contractor has developed detailed work plans for the project, which emphasize that special consideration is required to minimize disturbances to the resident harbor seal population (New World Technology, 2001). In addition to not using explosives and only operating during daylight hours, NBVC will adopt the following mitigation measures:

(1) Prior to each day of demolition or removal activities, NBVC Point Mugu Environmental Division personnel will inspect the work site to ensure compliance with the construction

contractor's work plan, and to assess the number and types of marine mammals that are occupying the lagoon. Depending on results of initial observations and subsequent planned activities, the NBVC personnel will decide each day whether marine mammal monitoring for the entire day is needed (see Monitoring section). Work will be suspended or conducted in another area in the event that a monitoring biologist or a member of the demolition crew sights a marine mammal hauled out in an area where there is a risk that the animal may come into physical contact with construction machinery or personnel.

(2) The demolition contractor will ensure that work areas are caution taped as a barricade against inadvertent entry of unauthorized personnel where physical barriers are not already present. Before start of the activities, demolition personnel will be advised of all marine mammal mitigation measures.

(3) Work outside of the fenced boundary on the lagoon side of the site will be minimized to the extent possible. Work within 100 feet (30.48 meters) of the lagoon will be done manually where possible (New World Technology, 2001).

(4) During excavations, tarps will be carefully placed over areas in such a way as to reduce "flapping" during installation by unfolding the tarps in sections as they are installed. The edges of the tarps will be held down and secured with sandbags and/or tent stakes to prevent movement of the tarp during windy conditions.

(5) To reduce sound levels in proximity to harbor seal haul-out sites, concrete slabs that form the bases of some buildings and the pools will be sectioned using concrete cutting saws, rather than the hydraulic concrete breaker, where possible.

Monitoring

As part of its original application, NBVC provided a proposed monitoring plan for assessing impacts to marine mammals from demolition activities in Mugu Lagoon. This monitoring will be entirely land-based and is designed to determine if there are disturbance reactions, to determine the area over which reactions occur, and to characterize harbor seal reactions to demolition sounds.

The monitoring program will continue to be conducted via direct visual observation. NBVC must conduct a minimum of twice-daily monitoring efforts during each day of demolition, and conduct all-day monitoring when marine mammals are present or when

new procedures or equipment are employed relative to previous project activities. Marine mammal monitors are required to record a variety of information including: (1) Date and time, (2) weather, (3) tide state, (4) composition and locations of the haul-out groups of pinnipeds within the lagoon, (5) horizontal visibility (estimated by determining what the furthest visible object is relative to the interacting seals using known positions of local objects and accounting for obstructing terrain), and (6) occurrence, or planned occurrence, of any other military aircraft activity or other anthropogenic activities in or around the lagoon.

Through direct visual observation, the number of seals hauled out and haul-out locations will be documented during the demolition. After each day's demolition activities, the marine mammal monitor will again inspect the work site and record information about the marine mammals within the lagoon. This monitoring plan also provides data required to characterize the extent and nature of marine mammal takings.

Reporting

NBVC will provide an initial report to NMFS within 90 days after the demolition and removal activities cease. This report will provide dates and locations of demolition activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In the unanticipated event that any cases of pinniped mortality are judged to result from demolition activities, this will be reported to NMFS immediately.

Endangered Species Act (ESA)

NBVC's activities will not affect any listed species. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

The Department of the Navy, following Council on Environmental Quality regulations (40 CFR 1500), has found that demolition and disposal involving buildings or structures neither on, nor eligible for, listing on the National Register of Historic Places and requiring removal of hazardous materials, are categorically excluded from further documentation under NEPA (32 CFR 775, Department of Navy Procedures for Implementing the National Environmental Policy Act). NBVC has prepared a Record of Categorical Exclusion for all phases of this demolition project.

In accordance with section 6.01 of NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined, based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996); the content and analysis of the NBVC's request for an IHA and its Site Work/Final Survey Plan, that the proposed issuance of this IHA to NBVC by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, based on this analysis, the action of issuing an IHA for these activities meets the definition of a "Categorical Exclusion" as defined under NOAA Administrative Order 216-6 and is exempted from further environmental review.

Determinations

Based on the evidence provided in the application and this document, NMFS has determined that the effects of the planned demolition activities will have no more than a negligible impact on pinniped species and stocks. NMFS has determined that the short-term impact of conducting demolition and removal activities at the entrance of Mugu Lagoon in Point Mugu, California will result, at worst, in a temporary modification in behavior by certain species of pinnipeds. While behavioral modifications may be made by these species to avoid the acoustic and visual stimuli resulting from demolition and removal activities, previous observations of the responses of pinnipeds to loud military overflights and regular human activities near the Mugu Lagoon haul-out sites have not shown injury, mortality, or extended disturbance.

Due to the localized nature of these activities, the number of potential harassment takings of harbor seals, northern elephant seals, and California sea lions are estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near Mugu Lagoon during the period of demolition activities.

Authorization

Accordingly, NMFS has issued an IHA to NBVC for demolition and building removal activities to take place in Mugu Lagoon, CA during a 1-year period provided the mitigation, monitoring, and reporting requirements described in this document and the IHA are undertaken.

Dated: September 18, 2002.

David Cottingham,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 02-24245 Filed 9-23-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of a Final Damage Assessment and Restoration Plan and Environmental Assessment for Natural Resource Injuries and Service Losses Associated With the Fort Lauderdale Mystery Oil Spill in Florida

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that a document entitled, "Final Damage Assessment and Restoration Plan and Environmental Assessment for the Fort Lauderdale Mystery Oil Spill" (Final DARP/EA) is available. This document has been prepared by the state and Federal natural resource trustee agencies (Florida Department of Environmental Protection, FDEP, and the National Oceanic and Atmospheric Administration, NOAA) to address natural resource injuries and resource service losses resulting from a mystery oil spill in the Fort Lauderdale area. This Final DARP/EA presents the trustees' assessment of the natural resource injuries and service losses and their final plan to compensate for those losses by restoring natural resources and services. The trustees provided the public an opportunity to comment on a public review Draft DARP/EA. The Draft DARP/EA was released on June 24, 2002 and was announced in local newspapers and the **Federal Register** (June 24, 2002; 67 FR 42538). The trustees received two public comments on the Draft DARP/EA, both were in support of one of the restoration projects. As a result, there are no significant changes in the evaluation or selection of restoration projects since the Draft DARP/EA.

ADDRESSES: Requests for copies of the Final DARP/EA should be directed to

Tony Penn of NOAA, 1305 East West Highway, Station 10218, Silver Spring, MD 20910, e-mail: tony.penn@noaa.gov. The Final DARP/EA is also available electronically at <http://www.darp.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: For further information contact: Tony Penn, at (301) 713-3038 x197, e-mail: tony.penn@noaa.gov.

SUPPLEMENTARY INFORMATION: On Tuesday morning, August 8, 2000, oil tar balls and oil mats were observed on beaches in the area of Fort Lauderdale, Florida. Within the next few days, approximately 20 miles of high-use recreational beaches, from North Miami Beach northward to near Pompano Beach (primarily Broward County beaches), were oiled; some were closed for cleaning. The origin of the oil is unknown. The United States Coast Guard, the lead response agency for the incident, classified the spill as medium, and the trustees have estimated the amount of oil stranded on the shoreline to be approximately 15,000 gallons.

Natural resources or their services impacted as a result of the incident include threatened and endangered sea turtles and their habitats, marine surface waters and their biota including fish, birds, and recreational use of beaches. Response actions removed the majority of the shoreline oil within a few days of oiling. These response actions did not prevent natural resource impacts from occurring nor did these actions restore or rehabilitate natural resource and service injuries that resulted from the incident.

Natural resource trusteeship authority is designated according to section 1006(b) of OPA, Executive Order 12777, October 22, 1991 (56 FR 54757), and Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300. Federal trustees are designated by the President, and state trustees by the Governor. Acting on behalf of the public as trustees for the living and non-living resources in the coastal and marine environments of Florida, the National Oceanic and Atmospheric Administration and the Florida Department of Environmental Protection, are responsible for assessing injuries to trust resources resulting from oil spill incidents, and for developing and implementing a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of injured natural resources and their services.

Pursuant to section 1002(a) of OPA, each party responsible for a vessel or facility from which oil is discharged, or

which poses a substantial threat of a discharge of oil, into or upon the navigable waters of the United States or adjoining shorelines, is liable for natural resource damages from incidents that involve such actual or threatened discharges of oil. The measure of damages to natural resources is the cost of restoring, rehabilitating, replacing or acquiring the equivalent of the injured natural resources, compensation for the diminution in value of those natural resources pending restoration, and the reasonable costs of assessing such damages. All recoveries for the first two elements are to be spent implementing a restoration plan developed by the trustees. In this case, there is not an identified responsible party to pay damages. When there is not a responsible party, the Federal Oil Spill Liability Trust Fund is available to pay claims for the costs of assessing natural resource damages and for developing and implementing restoration plans.

The trustees quantified injury to sea turtles, fish and invertebrates, seabirds, and recreational beaches for inclusion in a claim for restoration costs. The trustees determined that their selected alternative to address injuries and losses of sea turtles is a combination of active primary restoration (to return sea turtle resources and services to baseline) and compensatory restoration (to compensate for interim losses pending recovery to baseline). The primary restoration consists of augmenting lighting ordinance enforcement activities that will return sea turtles to baseline by preventing mortality of turtle hatchlings due to disorientation. The selected compensatory restoration also augments lighting ordinance enforcement, which will provide additional turtle hatchlings to compensate for the interim turtle losses. The compensatory component of the enforcement project will be of sufficient scale to provide compensatory ecological services approximately equivalent to those that will be lost from the injured turtles pending recovery to baseline.

No primary restoration actions are necessary for the fish and invertebrate, and seabird injuries. However, the trustees have selected projects as compensation for an acute kill of fish, invertebrates, and seabirds. The trustees will create mangrove habitat in order to provide the fish and invertebrate biomass that was lost.

To replace the birds that were killed, the trustees will save birds from future injury. The trustees will install signs at a fishing pier that warn anglers from cutting their lines and that demonstrate how to free birds from fishing lines and

hooks, which will prevent entanglement and provide seabird rescue in the event of entanglement.

The impacted recreational beaches were returned to baseline conditions through incident response actions, however there was a period of lost use during the response phase. The selected compensatory restoration projects are to plant sea oats to build dunes, construct dune walkovers, provide handicapped carts, and provide shade areas that together will maintain beaches for future use, provide access to the beach, and improve the quality of the beach experience.

Dated: August 16, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02-24223 Filed 9-23-02; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 010222048-2215-02

Product Recall Exception to the Electronic Signatures in Global and National Commerce Act

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

ACTION: Notice, Request For Comments

SUMMARY: Section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, codified at 15 U.S.C. 7001 *et seq.* ("ESIGN" or "the Act"), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. 7001(a). Section 103(a) and (b) of the Act, however, provides that the provisions of section 101 do not apply to contracts and records governed by statutes and regulations regarding court documents; probate and domestic law matters; certain provisions of state uniform commercial codes; utility service cancellations, real property foreclosure and defaults; insurance benefits cancellations; product recall notices; and hazardous materials documents. Section 103 of the Act also requires the Secretary of Commerce, through the Assistant Secretary for Communications and Information, to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on

this evaluation. 15 U.S.C. 7003(c)(1). This Notice is intended to solicit comments from interested parties for purposes of this evaluation, specifically on the product recall notices exception to the ESIGN Act. See 15 U.S.C. 7003(b)(2). NTIA will publish separate notices requesting comment on the other exceptions listed in section 103 of the ESIGN Act.¹

DATES: Written comments and papers are requested to be submitted on or before November 25, 2002.

ADDRESSES: Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street and Constitution Ave., NW., Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: esignstudy_prodrec@ntia.doc.gov. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: For questions about this request for comment, contact: Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone (202) 482-1816 or electronic mail: jscarlett@ntia.doc.gov. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482-7002.

SUPPLEMENTARY INFORMATION:

Background: Electronic Signatures in Global and National Commerce Act

Congress enacted the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), to facilitate the use of electronic records and signatures in interstate and foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act

¹ Comments submitted in response to *Federal Register* notices requesting comment on other exceptions to ESIGN will be considered as part of the same section 103 evaluation and not as a separate review of the Act.

provide that the requirements of section 101 shall not apply to contracts and records governed by statutes and regulations regarding: probate and domestic law matters; state commercial law; consumer law covering utility services, real property purchases, and insurance benefits; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for product recall notices is found in section 103(b) of the Act:

Sec. 103. [15 U.S.C. 7003] Specific Exceptions.

* * * *

(b) *Additional Exceptions.*— The provisions of section 101 shall not apply to—

* * * *

(2) any notice of—

* * * *

(D) recall of a product, or material failure of a product, that risks endangering health or safety. . .

* * * *

The statutory language requiring the Assistant Secretary for Communications and Information to submit a report to Congress on the results of the evaluation of the section 103 exceptions to the ESIGN act is found in section 103(c)(1) of the Act as set forth below.

(c) *Review of Exceptions.*—

(1) *Evaluation required.*— The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to Congress on the results of such evaluation.

Recall Notices

A recall is the voluntary or compulsory removal of a product, including food, from the stream of commerce because the product violates state or federal regulations regarding the product, or because the use of the product poses a risk to health or safety. Recall notices are typically issued by government agencies, and by manufacturers, retailers, and distributors of products and foods using a variety of media under the guidance and direction of federal and state regulatory and consumer protection agencies. The Department of Agriculture (USDA), Environmental Protection Agency (EPA), Food and Drug

Administration (FDA), National Highway Safety Transportation Administration (NHSTA), and U.S. Consumer Product Safety Commission (CPSC) have regulations and guidelines that companies follow to recall various manufactured products, foods, drugs, and cosmetics.² Numerous recall notices are issued by manufacturers each year under the guidance and instruction of federal and state agencies; the Consumer Product Safety Commission estimates that the CPSC oversees approximately 300 recalls yearly.

Current federal regulations and policies allow companies to use a variety of methods to transmit recall notices. Companies, manufacturers, distributors, retailers or recall firms may disseminate recall information to the consumer by, among other things, letter, signs and posters at points of purchase, press releases and public announcements, including video news releases and website notices. The method used to notify consumers and the extent of a recall varies in each case depending upon a variety of factors, including the severity of the risk to health, life, and safety associated with the use of the product and the level of product distribution. For example, recalls classified as Class I involve a reasonable probability that the use of the product is likely to cause serious, adverse health consequences or death. A manufacturer of a widely-distributed product that is subject to a Class I recall may be required to issue direct notice in the form of written letters, to issue press releases, and point of purchase posters in order to contact consumers, retail and wholesale distributors, and users of the product. See USDA, FSIS Directive 8080.1, Rev. 3, sections VI(D) and VI(E); CPSC Recall Handbook, and CPSC Fax-on-Demand Document no. 8002, at 11–12, 15. For a product that presents a less serious risk of injury, for example, a product where the risk of serious injury or illness is not likely, but is possible, a lesser degree of notice may be required. An agency may request a

² See e.g., 9 CFR 417.3, 9 CFR part III, and Food Safety Inspection Service (FSIS) Directive 8080.1, Rev. 3, available at <http://www.fsis.usda.gov/FOIA/dir/8080.htm> (USDA recall guidelines); 42 U.S.C. 7541(c)(1), and 40 CFR 85.1802 through 85.1805, 92.703, 92.404, 94.404 and 94.703 (EPA recall authority and procedures); 21 CFR 1115.2(c), 1115.20, and CPSC Recall Guidelines, available at <http://www.cpsc.gov/businfo/8002> (CPSC recall authority and recall guidelines); and 49 U.S.C. 30119, 49 CFR 573.6, 577.5, 577.6, 579, NHTSA Motor Vehicle Defects and Recall Campaigns, available at <http://www.nhtsa.dot.gov/hotline/recallprocess.html> and NHTS Safety Recall Compendium, Third Release, June 2001, available at http://www.nhtsa.dot.gov/cars/problems/recalls/recall_links.cfm (NHSTA recall authority and guidelines).

manufacturer of a product that presents a lesser degree of hazard but a hazard, nonetheless, to join in a press release, provide point of purchase posters, post information on a company world wide web site and to issue a notice to distributors, dealers and sellers of the product. See e.g., CPSC Recall Handbook and CPSC Fax-on-Demand Document no. 8002, at 11–12, 15; U.S. Department of Transportation, NHTS Safety Recall Compendium, at 10, 12. In cases involving foods or products that pose extreme health or safety risks to the public, federal and state agencies, as well as companies, issue press releases to inform the public of the dangers associated with the use of the food or product that is the subject of the recall. See e.g., USDA, FSIS Directive 8080.1, Rev. 3, section IX, “Public Notification” at 3. More recently, some federal agencies have instituted procedures that provide for recalling companies and firms to send electronic mail notices to consumers and postings on the company’s world wide website announcing the recall of a product. See e.g., CPSC Recall Handbook at 15.

The ESIGN Section 103 Evaluation

The ESIGN Act directs the Assistant Secretary of Communications and Information to conduct an evaluation of the exceptions set out in section 103 of the Act to determine whether the product recall notices exception continues to be necessary for the protection of consumers, and to submit a report to Congress on the results of the evaluation no later than June 30, 2003. The Assistant Secretary for Communications and Information is the chief administrator of NTIA. As the President’s principal advisor on telecommunications policies pertaining to the Nation’s economic and technological advancement, NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy.

The ESIGN section 103 evaluation of the product recall notices exception is intended to evaluate the current status of federal and state regulations and practices that direct or allow companies to issue product recall notices and the manner in which the notices are provided to consumers, in preparation for a report to Congress on whether the exception of product recall notices remains necessary to protect consumers. This evaluation is not a review or analysis of federal and state regulations and rules relating to product recall notices for the purpose of recommending changes to those regulations but to advise Congress of the

current state of law, practice, and procedure regarding this issue.³ Comments filed in response to this Notice should not be considered to have a connection with or impact on specific ongoing federal and state procedures or rulemaking proceedings concerning product recall notices.

Invitation to Comment

NTIA requests that all interested parties submit written comment on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comment from parties that may be affected by the elimination of the product recall notices exception, including consumer advocacy groups and organizations, federal agencies, and companies and industry associations. The comments submitted will assist NTIA in evaluating the narrower issues associated with consumer issues and the substantive law related to product recalls. The following issues are intended to provide guidance as to the specific areas to be examined as a part of the evaluation. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. Describe federal and state regulations and rules that prescribe procedures for companies, distributors, retailers, and third party recall companies to follow when recalling a product.

2. Discuss whether federal and state regulations or laws that prescribe content, format, and timing of notices allow for electronic formats, including facsimile, electronic mail, and web site postings.

3. Discuss what effect, if any, the removal of the product recall notices exception would have on the ability of federal and state agencies to perform their mission.

4. What effect, if any, would the removal of the product recall notices exception have on companies and consumers?

5. Describe any issues encountered by companies that currently provide recall notices by electronic means. Discuss the methods companies use to transmit recall information to consumers and state whether there is a receipt verification process that has proven to be reliable.

6. Discuss issues, if any, that consumers have regarding receiving notice of product recalls through electronic means, including but not

limited to, receipt and delivery, technological compatibility, privacy, and security.

7. State whether the consumer protections of ESIGN section 101(c) would be sufficient to protect consumers if the product recall notices exception is eliminated.

8. Discuss any benefits for consumers, companies or both that may result if product recall notices are sent by electronic means.

9. Discuss any other issues (such as state privacy or consumer protection laws) that may be affected if product recall notices are included under the requirements of section 101 of the ESIGN Act.

Please provide copies of studies, reports, opinions, research or other empirical data referenced in the responses.

Dated: September 19, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02-24209 Filed 9-23-02; 8:45 am]

BILLING CODE 3510-60-S

COMMODITY FUTURES TRADING COMMISSION

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

ACTION: Membership change of Performance Review Board.

SUMMARY: In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act of 1978, notice is given that the following employees will serve as members of the Commission's Performance Review Board.

Members: Madge A. Bolinger, Acting Executive Director, Chairman; Andrea M. Corcoran, Director, Office of International Affairs; David R. Merrill, Deputy General Counsel, Office of General Counsel; Gregory G. Mocek, Director, Division of Enforcement; and Patrick J. McCarty, General Counsel, Office of General Counsel.

DATES: This action will be effective on September 18, 2002.

ADDRESSES: Commodity Futures Trading Commission, Office of Human Resources, Three Lafayette Centre, 1155 21st Street, NW., Suite 4100, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Marsha E. Scialdo, Director, Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette

Centre, 1155 21st Street, NW., suite 4100, Washington, DC 20581, (202) 418-5003.

SUPPLEMENTARY INFORMATION: This action which changes the membership of the Board supersedes the previously published **Federal Register** Notice, August 31, 2001.

Issued in Washington, DC on September 18, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02-24226 Filed 9-23-02; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Unmanned Aerial Vehicles (UAV) and Uninhabited Combat Aerial Vehicles (UCAV) will meet in closed session on October 7, 2002; October 29-30, 2002; and December 3, 2002, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will review UAV/UCAV systems with special emphasis on affordability and increasing costs, interoperability disconnects, communications architectures to include bandwidth and redundancy, accident rates, operational control in both FAA airspace and military restricted airspace, survivability, military utility analysis, and management approaches.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will identify principal impediments to full and rapid exploitation of the joint warfighting potential of UAW and UCAV systems and, further, recommend how these constraints might be mitigated or removed.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

³ The NTIA Request for Comment and the resulting evaluation have no legal effect on existing CPSC, EPA, FDA, NHTSA or USDA regulations and rules, or pending proceedings affecting recalls.

Dated: September 18, 2002.

Patricia L. Toppings,

*Alternative OSD Federal Register Liaison
Officer, Department of Defense.*

[FR Doc. 02-24188 Filed 9-23-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 24, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the e-mail address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: September 18, 2002.

John D. Tressler,

*Leader, Regulatory Information Management
Group, Office of the Chief Information Officer.*

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Strengthening Historically Black Colleges and Universities Program and Historically Black Graduate Institutions Program.

Frequency: Phase I Annually, Phase II every five years.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 117.

Burden Hours: 889.

Abstract: The information is required of institutions of higher education designated as Historically Black Colleges and Universities and Qualified Graduate Programs as stipulated in Title III, Part B of the Higher Education Act of 1965, as amended. This information collection will be used for the evaluation process to determine whether proposed activities are consistent with the legislation and to determine dollar share of congressional appropriation.

Requests for copies of the submission for OMB review; comment request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2089. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address vivan.reese@ed.gov. Requests may also be electronically mailed to the e-mail address OCIO_RIMG@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at the e-mail address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-24159 Filed 9-23-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 24, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 19, 2002.

John D. Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Annual Performance Report Forms for the FIPSE US-Brazil Higher Education Consortia Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 400.

Abstract: FIPSE's US-Brazil Higher Education Consortia Program awards grants to U.S. institutions participating in bilateral institutional cooperation and student exchange programs in the United States and Brazil. The enclosed protocols for the first years and second year annual reports are necessary to ensure that the information and data to be collected will result in a balanced and effective assessment of the student exchanges and curricular developments of the US-Brazil Education Consortia Program.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 1941. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202-4651. Requests may also be electronically mailed to the internet address OCIO.RIMG@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-24219 Filed 9-23-02; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 24, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Karen_F_Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 19, 2002.

John Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Early Childhood Longitudinal Study: Birth Cohort/24 Month Followup.

Frequency: One-time.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 31,364.

Burden Hours: 23,114.

Abstract: The Early Childhood Longitudinal Study, Birth Cohort (ECLS-B) is a nationally representative longitudinal study of children born in the year 2001. The 24 month followup represents the second round of data collection for members of this cohort. Children are assessed using state of the art assessment tools, parents are interviewed as well as child care providers. Together with the Kindergarten component of this early childhood studies program, the survey informs the research and general community about children's health, early learning, development and education experiences. The focus of this survey is on characteristics of children and their families that influence children's first experiences with the demands of formal schools as well as early health care and in- and out-of-home experiences.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2092. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202-4651. Requests may also be electronically mailed to the internet address OCIO.RIMG@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-24220 Filed 9-23-02; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF EDUCATION

Reauthorization of the Adult Education and Family Literacy Act

AGENCY: Office of Vocational and Adult Education, U.S. Department of Education.

ACTION: Notice of public meetings and request for comment on the reauthorization of the Adult Education and Family Literacy Act.

SUMMARY: The Assistant Secretary announces a series of public meetings and invites comments from the public regarding the reauthorization of programs under the Adult Education and Family Literacy Act (the Act) (Title II of the Workforce Investment Act of 1998).

DATES: We must receive your comments on or before October 31, 2002.

We will hold public meetings about the reauthorization of programs under the Act. The dates, times, and places of the meetings are under *Public Meetings* elsewhere in this notice.

ADDRESSES: Address all comments concerning the reauthorization of programs under the Act to Gerri Anderson, Conference Manager, 1010 Wayne Avenue, Suite 300, Silver Spring, Maryland 20910; or by using one of the following methods:

1. *E-Mail.* We encourage you to e-mail your comments to the following address: ganderson@dbconsultinggroup.com.

2. *Facsimile.* You may submit comments by facsimile at (301) 589-4122.

FOR FURTHER INFORMATION CONTACT: Michael Jones, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4521, Mary E. Switzer Building, Washington, DC 20202-7242. Telephone: (202) 205-9260.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meetings

Dates, times, and addresses

We will hold public meetings according to the following schedule:

1. *Date:* October 15, 2002, Time: 1 p.m. to 4 p.m.

Location: Sheraton Nashua Hotel, Wentworth Ballroom, 11 Tara Boulevard, Nashua, NH 03062. Phone: (603) 888-9970, Fax: (603) 891-4179.

Hotel Information: A limited number of rooms has been reserved at the Sheraton Nashua Hotel located at 11 Tara Boulevard, Nashua, NH 03062. To make your reservations, please call 603-888-9970 and refer to "OVAE Public Meeting." The room rate is \$96.12 (tax inclusive) for the reserved rooms on a first-come, first-served basis. Check-in time is 3 p.m., and check-out time is 12 p.m.

1. *Date:* October 25, 2002, Time: 1 p.m. to 4 p.m.

Location: College of The Canyons, 26455 Rockwell Canyon Road, Santa Clarita, CA 91355. Phone: (661) 259-7800, Fax: (661) 259-8302

Hotel Information: A limited number of rooms has been reserved at the Hyatt Valencia Hotel located at 24500 Town Center Drive, Valencia, CA 91355. To make your reservations, please call 1-800-233-1234 and refer to "OVAE Public Meeting." The room rate is \$108.90 (tax inclusive) for the reserved rooms on a first-come, first-served basis. Check-in time is 3 p.m., and check-out time is 12 p.m.

Participants

Those who wish to present comments on the reauthorization of Federal support for the Adult Education and Family Literacy Act at one of the public meetings must reserve time on the agenda for that meeting by contacting Gerri Anderson, Conference Manager, 1010 Wayne Avenue, Suite 300, Silver Spring, MD 20910. Telephone: (voice) 1(888) 589-4366; fax: (301) 589-4122; or via e-mail at: ganderson@dbconsultinggroup.com. Reservations for presenting comments will be accepted on a first-come, first-served basis.

Participants will be allowed approximately 3 to 5 minutes to present their comments, depending upon the number of individuals who reserve time on the agenda. At the meeting, participants also are encouraged to submit two written copies of their comments. Persons interested in making comments are encouraged to address the issues and questions discussed under **SUPPLEMENTARY INFORMATION**.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting rooms and proceedings will be accessible to individuals with disabilities. When making reservations, anyone presenting comments at or attending a meeting who needs special accommodations, such as sign language interpreters, Braille materials, and communication access real-time transcription, should inform Gerri Anderson of his or her specific accessibility needs. You should make requests for accommodations at least 10 working days prior to the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

In addition to soliciting comments during the public meetings, we invite the public to submit written comments on the reauthorization of the Act. We are particularly interested in comments that address the issues and questions described under *Key Issues for Public Comment* elsewhere in this notice.

During and after the comment period, you may inspect all public comments about the reauthorization by contacting Gerri Anderson, Conference Manager, 1010 Wayne Avenue, Suite 300, Silver Spring, MD, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background and Description of the Act

The Act authorizes Federal support to States to provide adult education and literacy services, including adult basic education, adult secondary education, English literacy, and family literacy programs of instruction. For fiscal year (FY) 2002, Congress appropriated \$505 million for these grants to States. Since FY 2000, Congress also has appropriated additional funds for grants to States for

integrated English literacy and civics education services to immigrants and other limited English proficient populations. For FY 2002, \$70 million was appropriated for this purpose.

Under these programs States distribute funds to local providers through a competitive process. Eligible providers include: local educational agencies, community-based organizations, volunteer literacy organizations, correctional education agencies, institutions of higher education, libraries, public housing authorities, and other public or private nonprofit agencies.

The statutory authorization for this program expires on September 30, 2003. In order to contribute in a timely manner to congressional reauthorization discussions, we are beginning a review of this program. To ensure public participation in our review and decision-making, we invite public comment on these issues.

You may obtain an electronic copy of the Act on the Internet at the following site: <http://www.ed.gov/offices/OVAE/CTE/legis.html>.

Individuals with disabilities may obtain a copy of the Act in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact number listed under **FOR FURTHER INFORMATION CONTACT**.

Key Issues for Public Comment

Comments are encouraged on the following priority issues.

1. *Narrowing the Achievement Gap.* The 1992 National Assessment of Adult Literacy (NAALS) indicated that approximately 90 million adults were reading at levels that were insufficient to allow them to participate fully in the economy and obtain new skills necessary for success. In 2002, an updated version of NAALS will be conducted, which will likely indicate that tens of millions of Americans continue to live with low literacy. Yet programs funded under the Act currently serve only about 2.7 million individuals each year. This disparity between available resources and need is likely to persist for the foreseeable future.

- How can we improve the targeting of Federal resources on effective programs that will produce the greatest return on the Federal investment?

- What are the features of effective adult education and literacy programs that should be given higher priority for Federal resources?

- How can we improve the performance of adult education programs, increasing their success only

in not increasing the number of completers but also in generating more rapid knowledge and skill gains?

- How can we improve the array of services available to support adult learners who are currently not accessing learning through the present system?

- Can non-traditional service providers be better integrated into a multi-faceted delivery system? What changes would promote the delivery of high-quality, accountable services by community-based organizations, faith-based organizations, and businesses?

- How should our national program funds be targeted to help States close the achievement gap?

2. *Increasing Accountability for Student Performance.* The Act established a State accountability system that holds States and other grant recipients accountable for meeting annual, agreed-upon levels of performance on a set of "core indicators" specified in the statute. Do these core indicators measure student performance and demonstrate the impact of the Federal investment well? How could data be reported differently to enhance their meaning to the public, to students, and to policymakers?

3. *Coordination with Federal Employment and Training Programs.* Title I of the Workforce Investment Act (WIA) created a one-stop delivery system that links multiple Federal education and training programs in order to make these services more accessible to the public, to reduce duplication of services, and to facilitate coordinated planning across programs. Adult education and literacy programs supported by the Act are "mandatory partners" that are required to participate in the one-stop delivery system. They are also represented on local workforce investment boards that govern the one-stop system in local areas.

- Have the one-stop delivery system's goals of improving public access to adult education services, improving academic achievement, reducing duplication, and facilitating coordination been achieved in local areas? What changes are needed to promote the further attainment of these goals? How have memoranda of understanding [MOUs] among the delivery system's partners worked to benefit adult education participants?

- States negotiate annual levels of performance for WIA Title I employment programs for a set of "core indicators" that one similar to those established under the Act. Placement in employment, for example, is measured for both WIA Title I and the Act. Should these indicators be measured consistently across these programs and

others, using the same population and other definitions? If so, how should this common employment measure be constructed and what definitions should be used? Are there other indicators (e.g., educational attainment) for which there should also be common measurement approaches and definitions?

- Have WIA incentive grants helped States look at ways to promote student achievement across programs and help close the achievement gap?

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Program Authority: 20 U.S.C. 9201, *et seq.*

Dated: September 19, 2002.

Carol D'Amico,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 02-24250 Filed 9-23-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Reauthorization of Federal Support for Vocational and Technical Education Programs

AGENCY: Office of Vocational and Adult Education, U.S. Department of Education.

ACTION: Notice of public meetings and request for comment on the reauthorization of Federal support for vocational and technical education programs.

SUMMARY: The Assistant Secretary announces a series of public meetings and invites comments from the public regarding the reauthorization of programs under the Carl D. Perkins Vocational and Technical Education Act of 1998 (the Act) and related issues, including Federal support for secondary school reform.

Public Meetings

Dates, Time, and Addresses: We will hold public meetings according to the following schedule:

1. Date: October 15, 2002, Time: 9 a.m. to 12 p.m.

Location: Sheraton Nashua Hotel, Wentworth Ballroom, 11 Tara Boulevard, Nashua, NH 03062. Phone: (603) 888-9970. Fax: (603) 891-4179.

Hotel Information: A limited number of rooms has been reserved at the Sheraton Nashua Hotel located at 11 Tara Boulevard, Nashua, NH 03062. To make your reservations, please call 603-888-9970 and refer to "OVAE Public Meeting." The room rate is \$96.12 (tax inclusive) for the reserved rooms on a first-come, first-served basis. Check-in time is 3 p.m., and check-out time is 12 p.m.

2. Date: October 25, 2002, Time: 9 a.m. to 12 p.m.

Location: College of The Canyons, 26455 Rockwell Canyon Road, Santa Clarita, CA 91355. Phone: (661) 259-7800. Fax: (661) 259-8302.

Hotel Information: A limited number of rooms has been reserved at the Hyatt Valencia Hotel located at 24500 Town Center Drive, Valencia, CA 91355. To make your reservations, please call 1-800-233-1234 and refer to "OVAE Public Meeting." The room rate is \$108.90 (tax inclusive) for the reserved rooms on a first-come, first-served basis. Check-in time is 3 p.m., and check out time is 12 p.m.

Participants: Those who wish to present comments on the reauthorization of Federal support for vocational and technical education programs and related issues at one of the public meetings must reserve time on the agenda for that meeting by contacting the individuals identified under *Reservations and Additional Meeting Information*. Reservations for presenting comments will be accepted on a first-come, first-served basis.

Participants will be allowed approximately 3 to 5 minutes to present their comments, depending upon the number of individuals who reserve time on the agenda. At the meeting, participants also are encouraged to submit two written copies of their comments. Persons interested in making comments are encouraged to address the issues and questions discussed under **SUPPLEMENTARY INFORMATION**.

Reservations and Additional Meeting Information: Individuals who intend to present comments at one of the public meetings must make reservations by contacting Gerri Anderson, Conference Manager, 1010 Wayne Ave, Suite 300, Silver Spring, Maryland 20910 (voice)

1(888) 589-4366; (fax) (301) 589-4122; (Federal Information Relay Service) 1-800-877-8339; (e-mail) ganderson@dbconsultinggroup.com.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting rooms and proceedings will be accessible to individuals with disabilities. In addition, when making reservations, anyone presenting comments at or attending a meeting who needs special accommodations, such as sign language interpreters, Braille materials, and communication access real-time transcription, should inform the previously listed individual of his or her specific accessibility needs. You should make requests for accommodations at least 10 working days prior to the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Request for Written Comments

In addition to soliciting comments during the public meetings, we invite the public to submit written comments on the reauthorization of Federal support for vocational and technical education programs, as well as related issues, including secondary school reform. We are particularly interested in comments that address the issues and questions described under **SUPPLEMENTARY INFORMATION**.

DATES: Submit comments on or before October 31, 2002.

ADDRESSES: Written comments should be addressed to Gerry Anderson, Conference Manager, 1010 Wayne Ave, Suite 300, Silver Spring, Maryland 20910.

1. *E-Mail.* We encourage you to e-mail your comments to the following address:

ganderson@dbconsultinggroup.com.

2. *Facsimile.* You may submit comments by facsimile at (301) 589-4122. If you use a telecommunications device for the deaf, you may call (202) 205-5538.

Individuals with disabilities may obtain a copy of this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the previous paragraph. *Availability of Copies of the Act:* You may obtain an electronic copy of the Act on the Internet at the following site: <http://www.ed.gov/offices/OVAE/CTE/legis.html>.

Individuals with disabilities may obtain a copy of the Act in an

alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact number listed in the previous paragraph.

SUPPLEMENTARY INFORMATION: The Act authorizes Federal support to improve secondary and postsecondary vocational and technical education programs. The Act includes seven programs, with more than \$1.3 billion in funding for Fiscal Year 2002. The funded programs are: the Vocational and Technical Education State Grants; Tech-Prep Education State Grants; National Activities, including a national research center; the Native American Vocational and Technical Education program; the Tribally-Controlled Postsecondary Vocational and Technical Institutions program; America's Career Resource Network grants to States; and the Tech-Prep Demonstration program.

The statutory authorization for these programs expires on September 30, 2004. In order to contribute in a timely manner to congressional reauthorization discussions, we are beginning a review of these programs, as well as related issues, including secondary school reform. To ensure public participation in our review and decision-making, we invite public comment on these issues.

Key Issues for Public Comment

Comments are encouraged on the following priority issues.

1. Narrowing the Achievement Gap

Since the release of *A Nation At Risk* in 1983, little if any, improvement has been made in the performance of our nation's high school students. By all accounts, improvements have not been substantial enough so that every student is prepared for a successful future. In fact, data show that by the end of the 1980s, progress stopped cold and, through the 1990s, achievement gaps have remained stable or widened. A number of trends indicate that we may still be a "nation at risk" of not preparing our students for their future.

Scores by 12th graders on the National Assessment of Educational Progress (NAEP) remain disturbingly low. As of 1998, only 40 percent of 12th graders were able to read at or above a proficient level and just 22 percent were able to write at or above a proficient level. Only 16 percent of 12th grade students in 2000 scored at or above a proficient level in math and 18 percent scored at or above a proficient level in science. Despite a substantial decrease in achievement gaps between 1970 and 1999, white students still consistently outperform peers of other racial and ethnic backgrounds in every subject area. In fact, by 1999, on average, 17-

year-old African-American and Hispanic students had skills in English, mathematics, and science skills comparable to those of 13-year-old White students. Achievement gaps also exist among students who pursue different programs of study. As of 1994, vocational concentrators lagged behind other students in English, math, and science achievement.

On January 8, 2002, President George W. Bush signed into law the No Child Left Behind Act of 2001, the most sweeping reform of the Elementary and Secondary Education Act (ESEA) since it was enacted in 1965. Its provisions include increased accountability for States, school districts, and schools; greater choice for parents and students, particularly those attending low-performing schools; more flexibility for States and local educational agencies in the use of Federal education dollars; and a stronger emphasis on reading, especially for our youngest children.

Although No Child Left Behind applies to both elementary and secondary students, it places primary and much-needed emphasis on the 28 million public school students enrolled in kindergarten through 8th grade. Follow-up action that builds on No Child Left Behind may be needed to improve the achievement of the nation's high school students.

- Is there a need for additional or separate Federal action to address the achievement gap among secondary school students?
- Is there a need for additional or separate Federal action to address the achievement gap among non-baccalaureate postsecondary students?
- How should Federal support for vocational and technical education programs be aligned with Title I of the Elementary and Secondary Education Act and other elementary and secondary education programs?
- The current array of Federal programs that impact high schools and their students, may or may not represent a coherent Federal high school policy.
- What policies and programmatic elements would an effective, coherent Federal strategy to promote high school transformation include?
- How would existing vocational and technical education be modified to support this Federal strategy?
- Nearly one-third of college freshman take remedial math courses, and over one-quarter take remedial English. In some states, estimates of students requiring college remediation are nearly 50 percent. What can be done to assure that every student is prepared for postsecondary education, without the need for remediation?

2. Focusing on What Works

The Federal investment in vocational and technical education comprises about seven percent of the total amount spent nationally on vocational and technical education.

- How can these limited resources be targeted to maximize the return on the Federal investment?
- What are the features of effective secondary vocational and technical education programs that should be given higher priority for Federal resources?
- What are the features of effective postsecondary vocational and technical education programs that should be given higher priority for Federal resources?
- How should our national program funds be targeted to help close the achievement gap between high and low performing students, including factors that are based on gender, ethnicity, economic status and disability?

3. Increasing Accountability for Student Performance

The Act established a State accountability system that holds States accountable for meeting annual, agreed-upon levels of performance on a set of "core indicators" specified in the statute. Each State has discretion to determine how it will measure each of the indicators.

- While the Act's accountability system has heightened attention on student achievement, completion, and other outcomes, some contend that the system is needlessly complex and does not generate straightforward, easily understandable information about student, program, and State performance. How can this accountability system be simplified and improved?
- The law uses a single set of indicators to measure the effectiveness of both secondary and postsecondary programs. However, some of the indicators, such as attainment of State-establish academic proficiencies, are not readily applicable to postsecondary education. What indicators are most appropriate and useful for measuring the effectiveness of postsecondary vocational and technical education programs? To what types of students should they apply? For example, should non-credit students be included in the accountability system?

4. Coordination With Federal Employment and Training Programs

Title I of the Workforce Investment Act (WIA) created a one-stop delivery system that links multiple Federal

education and training programs in order to make these services more accessible to the public, to reduce duplication of services, and to facilitate coordinated planning across programs. Postsecondary vocational and technical education programs supported by the Act are "mandatory partners" that are required to participate in the one-stop delivery system. They are also represented on local workforce investment boards that govern the one-stop system in local areas.

- Have the one-stop delivery system's goals of improving public access to postsecondary vocational and technical education, reducing duplication, and facilitating coordination been achieved in local areas? What changes are needed to promote the further attainment of these goals? How have memoranda of understanding [MOUs] worked to benefit the postsecondary vocational and technical education participant?
- States negotiate annual levels of performance for WIA Title I employment programs for a set of "core indicators" that are similar to that established under the Act. Placement in employment, for example, is measured for both WIA Title I and the Act. Should these indicators be measured consistently across these programs and others, using the same population and other definitions? How should this common employment measure be constructed and what definitions should be used? Are there other indicators [e.g., educational attainment] for which there should also be common measurement approaches and definitions?
- Have WIA incentive grants helped States look at ways to promote student achievement across programs and help close the achievement gap?

Electronic Access to This Document

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Program Authority: 20 U.S.C. 2301, *et seq.*

Dated: September 19, 2002.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 02-24251 Filed 9-23-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03-03; Enhanced Research Capabilities at DOE X-ray and Neutron Facilities

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for new capabilities or for upgrading existing research capabilities for innovative fundamental research at DOE-supported synchrotron light sources and neutron sources. Such instrumentation should employ state-of-the-art technology so that the photon and neutron beams are utilized more effectively. Applications for the development of new capabilities, as well as upgrading of existing capabilities are encouraged.

DATES: Potential applicants are required to submit a brief preapplication. All preapplications, referencing Program Notice 03-03, should be received by November 12, 2002. A response to the preapplications encouraging or discouraging a formal application will be communicated to the applicant within approximately thirty days of receipt. To permit timely consideration for awards in Fiscal Year 2003, formal applications submitted in response to this notice must be received by January 28, 2003.

ADDRESSES: All preapplications, referencing Program Notice 03-03, should be sent to Dr. Helen M. Kerch, Office of Basic Energy Sciences, Division of Materials Sciences, ER-132/ Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-1290.

After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications. We encourage you to submit formal applications in response to this solicitation electronically through DOE's Industry Interactive Procurement System (IIPS) at: <http://e-center.doe.gov/>. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment

via the Internet. Applications must be submitted through IIPS in PDF format by an authorized institutional business official. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: HelpDesk@e-center.doe.gov or you may call the help desk at (800) 683-0751. Further information on the use of IIPS by the Office of Science is available at: <http://www.sc.doe.gov/production/grants/grants.html>.

If you are unable to submit the application through IIPS, formal applications may be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC-64/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585-1290, ATTN: Program Notice 03-03.

When submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant, the following address must be used: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC-64, 19901 Germantown Road, Germantown, MD 20874-1290, ATTN: Program Notice 03-03.

FOR FURTHER INFORMATION CONTACT: Dr. Helen M. Kerch, Office of Basic Energy Sciences, Division of Materials Sciences, ER-132/Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-1290. Telephone: (301) 903-2346; Fax: (301) 903-9513; e-mail: helen.kerch@science.doe.gov. The full text of Program Notice 03-03 is available via the Internet using the following Web address: <http://www.sc.doe.gov/production/grants/grants.html>.

SUPPLEMENTARY INFORMATION: X-ray and neutron scattering are powerful tools used to investigate the fundamental properties of materials. BES is the major supporter of x-ray and neutron science in the United States and has pioneered the development of virtually all of the instruments and techniques used at these facilities for research in materials sciences, surface science, condensed matter physics, atomic and molecular physics, chemical dynamics, x-ray microscopy, tomography, femtosecond phenomena, interfacial/environmental, and geophysics studies. Within the physical sciences, BES remains the dominant federal supporter of beamline development and instrument fabrication providing as much as 85% of the federal support for these activities. Major instruments at the synchrotron light

sources and the neutron sources have a lifetime of 7-10 years after which the instruments may undergo major upgrades or be retired. Thus, after a facility is fully instrumented, about 10-15% of the instruments must be upgraded or replaced each year to keep the facility at the forefront of science.

The National User Facilities supported by the Office of Basic Energy Sciences are the Spallation Neutron Source (SNS) (currently under construction), National Synchrotron Light Source (NSLS), High Flux Isotope Reactor (HFIR), Intense Pulsed Neutron Source (IPNS), Stanford Synchrotron Radiation Laboratory (SSRL), Advanced Light Source (ALS), Advanced Photon Source (APS), and Los Alamos Neutron Scattering Center (LANSCE). These facilities have the capabilities of extreme flux, or brightness, to make certain experiments possible, which couldn't be done otherwise. The Department's intention for this program is to support fundamental research, which will include the upgrade and/or development of new instrumentation for general user beamlines at the Department's National User Facilities. The ability to conduct innovative fundamental research should be emphasized in each application. Grant applications are encouraged from the fields of solid-state physics, materials chemistry, metals and ceramics, chemical sciences, geosciences, and environmental sciences for energy-relevant research which make use of the DOE-supported user facilities. Instrumentation appropriate for consideration would include, but not be limited to, the following: beamline optics and transport guides, monochromators of much greater resolution, more efficient detectors to reduce the background noise, sample environments that afford control of temperature, pressure and magnetic field, electronics and data processing equipment to enable investigators to carry out new or more difficult experiments and/or more experiments in the same amount of time.

Program Funding

It is anticipated that approximately \$7,292,000 will be available for awards during FY 2003 to support instrument upgrades, instrument replacements, and new instrumentation at the x-ray and neutron scattering facilities, contingent upon the availability of appropriated funds. These funds will be competed among both academic and laboratory institutions, and the resulting instruments and beamlines will be made available to the entire U.S. scientific research community. Multiyear

beamline and instrument development in such areas as materials sciences, surface science, condensed matter physics, atomic and molecular physics, polymers and soft materials, nanostructured materials, x-ray microscopy, tomography, femtosecond phenomena, interfacial studies, and imaging results will be considered. The number of awards and the range of funding will depend on the number of applications received and selected for award.

Collaboration

Applicants are encouraged to collaborate with industry and to incorporate cost sharing and consortia wherever feasible. The extent of the collaboration and cost sharing will be factors, along with the principal criterion of the scientific merit of the application, in the selection process by the Department.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources;
4. Reasonableness and appropriateness of the proposed budget.

The evaluation will include program policy factors, such as the relevance of the proposed research to the terms of the announcement and agency's programmatic needs. External peer reviewers will be selected with regard to their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

General information about the development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the latest version of SC's Application Guide is possible via the Internet at the following Web address: <http://www.sc.doe.gov/production/grants/grants.html>. DOE is under no obligation to pay for any costs

associated with the preparation or submission of applications.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on September 17, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02-24214 Filed 9-23-02; 8:45 am]

BILLING CODE 6450-03-P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by October 24, 2002. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202-395-7285) or e-mail (Ballen@omb.eop.gov) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395-3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202-287-1705) or e-mail (grace.sutherland@eia.doe.gov) is recommended. The mailing address is Statistics and Methods Group (EI-70),

Forrestal Building, U.S. Department of Energy, Washington, DC 20585-0670. Mrs. Sutherland may be contacted by telephone at (202) 287-1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. EIA-28, "Financial Reporting System."
2. Energy Information Administration.
3. OMB Number 1905-0149.
4. Three-year approval requested.
5. Mandatory.
6. The Financial Reporting System, Form EIA-28 collects data used to analyze the energy industry's competitive environment as well as energy industry resource development, supply distribution, and profitability issues. Survey results from major energy producers are published annually and are used by both public and private analysts.
7. Business or other for-profit.
8. 13,470 hours (30 respondents x 1 response per year x 449 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13)(44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, September 10, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02-24213 Filed 9-23-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. OR02-12-000]

Colonial Pipeline Company; Notice of Petition for Declaratory Order

September 18, 2002.

Take notice that on August 28, 2002, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)), Colonial Pipeline Company (Colonial) filed a petition requesting a declaratory order that would enable Colonial to enter into a lease arrangement with Plantation Pipe Line Company (Plantation) to ship greater volumes of petroleum products from the western Gulf Coast of the United States to markets in the Northeast.

Colonial states that it is unable to go forward with this arrangement without advance assurance that the Commission will not entertain requests from shippers from points of origin on Plantation who might seek an order of the Commission pursuant to section 15(3) of the Interstate Commerce Act (ICA) that would force Colonial to establish new or additional routes to destinations on Colonial downstream of Greensboro, North Carolina.

Accordingly, Colonial requests a Commission declaration that Colonial will not be ordered to establish through routes with Plantation from Plantation origins to destinations on Colonial in the Northeast on the ground that space leased by Colonial on the Plantation system will be considered to be part of the Colonial common carrier system and will therefore not be considered a "connecting carrier" line; or on the additional or alternative ground that in the particular circumstances described in its petition, such an order would not be in the public interest. In addition, Colonial requests declarations that Colonial will be allowed to remove its connection to Plantation at its sole discretion subject to any contractual obligations it may have, and that Colonial will be permitted to rely on its market-based ratemaking authority for movements on the leased space from Colonial's western Gulf Coast origin markets to its destinations in the Northeast.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions

or protests must be filed on or before October 11, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502-8222 or for TTY, (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,*Deputy Secretary.*

[FR Doc. 02-24193 Filed 9-23-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP02-542-000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 2002.

Take notice that on September 13, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 2002.

Kern River states that the purpose of this filing is to revise Kern River's tariff to reflect the sale of Kern River by The Williams Companies, Inc. to MidAmerican Energy Holdings Company and to make minor housekeeping changes.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions

or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502-8222 or for TTY, (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,*Deputy Secretary.*

[FR Doc. 02-24197 Filed 9-23-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP02-543-000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 2002.

Take notice that on September 13, 2002, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet Number 267, to become effective November 1, 2002.

Northern Border is filing a revised tariff sheet to allow the pipeline the flexibility to build, own, and operate lateral lines from the existing mainline transmission system.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions

or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502-8222 or for TTY, (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-24198 Filed 9-23-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-529-001]

Portland Natural Gas Transmission System; Notice of Compliance Filing

September 18, 2002.

Take notice that on September 12, 2002, Portland Natural Gas Transmission System (PNGTS) filed to amend its Annual Charge Adjustment (ACA) filing. PNGTS is filing the following revised tariff sheet, to become effective on October 1, 2002, to implement this new ACA charge:

Second Revised Sheet No. 100

PNGTS states that, pursuant to Section 154.402 of the Commission's regulations and Section 17 of the General Terms and Conditions of its tariff, that the purpose of this filing is to change its ACA surcharge to \$0.0021 per dekatherm for the upcoming fiscal year.

PNGTS states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502-8222 or for TTY, (202) 502-8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-24196 Filed 9-23-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02-33-001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

September 18, 2002.

Take notice that on September 12, 2002, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sub. Second Revised Sheet No. 405A.01.

Tennessee states that the revised tariff sheet is being filed in compliance with the Commission's August 29, 2002 Order in the above-referenced docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS"

link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502-8222 or for TTY, (202) 502-8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-24192 Filed 9-23-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02-99-004 and RP02-144-004]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

September 18, 2002.

Take notice that on September 12, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sixth Revised Sheet No. 33 and Eighth Revised Sheet No. 33, with proposed effective dates of September 5, 2002 and October 1, 2002.

Transco states that the filing was made pursuant to Ordering Paragraph (B) of the Commission's Order on Initial Decision issued September 5, 2002 in Docket Nos. RP02-99-000 and RP02-144-000.

Transco states that the purpose of the instant limited Section 4 filing is to comply with the Commission's requirement that Transco establish an unbundled gathering rate for service on the North Padre Island gathering facilities of 1.69 cents per Dth effective September 5, 2002.

Transco states that copies of the filing are being mailed to each of its affected customers, interested State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502-8222 or for TTY, (202) 502-8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-24195 Filed 9-23-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-288-009 through 024]

Transwestern Pipeline Company; Notice of Technical Conference

September 18, 2002.

Take notice that on August 16, 2002, Transwestern Pipeline Company (Transwestern) filed a request for a conference to discuss Transwestern's proposal for addressing certain issues in these dockets.

Take notice that a technical conference to discuss the various issues raised by Transwestern's filing will be held on Wednesday, September 25, 2002 at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-24194 Filed 9-23-02; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7381-5]

U.S.-Mexico Border 2012 Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the availability of the draft document for the U.S.-Mexico Border 2012 Program.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing

the availability of the draft document, "Border 2012: U.S.-Mexico Environmental Program" (Border Plan or Border 2012). Border 2012 is a 10-year, binational, results-oriented, environmental program for the U.S.-Mexico border region, which has been developed by the EPA, the U.S. Department of Health and Human Services, Secretaría de Medio Ambiente y Recursos Naturales (Mexico's Secretariat of Environment and Natural Resources), Secretaría de Salud (Mexico's Secretariat of Health), the U.S. border Tribes, and the environmental agencies from each of the ten U.S.-Mexico border states. The proposed Border 2012 Program is the latest multi-year, binational planning effort to be implemented under the La Paz Agreement and succeeds Border XXI, a five-year program that ended in 2000. The mission of Border 2012 is to protect public health and the environment in the U.S.-Mexico border region, consistent with the principles of sustainable development.

EPA is requesting comments from interested parties and border stakeholders on the draft Border Plan. **DATES:** Written comments must be submitted no later than November 22, 2002. Written comments can be submitted by mail or fax to either of EPA's Border Offices. Comments can also be submitted on EPA's U.S.-Mexico Border Web site at: <http://www.epa.gov/usmexicoborder>. In addition, EPA will be accepting comments at public meetings to be held throughout the border region during October and November 2002. The draft document, "Border 2012: U.S.-Mexico Environmental Program", is posted in English and Spanish on EPA's web page at: <http://www.epa.gov/usmexicoborder>. In addition, English/Spanish copies of the draft document can be requested by contacting either of the EPA Border Offices:

EPA El Paso Border Office: 4050 Rio Bravo, Suite 100, El Paso, Texas 79902. Telephone (915) 533-7273; Toll-free (800) 334-0741; FAX (915) 533-2327. Office Hours: 8 a.m.-5 p.m. C.S.T.

EPA San Diego Border Office: 610 West Ash St., Suite 905, San Diego, CA 92101. Telephone (619) 235-4765; Toll-free (800) 334-0741; FAX (619) 235-4771. Office Hours: 8 a.m.-5 p.m. P.S.T.

FOR FURTHER INFORMATION CONTACT: EPA El Paso Border Office at (915) 533-7273 or (800) 334-0741 or EPA San Diego Border Office at (619) 235-4765 or (800) 334-0741.

SUPPLEMENTARY INFORMATION:

I. Background

For decades, the U.S. and Mexico have collaborated on efforts to protect the environment and health of border communities. The most recent binational effort was the Border XXI Program, which was initiated in 1996 with a five-year plan for addressing the most challenging environmental and environmentally-related health problems in the region. The formal foundation for these binational efforts is the La Paz Agreement (<http://www.epa.gov/usmexicoborder/2002/efpaz.htm>) signed by Presidents De la Madrid and Reagan in 1983. The agreement is implemented through multi-year binational programs such as Border XXI and the new Border 2012 program.

Although most of the Border XXI projects were implemented at the local level, its organizational structure emphasized border-wide coordination and planning. Nine border-wide workgroups—each focused on a particular environmental program, such as air quality or hazardous waste management—coordinated the efforts of various federal, state, tribal and local governmental activities in the border area. The new Border 2012 Program builds upon the successes achieved under Border XXI while also establishing a regionally-focused border plan to facilitate environmental priority setting and planning at the regional and local levels.

II. A New Approach

The proposed Border 2012 emphasizes a bottom-up approach, anticipating that local decision-making, priority-setting and project implementation will best address environmental issues in the border region. Border 2012 will emphasize concrete measurable results, public participation, transparency, and timely access to environmental information.

The Border 2012 Program proposes some key changes from Border XXI including: (1) New mission statement; (2) integration of pollution prevention and environmental information into the activities of all coordinating bodies; and (3) new organizational structure that focuses on regional workgroups to facilitate regional- and local-level planning and priority setting.

The major features of the Border 2012 program are the following: the coordinating bodies, goals and measurable objectives, and reporting results to the public.

III. Coordinating Bodies

Border 2012 is organized around coordinating bodies. These coordinating

bodies include the following: the National Coordinators, four Regional (geographically-focused) Workgroups, three Border-wide Workgroups, and Policy Forums.

A. National Coordinators

Consistent with the requirements of the La Paz Agreement, the National Coordinators will monitor and manage implementation of the Border 2012 Program and ensure cooperation and communication among all coordinating bodies.

B. Regional Workgroups

Providing the foundation of the Border 2012 Program, four multi-media, regionally-focused workgroups will support the efforts of local Task Forces and coordinate activities at the regional and local level. The proposed Regional Workgroups are the following: California—Baja California, Arizona—Sonora, New Mexico—Texas—Chihuahua, and Texas—Coahuila—Nuevo León—Tamaulipas. Each Regional Workgroup will be co-chaired by one state and one federal representative from each country.

C. Border-wide Workgroups

Border-wide Workgroups will concentrate on issues that are multi-regional (identified as a priority by two or more Regional Workgroups) and primarily federal in nature (requiring direct, high-level, and sustained leadership by federal program partners in the United States and Mexico). Three Border-wide Workgroups will have federal U.S. and Mexican co-chairs for the following issues: environmental health, emergency preparedness and response, and cooperative enforcement and compliance.

D. Policy Forums

Policy Forums will have a media-specific focus and will concentrate on broad policy issues that require an on-going dialogue between the two countries. Three Policy Forums will be established to address policy issues and provide technical assistance to the Regional and Border-wide Workgroups in the following areas: air, water, hazardous waste, solid waste, and toxic substances.

The Regional Workgroups, Border-wide Workgroups, and the Policy Forums will be broad-based and will include representation from local communities from both sides of the border, including non-governmental or community-based organizations; academic institutions; local, state, and tribal representatives; and binational organizations (such as the Border

Environmental Cooperation Commission or the North American Development Bank) with expertise in the given workgroup's subject area.

Except for the National Coordinators, the coordinating bodies may create Task Forces to address specific community-identified concerns and implement site-specific projects. Task Forces will be led by a "team leader" from each country and may be from any sector of government (including tribal governments), the private sector, academia, or from non-governmental organizations.

IV. Goals and Objectives

Border 2012 establishes the following five border-wide environmental goals for the U.S.-Mexico border region: reduce water contamination, reduce air pollution; reduce land contamination; reduce exposure to pesticides, particularly children's exposure; and reduce exposure to chemicals as a result of accidental chemical releases and/or deliberate acts of terrorism.

For each of the above goals, measurable objectives have been proposed. In all, there are fifteen measurable objectives. These objectives are in the areas of:

- Homes connected to potable water, wastewater collection and treatment systems;
- Surface and groundwater water quality;
- Ambient air quality standards;
- Human risk from air toxics;
- Voluntary compliance in maquiladoras;
- Hazardous and solid waste capacity in the border region;
- Hazardous waste violations at ports of entry;
- Tire piles;
- Brownfields;
- Pesticide exposure;
- Contingency planning; and
- Binational emergency planning.

V. Reporting Results

Every two years the coordinating bodies will publish an implementation report that describes the status of current and proposed activities under the Border 2012 program. In addition, comprehensive mid-term and final progress reports that describe progress on meeting the goals and objectives of the program, including environmental indicators, will be published in 2006 and 2012 respectively.

VI. Public Input and Participation During the Comment Period

EPA, SEMARNAT, and the U.S. and Mexican border states are seeking input from border stakeholders and other

interested parties about the proposed Border 2012 program. We invite public comments related to all aspects of the proposed Border 2012 plan, and, in particular, we are interested in comments related to the following topics:

- Once established, each Regional Workgroup will develop specific plans and projects for that Region. What are the most important environmental issues for each region? Some examples of important environmental issues are included in the draft document.
- Will the new structure, especially the introduction of Regional Workgroups and Task Forces, help focus on the key environmental issues in each region? Are there improvements that could be made to the proposed structure that would improve decision-making?
- Will the Border 2012 plan provide adequate input from border stakeholders to state and federal decision-makers? Are there ways to improve the workgroup process to insure that stakeholders' concerns are heard?

A number of opportunities for the public to comment on the draft document are provided as follows:

A. EPA U.S.-Mexico Border Web Site

Individuals can submit comments directly by filling out the public comment form at: <http://www.epa.gov/usmexicoborder/>

B. Public Meetings

A number of public meetings will be held in October and November in the following cities: Deming, New Mexico; Las Cruces, New Mexico; Alpine, Texas; Imperial County, California Yuma/San Luis, Arizona; Sells, Arizona; Douglas, Arizona. In addition, bi-national meetings will be held in San Diego, California/Tijuana, Baja California; Nogales, Arizona/Nogales, Sonora; El Paso, Texas/Ciudad Juárez, Chihuahua; Del Rio, Texas/Ciudad Acuña, Coahuila; Laredo, Texas/Nuevo Laredo, Tamaulipas; Brownsville, Texas/Matamoros, Tamaulipas. For meeting locations and times, please check the EPA U.S.-Mexico Border website or contact the EPA Border Offices. Public comment will be accepted at these meetings.

C. Interested parties can also mail or fax comments to the EPA Border Offices at the addresses and fax numbers listed above.

D. On-Line Dialogue

The Udall Center for Studies in Public Policy will be hosting an on-line dialogue on the BECCNet Listserve during the comment period for interested parties to exchange ideas

about the draft plan. The purpose of this dialogue is not to submit public comment, but rather to provide a forum for discussion of the draft document. To participate in or to monitor this dialogue, one must subscribe to the BECCNet Listserv. The instructions for subscribing to the BECCNet can be found on the Udall Center Web site at: <http://udallcenter.arizona.edu/listservs/beccnet.html>

VII. EPA's Relationship With U.S. Border Tribes in Border 2012

EPA will continue to honor its unique trust relationship with U.S. Indian tribes and enforce its "Policy for the Administration of Environmental Program on Indian Reservations" within the Border 2012 U.S.-Mexico program. EPA recognizes that U.S. tribal governments are sovereign and are the primary parties for setting standards, making environmental policy decisions, and managing environmental programs on Indian reservations.

Within the Border 2012 Program, EPA will comply with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" and work with tribes when formulating and implementing policies or taking other actions that have a substantial direct effect on any Indian tribe.

EPA is working with U.S. border tribes to develop mechanisms to ensure full participation of U.S. border tribes in the Border 2012 Program.

Dated: September 18, 2002.

Joan Fidler,

Director Office of Western Hemisphere and Bilateral Affairs, Office of International Affairs.

[FR Doc. 02-24230 Filed 9-23-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

September 16, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it

displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments on or before November 25, 2002.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202-418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: OMB Control Number: 3060-0219.

Title: Section 90.49(a)(2)(xi), Communications Standby Facilities "Special Eligibility Showing".

Form Number: N/A.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 0.75 hours.

Total Annual Burden: 150 hours.

Total Annual Cost: None.

Needs and Uses: 47 CFR section 90.49(a)(2)(xi) requires each communications common carrier that operates communications circuits that normally carry essential communications is eligible to apply for standby radio facility authorization only for transmissions during periods when normal circuits are inoperable due to special circumstances. The initial application for authorization must include a statement describing the desired radio communications facilities, the proposed operating method, a description of the normal messages, and an explanation of how their disruption will endanger life or public property.

OMB Control: 3060-0251.

Title: Section 74.833, Temporary Authorizations.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 12 hours.

Total Annual Cost: None.

Needs and Uses: 47 CFR section 74.833 requires that requests for special temporary authorization be made by informal applications for low power auxiliary station operations, which cannot be conducted in accordance with section 74.24 of the FCC's rules, and for operations of a temporary nature.

Section 74.24 states that classes of broadcast auxiliary stations may be operated on a short-term basis under the authority conveyed by a part 73 licensee without prior authorization from the FCC, subject to certain conditions. The FCC staff will use these data to insure that the temporary operation of a low power auxiliary station does not cause interference to other existing stations and to assure compliance with current FCC rules and regulations.

OMB Control Number: 3060-0435.

Title: Section 80.361 Frequencies for Narrow-Band Direct-Printing (NB-DP) and Data Transmissions.

Form Number: N/A.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit entities; and Individuals or households.

Number of Respondents: 2.

Estimated Time per Response: 2 hours.

Total Annual Burden: 4 hours.

Total Annual Cost: None.

Needs and Uses: Under 47 CFR section 80.361, public coast station applicants must submit a "showing of need" to obtain new or additional narrow-band direct-printing (NB-DP) frequencies. Applicants for new or additional NB-DP frequencies must also show the service schedule for each currently licensed or proposed series of NB-DP frequencies. The need for additional frequencies is based on showing a minimum 40% usage of existing NB-DP frequencies. The FCC uses this information to determine whether to grant a public coast station's application for a NB-DP frequency and if these frequencies are being hoarded or under utilized.

OMB Control Number: 3060-0543.

Title: Section 21.913, Signal Booster Stations.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 250.

Estimated Time per Response: 0.5 to 2.5 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 125.

Total Annual Cost: \$90,000.

Needs and Uses: 47 CFR section

21.913(e) requires each applicant for an MDS signal booster station to obtain written permission from the licensee of each MDS, ITFS, and OFS station whose signal is retransmitted. Section 21.913(g) permits an MDS or ITFS licensee to install and commence operation of low power signal booster stations without a formal application, but the licensees must submit a certification within 48 hours of installation of the booster station to demonstrate compliance with the various components of sections 21.913(g). The written consent statements under section 21.913(e) are attached to the FCC Form 304 to verify that the applicant has permission to retransmit the signal of other licensees' stations, and under section 21.913(g) to note that the applicant has compiled with guidelines of the certification process and that the booster will not cause harmful interference.

OMB Control Number: 3060-0663.

Title: Section 21.934, Assignment or Transfer of Control of BTA Authorization.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 50 hours.

Total Annual Cost: None.

Needs and Uses: 47 CFR Section

21.934 requires a Basic Trading Area (BTA) authorization holder to file a statement that its authorization was obtained through competitive bidding, when seeking approval for a transfer of control or assignment of the authorization within three years of receiving the authorization through competitive bidding procedures. Along with this statement, the applicant must also file copies of documents containing information on the amount of consideration. The FCC staff use this information to determine whether there has been unjust enrichment to the person selling the station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-24210 Filed 9-23-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 8, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309-4470:

1. *Emile Joseph Barras*, St. Martinville, Louisiana; to acquire additional voting shares of St. Martin Bancshares, Inc., St. Martinville, Louisiana, and thereby indirectly acquire additional voting shares of St. Martin Bank & Trust Company, St. Martinville, Louisiana.

Board of Governors of the Federal Reserve System, September 18, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02-24161 Filed 9-23-02; 8:45 am]

BILLING CODE 6210-01-S

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Cancellation of a Optional Form by the Department of Defense

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of Defense cancelled the following Optional Form because of low usage:

OF 73, Method 50 Package Label (Small)

DATES: Effective September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501-0581.

Dated: September 16, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02-24174 Filed 9-23-02; 8:45 am]

BILLING CODE 6820-34-M

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Cancellation of an Optional Form by the Department of State

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State is cancelling the following Optional Form because of low demand in the Federal Supply Service: OF 127, Receiving and Inspection Report.

This form will be converted to a State Department form. You can request copies of the new form from: Department of State, A/RPS/DIR, 18th and G Streets, N.W., Suite 2400, Washington, DC 20522-2201.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202-312-9605.

DATES: Effective September 24, 2002.

Dated: September 10, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02-24175 Filed 9-23-02; 8:45 am]

BILLING CODE 6820-34-M

GENERAL SERVICES ADMINISTRATION

Record of Decision (ROD)

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA), Public Buildings Service, Portfolio Management (9PT), has prepared a Record of Decision for the development of a new U.S. Courthouse in Los Angeles, CA.

The purpose of the proposed action is to meet the U.S. Courts' expansion need, and consolidate the U.S. Courts' operations into one location to increase efficiency and security.

FOR FURTHER INFORMATION CONTACT: Mr. Javad Soltani, Asset Manager, General Services Administration, Public Buildings Service, Portfolio Management, at (415) 522-3493.

SUPPLEMENTARY INFORMATION: The Record of Decision is as follows:

Record of Decision

The United States General Services Administration (GSA) has published a Final Environmental Impact Statement on the following project: Los Angeles U.S. Courthouse, Los Angeles, California.

GSA announces its decision in accordance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500-1508 and the Regulations issued by the Council on Environmental Quality, November 29, 1978, to construct a new U.S. Courthouse.

I. Purpose and Need for the Proposed Action

Three major federal buildings are located in the downtown Los Angeles Civic Center area—the Federal Building at 300 North Los Angeles Street, the Edward R. Roybal Federal Building & Courthouse at 255 East Temple Street, and the historic U.S. Courthouse at 312 North Spring Street.

The existing federal buildings in downtown Los Angeles cannot adequately house the U.S. Courts and their specialized requirements. The U.S. Courts and courts-related agencies current space deficit greatly impacts their daily operations and the manner in which the judicial system is able to address its caseload. This has created a problem in achieving their mission to deliver justice efficiently and expeditiously in a safe and timely manner.

The “U.S. Courts (Los Angeles) Prospectus Development Study” (Kaplan et al., 1998) estimated that given projected case-loads, the U.S. Courts and courts-related agencies would need to expand from their current occupancy by 31 percent in 10 years. The existing federal buildings in downtown Los Angeles cannot provide this space and adequately house the U.S. Courts and their specialized requirements.

A “Stand-Alone Courthouse Site Evaluation” study was prepared in June 2000 by CH2M HILL. The evaluation concluded that a stand-alone courthouse was the only option that would meet the long-term needs of the U.S. Courts. None of the existing federal buildings would lend themselves to the extensive remodeling that is required by the U.S. Courts and court-related agencies. Additionally, the surrounding properties are unsuitable for construction of a new courthouse.

Therefore, the purposes for the proposed action are: (1) meet the U.S. Courts’ expansion need, and (2) consolidate the U.S. Courts’ operations into one location to increase efficiency and security.

II. Alternatives Examined

Prior to beginning this EIS there were several studies completed to analyze the feasibility of several alternative methods to meet the long-term needs of the U.S. Courts in Los Angeles.

The “U.S. Courts Feasibility Study and Master Plan: Los Angeles” was prepared in

1997 to assist GSA in determining a plan to meet the long-term needs of the U.S. Courts, Central District of California, in downtown Los Angeles. Agency requirements for function, operation, and adjacencies were considered as part of the process. Compliance with the U.S. Courts Design Guide was determined to be critical. For operational and functional reasons, it was determined that the preferred alternative must include all U.S. Courts in one complex.

A “Companion Courthouse Site Evaluation” was prepared in May 2000 to document the site development consequences for sites being considered at the time by the GSA for a new companion courthouse. A companion courthouse would serve as an extension of the existing courthouse facilities in downtown Los Angeles by providing supplemental space. The consequences of this action that were considered in the evaluation included: conflicts with future city plans for the sites, potential for site contamination, tunneling costs, demolition costs and utility relocation, and other important issues determined through scoping.

Following this study, it was determined that a companion courthouse could not meet all of the criteria for the project, and a stand-alone building was the only option to meet the long-term requirements of the U.S. Courts. Finally, a “Stand-Alone Courthouse Site Evaluation” study was prepared in June 2000 to document the site development consequences for a new stand-alone courthouse.

Based on the previous studies and scoping process, the following alternatives were analyzed in the EIS:

Site A

Site A encompasses 3.11 acres of the city block bounded by West Temple Street, North Spring Street, West First Street, and North Broadway. Currently, Site A is occupied by a parking lot and vacant area where a building was once located. A mixture of office buildings generally characterizes the area surrounding Site A. The Los Angeles County Criminal Courts Buildings is located on the north half of the block. To the east, across North Spring Street, is the landmark City Hall building. To the south, across West First Street, is the historic art deco Los Angeles Times Mirror building. West, across North Broadway, are the Los Angeles County Law Library, Court of Flags, and Hall of Records. Site A is currently owned by Los Angeles County and the State of California and has a zoning designation of C-4 Commercial.

Site B

Site B is comprised of a full city block (3.75 acres) bounded by West First Street, South Broadway, West Second Street, and South Hill Street. Currently, Site B is occupied by the Junipero Serra State of California Office Building and an adjacent parking structure. The area surrounding Site B is generally characterized as a mixture of office buildings and privately owned parking lots. To the north of Site B, across West First Street, is the Los Angeles County Law Library. To the east, across South Broadway,

is the historic art deco Los Angeles Times Mirror building. To the south, across West Second Street, are the Kawada Hotel and an office building. To the west, across South Hill Street, is a privately owned parking lot. Site B is currently owned by the State of California and has a zoning designation of C-4 Commercial.

Site C

Site C consists of a full city block (3.3 acres) bounded by West First Street, South Olive Street, West Second Street, and South Grand Avenue. Currently, Site C is occupied by an above ground parking structure. A mixture of public and private buildings and privately owned parking lots generally characterizes the area surrounding Site C. To the north of the site, across West First Street, is the Los Angeles County Courthouse. To the east, across South Olive Street, is a privately owned parking facility. To the south, across West Second Street, are the Colburn School of Performing Arts and a privately owned parking lot. To the west, across South Grand Avenue, is the future site of the Walt Disney Concert Hall (under construction).

No Action Alternative

Section 1502.14(d) of NEPA requires that a No Action Alternative be examined in the EIS. Under this alternative the U.S. Courts and federal agencies would continue to be housed in the Roybal Federal Buildings & Courthouse and U.S. Courthouse 312 North Spring. The Courts and court-related agencies would outgrow their existing facilities and not be able to expand. They would continue to operate under growing space deficits and caseload quantities would continue to increase.

Preferred Alternative

GSA has selected Site B as the preferred site for the new Los Angeles U.S. Courthouse. Site B best meets the need of GSA in providing a location for the U.S. Courthouse because the site provides the area that can accommodate the structure while meeting the security requirements of the U.S. Courthouse facility. In addition, Site B best fits the surrounding uses and proximity to adjacent court-related facilities that will provide for efficient court operations.

Site A would require variances for floor area ratio and height restrictions on portions of the site and would require exceptions to development restrictions related to the proposed open space mall associated with the Los Angeles Civic Center area.

Site C would require rezoning to accommodate the new Los Angeles U.S. Courthouse. The presence of the large-scale U.S. Courthouse would have a negative impact on the visual aspects associated with the Walt Disney Concert Hall on the adjacent block. In addition, parking at this location would be deficient in approximately 257 parking spaces within a ¼-mile radius based on the City of Los Angeles Parking Code.

Environmentally Preferable Alternative

The No Action Alternative is the environmentally preferable alternative, which results in the least damage to the environment. However, it does not meet the primary objective of meeting the projected

needs of the U.S. Courts. The U.S. Courts would be required to utilize existing substandard facilities that do not meet U.S. Courts Design Guide.

III. Environmental Consequences and Mitigation

The following discussion presents the findings and mitigation identified in the EIS for Site B.

Geology and Landform

According to the California Department of Conservation Division of Mines and Geology Seismic Hazard Zones Map (March 25, 1999), Site B is located in an area where historic occurrence of liquefaction, or local geological, geotechnical and groundwater conditions indicate a potential for permanent ground displacements. Impacts are significant but mitigatable.

Mitigation. Mitigation for liquefaction potential is required in the building design as defined in Public Resources Code Section 2693(c). A comprehensive geotechnical survey of the site has been performed. Construction and building design measures recommended by the geotechnical study will be incorporated into the overall design of the building.

Hydrology

Site B is not located in a flood zone according to FEMA Flood Insurance Rate Maps. The site is located within La Brea Subarea sub-basin of the Central Groundwater Basin. Groundwater extends to a depth of at least 1,600 feet and includes several distinct water bearing aquifers. The depth to groundwater is estimated to be approximately 30 to 40 feet below the ground surface. Groundwater flow direction is to the south and southeast. According to the Los Angeles Hydrologic Basin Planning Map and the Water Quality Control Plan for the Los Angeles Basin, all aquifers in the project area are designated as being of beneficial use (LARWQCP, 1994).

Short-term impacts to hydrology were found to be significant, but mitigatable.

Mitigation. Construction plans will implement erosion and sediment control measures. Grading and other activities involving soil displacement should, to the extent feasible, be conducted during the dry season, May-October. A spill control and countermeasure plan will be prepared to properly address any spills of hazardous construction materials.

Vegetation and Wildlife

There have been no recorded occurrences of threatened, endangered, or sensitive plants, animals, or natural communities in the immediate vicinity Site B. Short-term and long-term impacts to vegetation and wildlife were found to be less than significant. Therefore, no mitigation measures are required.

Mitigation. None.

Shadows

On the summer solstice, June 21, the shadows cast by the proposed U.S. courthouse are smallest, and at noon and 3:00 PM only the streets and sidewalk areas adjacent to the proposed structure are

impacted. At 9:00 AM the shadow from the proposed structure extends to the east and impacts small portions of the Kawada Hotel.

At the vernal and autumnal equinoxes (March 21 and September 21), the shadows cast by the proposed U.S. courthouse are longer than those at the summer solstice. In addition to the sidewalks, parking areas, and streets being shaded in the immediate vicinity of the proposed courthouse, the open parking lot to the west of Site B will be significantly shaded. At 3:00 PM, most of the Los Angeles County Law Library to the north of Site B will be shaded.

The shadows on the winter solstice (December 21) are long enough to block sunlight at several neighboring buildings. At 9:00 AM, the shadows from the proposed building extend west past Grand Avenue, almost completely shading the parking structure on Site C. At noon the shadows extend to the north and shade a small part of the lower floors of the County Courthouse and the surface parking lot on the other side of Hill Street. At 3:00 PM, the shadows extend northeast covering most of the Los Angeles County Law Library and approximately half of the Court of Flags, open spaces within the Civic Center area. This is considered an adverse affect since the cool winter temperatures will be amplified with the shading.

During most of the year the shading from the proposed U.S. courthouse at Site B does not pose a significant impact. However, the impact to open space areas at 3:00 PM on the winter solstice is adverse, and not mitigatable. The impact is significant.

Mitigation. None.

Air Quality

Published air quality monitoring data indicated ambient levels of PM₁₀ that exceed the State ambient air standard were recorded at one of the monitoring stations located near the study area. The PM₁₀ emissions are generated by mobile source exhaust, fugitive dust sources, and various industrial sources.

The study area is in a commercial zone surrounded by other commercial businesses. Most of the air pollution in this area is produced by vehicular traffic. The air quality in the Civic Center area of downtown Los Angeles may be affected by the construction of the new courthouse by contributing to the level of total suspended particulate (TSP), PM₁₀, and ozone in the ambient air measured on a 24-hour or daily average.

Particulate matter, in the form of TSP and PM₁₀, will be generated in the construction process. Ozone may be generated from the photochemical reaction of exhaust gases (CO and VOCs) in the atmosphere from mobile sources used during construction and vehicular traffic. Fugitive particulate matter emissions will be generated by various construction activities such as earthmoving, excavation, and grading operations. CO and VOC emissions will also be generated from the exhaust of the construction vehicles. Other organic gaseous emissions may be emitted from solvents, adhesives, non water-based paints, some insulation materials, and asphaltic material. These emissions contribute to the formation of ozone in the lower atmosphere.

Since Los Angeles County is in non-attainment for both PM₁₀ and ozone, and since ambient air monitors near the study area have recorded elevated levels of these pollutants, control measures may be required to minimize air pollution generated from construction activities and building operations.

This project is expected to have a significant short-term impact on the regional air quality due to construction activities. These activities are expected to last from 3–4 years, and could elevate levels of ozone and PM during periods of peak activity. It is expected that long-term, non-construction related air quality impacts from this project could also be significant due to the vehicle trip generated by the courthouse employees, staff, and civil servants.

Construction Impacts

The emissions from construction activities are primarily from demolition, excavation, off-road mobile source equipment, and on-road motor vehicles (construction worker trips). The mitigation measures listed below are intended to minimize the emissions associated with construction activities. Construction activities to build the new courthouse would be subject to SCAQMD Rule 403, which requires application of best available control measures to reduce fugitive dust emissions.

Building Operations Impacts

The increase in 2,000 gross daily vehicle trips identified in the traffic section may result in potential significant impacts to air quality. This would elevate emission levels and contribute to increased pollutant levels in the project area.

SCAQMD Rule 2202 is designed to reduce mobile source emissions from employee commuting. This rule provides employers with options to meet an emission reduction target for their worksite. GSA promotes the Employee Commute Reduction Program and will provide a mass transit subsidy to its employees to reduce worker trips and vehicle emissions. This program reduces vehicles trips and miles traveled by implementing carpooling, rideshare programs, public transportation vouchers, and alternative transportation.

Mitigation

Construction-Related Mitigation Measures:

1. Restrict construction activities that affect traffic flow to off-peak hours
2. Route construction trips to avoid congested streets
3. Provide dedicated turn lanes for movement of construction equipment on- and off-site
4. Obtain electrical power from power poles instead of electrical generators
5. Use "clean" fuels for mobile construction equipment instead of diesel
6. Do not allow trucks to idle for more than two minutes
7. Water active portions of construction site daily
8. Apply non-toxic soil stabilizers to graded areas that are will be inactive for 10 days or more

9. Suspend excavation and grading when wind speeds (as instantaneous gusts) exceeds 25 miles per hour

10. Earth material transported off-site will be covered or trucks will maintain at least two feet of freeboard

11. Paved streets adjacent to the construction site shall be swept as needed to remove dust and silt that may have accumulated as a result of construction activities

12. Curtail all construction requiring heavy equipment during second stage smog alerts

The SCAQMD identified no feasible mitigation measures that could be implemented to reduce emissions associated with construction worker trips to and from construction sites. Health and Safety Code § 40929 specifically prohibits air districts and other public agencies from requiring an employee trip reduction program making such mitigation infeasible. Furthermore, the fact that most construction workers would be coming from different parts of the district makes carpooling impractical. No other feasible measures have been identified to reduce emissions from this source.

Building Operations Mitigation Measures:

1. Provide mass transit vouchers to all jurors located outside of the metropolitan Los Angeles area.

2. Provide mass transit information and schedules with each juror's information packet.

Noise

Site B is located in an urban environment, the Civic Center area of downtown Los Angeles. The majority of consistent existing noise levels are dominated by traffic related sources. The noise levels vary by time of day. Daytime noise levels are predominantly louder than nighttime noise levels, especially during peak morning and evening traffic periods.

There would be a minor increase in traffic volumes due to the construction of a new courthouse. From a noise perspective, this traffic increase should result in noise levels less than 3 dBA. A noise increase less than 3 dBA is not perceptible and no further studies or mitigation is recommended. The impact is adverse, but minor.

Mitigation. None.

Land Use

Site B covers a full city block bounded by West First Street, South Broadway, West Second Street, and South Hill Street. Currently, the Junipero Serra State of California Office Building and an adjacent parking structure occupy Site B.

The area surrounding Site B is primarily a mixture of office buildings and privately-owned parking lots. To the north of Site B, across West First Street, is the Law Library. To the east, across South Broadway, is the historic art deco Los Angeles Time mirror building. To the south, across West Second Street, are the Kawada Hotel and an office building. To the west, across South Hill Street, is a privately-owned parking lot.

This proposed alternative Site B is designated as Commercial District C-4. Retail activity is usually the primary focus of the Downtown Center, but it can also

accommodate a wide range of uses, including public facilities such as the proposed courthouse building.

The proposed land use for Site B is consistent with local land use policies and compatible with the adjacent existing or proposed land use, therefore there are no adverse impacts.

Mitigation. None.

Commercial Activity

Employment in Los Angeles County grew by 2.1 percent in 1999 and is projected to grow in 2000 and 2001, but at a slightly slower rate. The University of California at Los Angeles (UCLA) Anderson forecast projects Los Angeles County employment growth of 2 percent in 2000 and 1.9 percent in 2001. The Los Angeles County Economic Development Corporation forecasts similar growth (1999 Real Estate Planning Guide, NAI, Inc. & Landauer Associates, Inc. 1999).

The Framework Element's economic development policies are designed to facilitate job growth by emphasizing that Los Angeles plays a proactive role in the retention and attraction of businesses in order to have a sufficient job base to maintain and enhance the quality of life. Two such policies include the concentration of commercial and office development in centers, corridors, and in proximity to transit stations and retain the City's employment base and an ongoing assessment of their specific land use requirements (General Plan of the City of Los Angeles, Framework Element, January 26, 2000).

Economic development and job opportunities in the downtown area are a key component to the City's General Plan. Construction of the proposed U.S. Courthouse at Site B would create new short-term and long-term employment in the area, thus increasing the aggregate level of disposable income. It would also create a stronger municipal tax base.

Per Southern California Association of Governments, the proposed project will result in a total direct, indirect and induced employment impact of nearly 7,000 jobs (1,391 jobs per year) over the five-year construction period. A total of 3,304 jobs would be in the construction sector with the other jobs coming from indirect purchases of goods and materials and induced spending from the wages paid to workers. The total impact on output from the project is \$715 million (1997 dollars) or \$143 million annually. The project would have a total impact on value added of \$397 million or \$79 million (1997 dollars) annually over the five-year construction period. The impact is beneficial.

Mitigation. None.

Real Estate & Socioeconomics

Upon completion of the new courthouse facility, consolidation of the federal agencies currently located in other buildings throughout the city will be used to backfill the existing facilities, thus providing an increase in the supply of rental office space throughout the city.

The implementation of the proposed project at Site B would not displace existing housing or retail/commercial tenants. The

addition of employees and visitors to the area may provide additional opportunities to businesses in the area. The impact is beneficial.

Mitigation. None.

Demographics

Historically, the Central City has attracted only a small residential population. Currently, land-use policies are encouraging residential development in the city. The total housing stock of Central City has increased by over 800 units since 1996. The City will continue to offer opportunities for higher density residential development specifically in the Bunker Hill, Spring Street and South Park areas world (Annual Report on Growth and Infrastructure, Third Edition, 1999).

Economic development and job opportunities in the downtown area are a key component of the City's General Plan. Construction of the proposed U.S. Courthouse at Site B would create new short-term and long-term employment in the area, and may indirectly increase local population and a need for affordable housing. Employment and income would have both direct and indirect benefits for the area economy. Construction of the proposed U.S. Courthouse at Site B would result in overall beneficial impacts on the local economy.

Mitigation. None.

Archaeological Resources

The Junipero Serra State Office building and associated parking garage occupies the majority of this block. The only open space is on the southern one-third of the block. This area could not be surveyed because it is currently covered with asphalt. No archaeological resources were previously recovered within Site B. While archaeological sensitivity is not considered high for this site, there is the potential for small areas of undisturbed soil to yield either historic or prehistoric features. This impact has the potential to be significant, but mitigatable.

Mitigation. An archaeological and Native American monitor should be present during construction excavation. If any cultural resources are found, work should be halted in the area immediately until the resource can be assessed and treatment is determined through consultation under Section 106 of the NHPA. Depending on the resource(s) that are discovered, the impact may be significant.

If human remains are unearthed during construction, all activity must stop and a mitigation plan prepared to protect the remains. Additionally, the GSA Historic Official must immediately notify the State Historic Preservation Office (SHPO) by telephone, followed with written notification. The Native American tribe culturally affiliated with the geographic area must also be contacted by telephone and written correspondence. Activity at the site may resume thirty days after certification issued by the GSA Historic Official. This certification is contingent upon agreement between the GSA and the Native American Tribe for recovery of the remains.

Historic Resources

Site B exhibited a residential look in the early period. The 1888 Sanborn map recorded mostly single story dwellings and stores on the block. There were a number of changes by 1906. A two-story Police station and three-story jail sat on the northwest portion of the site. Several multi-story structures stood on the southern portion of the block, including the California Hotel, the Mason Opera House, and the Union League Club.

The block changed little over the next 40 years, but in the early 1960s, most of the northern portion of the block was cleared to make way for the Junipero Serra State Office Building. This L-shaped multi-story building was accompanied by a multi-level parking structure and together; they occupy the northern two-thirds of the block. The few storefronts that remained on the southern portion of the block were gone by 1970, replaced by a paved parking lot. The block looks much the same today as it did in 1970.

The area surrounding the block currently consists of the Los Angeles Times Building to the east, the Los Angeles Law Library to the north, four buildings to the south (including the Kawada Hotel and the Los Angeles Law Center), and empty lots to the west.

On-Site Historic Resources

One building is situated on Site B, the Junipero Serra State Office Building. Although this structure is less than 50 years old, it was found potentially eligible based on its association with well-known architects, J.E. Stanton and William Stockwell. These architects also took part in designing several other public buildings in downtown Los Angeles and at the University of California at Los Angeles and the University of Southern California campuses.

Adjacent Historic Resources

Site B is bordered by several structures, which were examined for this study. Three buildings border the southern side of Site B. None of these buildings are considered eligible due to the fact that they are not associated with persons or events significant in history, do not represent an unusual architectural style, are not outstanding examples of their architectural style, or have lost integrity through alterations. Two buildings border the site and are considered eligible. One building adjacent to Site B was previously determined eligible for listing in the NRHP, and one other building is potentially eligible.

Neither of these buildings will be directly affected by the project, but potential indirect impacts must be considered. If these buildings retained their historical setting, construction of a new buildings could affect the setting. However, the historical setting of these buildings has not remained intact, since several buildings surrounding them are both newer and older than the structures in question. Construction of a new building adjacent to these buildings would not have an affect and no mitigation is necessary.

The Junipero Serra State Office Building is located on Site B. This building will be directly affected, as it will need to be demolished. Documentation and

supplemental information were provided to the California Office of Historic Preservation. After reviewing that information, the State Historic Preservation Officer has determined that the Junipero Serra Office Building is not eligible for inclusion into the NRHP.

Mitigation. None.

Electricity

Existing electrical facilities consist of underground lines located along West First Street, South Broadway, West Second Street, and South Hill Street. The LADWP will supply power to this site through one of these underground lines.

Project implementation at Site B would result in the introduction of a federal courthouse with approximately 1,200,000 gross square feet (GSF), which in turn will increase the electrical demand onsite. The specific design is not available for the proposed courthouse; therefore, exact electrical demands could not be determined.

Construction of the proposed courthouse may require expansion of the substation serving the site. This expansion may cause some short-term service interruptions in the vicinity of the new courthouse. However, any interruption in service would be temporary and considered less than significant.

The project design should also be in accordance with applicable electrical codes, including the National Fire Protection Association Code, the National Electric Code, as well as City and County electrical codes. To maximize energy conservation, it is recommended that energy saving equipment be installed as stated in the energy conservation regulations contained in Title 24 of the California Code.

Impacts associated with providing electricity for the proposed alternative are considered to be less than significant.

Mitigation. None.

Natural Gas

Site B is serviced by underground high-pressure natural gas lines from both Broadway and 2nd Streets.

Project implementation at Site B would result in the introduction of a Federal Courthouse with approximately 1,200,000 gross square feet (GSF), thereby increasing natural gas demand onsite. Although natural gas consumption required by the proposed Courthouse has not been determined, demand would primarily be associated with heating of the facility.

It is not anticipated that the additional natural gas demands for the proposed project would adversely affect natural gas service in the project area. Therefore, impacts to natural gas associated with project implementation would be less than significant.

Mitigation. None.

Solid Waste

Site B is occupied by the State of California Office Building and an adjacent parking structure that will require removal of the structure, thus creating a larger increase in solid waste than would occur at the proposed Sites A and C. Special demolition and solid waste removal will be the responsibility of a contractor selected to perform the demolition and hauling of the materials to the City landfill.

Project implementation at Site B would result in the introduction of a Federal Courthouse land use with approximately 1,200,000 gross square feet (GSF), thereby increasing the solid waste generation onsite.

Solid waste generated at the proposed Site B would increase with the construction of a new courthouse. The overall amount of solid waste collected in the downtown area would not significantly increase, nor will it significantly impact the overall capacity of a landfill. There is an impact, but it is not significant.

Mitigation. GSA will implement a solid waste management program at the new courthouse.

Water Supply

The State of California Office Building is serviced from 1st Street by a twelve-inch water main, from Hill Street with a twelve-inch water main and from Broadway with an eight-inch water main.

Service to the site would have to be expanded, and would involve site connection to water lines located in the streets surrounding the site. Connection would be made utilizing standard construction connection procedures, and are not expected to result in any service interruption.

Project implementation at the site would result in the introduction of a Federal Courthouse land use with approximately 1,200,000 gross square feet (GSF), thereby increasing the water demand onsite. The infrastructure development will be evaluated along with the development proposal. Although it appears that the existing infrastructure is sufficient to serve any one of the alternatives, an infrastructure capacity evaluation will determine the need for any necessary system enhancements. Therefore, impacts to the water supply are considered to be less than significant.

Mitigation. None.

Wastewater

The City of Los Angeles Public Works Department indicates that the capacity of the existing sewer lines located at Site B are sufficient to accommodate existing flows, however, projected flows of the proposed courthouse must be evaluated during design before any upgrades to the sewer lines can be determined. There is an impact, but it is not significant.

Mitigation. None.

Police Protection

The proposed federal courthouse would not significantly increase the daytime population of the downtown area. The existing Roybal Federal Building & Courthouse and the U.S. Courthouse 312 North Spring will be backfilled by employees who are currently housed in other buildings throughout the region; therefore, the downtown population will increase by approximately 800 after implementation of the proposed project. This increase should not result in a significant level-of-service impact to the LAPD.

The Federal Protection Services (FPS) has legal jurisdiction over federal buildings and has law enforcement officers who usually are responsible for the interior of the building and the sidewalks surrounding the structure.

Usually the FPS has a Memorandum of Understanding with the local police with the FPS and shares jurisdiction.

There will be a temporary need for security to protect against theft of equipment, trespassing and vandalism during construction. Standards security measures during construction activities include the installation of chain-link fencing around the perimeter of the project site, and securing of all construction equipment during periods of non-use.

So long as proper safety measures, such as well lighted and secure parking areas, are incorporated into the design, it does not appear that the proposed will have a direct impact on the LAPD's current police staffing numbers or their ability to provide adequate police protection.

Impacts associated with project implementation at this site are considered to be less than significant.

Mitigation. None.

Fire Protection

A fire flow rate of 12,000 gallons per minute is required for the Downtown Area and the average response time for Fire Stations, 3, 4 and 9 within the Downtown Area is within 5 minutes 90% of the time. With three fire stations possessing adequate manpower and equipment resources within close proximity to the site, the consideration of increased personnel and/or equipment would be unnecessary for the implementation of this project at Site B. However, the potential for construction related accidents could temporarily increase the utilization of these resources. A fire inspector is required to be onsite from the start of construction through final sign-off of the shall structure.

Fire flow to the downtown areas is considered to be adequate to serve high-rise structures located in the Downtown Area. However, fire flow calculations and flow test based upon final site design would be required in order to assure adequate fire flow is provided to the proposed project site.

The proposed courthouse at Site B should not require additional fire protection personnel and equipment; therefore impacts to fire protection services are considered less than significant.

Mitigation. None.

Traffic

During the AM peak hour signalized intersections in the study area operate at LOS D or better. With the exception of one unsignalized intersection, Grand Avenue at the 101 & I-110 ramps (LOS F), all of the unsignalized intersections operate at Los C or better.

During the PM peak hour, all of the signalized intersections were found to operate at LOS D or better. With the exception of one unsignalized intersection, Grand Avenue at the 101 & I-110 ramps (LOS F), all of the unsignalized intersections operate at LOS D or better.

From any location in the Civic Center area of downtown Los Angeles, public transit is located within one block. Generally, during the peak periods local bus lines operate on short headways ranging from 3 to 15 minutes.

The express bus services range from single trips on the longer distance services to between 5 and 15 minutes on most other routes. Regional connectivity to sites A, B, and C is also provided via connections with the Metro Red and Blue Lines as well as Metrolink. Additional public transportation services are provided by taxicabs. These services are available at Taxi stands, generally located nearby major hotels or via radio dispatch.

With the project in place four intersections would operate at LOS E during the morning peak hour. The remaining intersections would operate at LOS D or better. Compared to the future baseline conditions (without project) there would be a worsening in the level of service at four intersections. Two intersections would go from LOS B to LOS C. Two intersections would go from LOS C to LOS D. Four intersections would be significantly impacted based on the City of Los Angeles Criteria. Three of these intersections would operate at LOS D or better. The fourth, Olive Street at 1st Street, would (continue to) operate at LOS E.

At the unsignalized intersections, one of the intersections would continue to operate at LOS F.

At the signalized intersections during the PM peak hour, two intersections would operate at LOS E and one at LOS F. The remaining intersections would operate at LOS D or better. Compared to the future baseline conditions (without project) there would be a worsening in the level of service at four intersections. Three would go from LOS B to LOS C. One intersection would go from LOS D to LOS E. Three intersections would be significantly impacted based on the City of Los Angeles Criteria. Two of these intersections would operate at LOS D or better. One intersection, Main Street at Temple Street, would deteriorate from LOS D to LOS E.

At the unsignalized intersections, one of the intersections would continue to operate at LOS F.

In sum, during the morning peak hour, four intersections would be significantly impacted. During the evening peak hour, three intersections would be impacted. The impact is significant.

Mitigation. As noted in the traffic analysis, during the morning peak hour, four intersections would be significantly impacted. During the evening peak hour, three intersections would be impacted.

All but two of the intersections would operate at LOS of D or better. During the morning peak hour the intersection of Olive Street at 1st Street would operate at LOS E with the addition of project related traffic. This impact can be mitigated as follows:

- Restripe the westbound approach to accommodate a second westbound left turn lane.
- Construct a new traffic signal to provide protected left turn phasing for eastbound and westbound traffic.

The implementation of these measures would improve the LOS to D.

During the evening peak hour the intersection of Main Street/Temple Street would operate at LOS E with the addition of project related traffic. No feasible mitigation measures could be identified.

Parking

A parking analysis was conducted for the project site. The quarter-mile walking distance used in the analysis extends from just north of Temple Street in the north, almost to Los Angeles Street to the east, between 3rd and 4th Streets to the south, and almost to Hope Street to the west. There are 8,710 parking spaces in this walking zone. Of these, 89 percent of these are generally occupied resulting in about 997 available spaces.

The total code requirement for parking is 763 spaces. Site B will provide 352 spaces as part of the building structure, which means the remaining 411 spaces must be provided within the quarter-mile walking radius. In addition, the structure itself will displace some 125 spaces resulting in a net parking requirement of 536 spaces (411 plus the displaced 125 spaces). Thus, there will be an excess of 461 spaces within the "walking distance" area. There are no adverse impacts.

Mitigation. None.

Hazardous Materials

The Junipero Serra State Office Building and state-owned parking garage are listed with the appropriate regulatory agencies as small quantity generators of non-acutely hazardous waste, and as underground storage tank sites. The listing of this facility as a small quantity generator implies that the facility is operating in accordance with local regulations regarding the generation of hazardous waste.

Historically, Site B contained several businesses that may have been engaged in hazardous waste activities. One gasoline/oil station occupied 102 South Hill Street from at least 1950-1955. A print shop occupied 311 West Second Street from at least 1906-1960. An additional print shop is depicted at 315 West Second Street on a 1906 Sanborn Map. Asbestos containing material (ACM) has been identified throughout the building in pipe wrapping, heat exchanger wrapping, and used as sprayed-on sound and fire proofing. The ACM observed was in generally good condition.

Soil and groundwater analytical results for gasoline, diesel, heavy hydrocarbons, and volatile organic compounds were below the detection limit for all of the analyses tested. Soil samples analyzed for Title 22 Metals had concentrations that were significantly less than the California Title 22 Hazardous Waste threshold.

Lead-based paint was detected in multiple locations within the building at 107 South Broadway Street including the boiler room, stairwells, and restrooms.

There are adverse impacts, but they are mitigatable.

Mitigation. The Phase I Environmental Site Assessment dated November 22, 2000 and the Phase II Subsurface Investigated dated January 2001 at Site B, recommends the following remediation measures take place prior to construction.

- Based on the nature of activities at the Site (vehicle service and multiple underground storage tanks), additional concerns may be identified during any construction or demolition activities. The reports also recommend that personnel

trained in hazardous materials and the identification of environmental issues is present at the Site during any construction or demolition activities.

- There are currently four (4) underground storage tanks (USTs) located on the Site. One 5,000-gallon steel tank with diesel fuel is located along the east side of the Junipero Serra State Building (107 South Broadway Street). Three 10,000 fiberglass USTs (diesel and unleaded gasoline) are located underneath the sidewalk at the parking garage. All of the tanks appear to be encased within vaults; therefore, subsurface sampling in the areas of the tanks was not performed. Based on the information obtained during the Phase I Assessment, none of these tanks are currently in use. The reports recommend that all of the underground storage tanks on-site be removed or returned to service (upgrading required) in accordance with appropriate local and state regulations.

- Approximately 19 hydraulic lifts are located on the bottom floor of the parking garage (122 South Hill Street). One of the lifts is not functioning and has a vault flooded with a substance with motor oil characteristics (Section 4.2). The reports recommend that the lift be repaired or removed in accordance with appropriate regulations. In addition, the fluid contained within the lift should be removed, as it is a threat to soil and groundwater in the area.

Asbestos containing material (ACM) and lead-based paint has been documented at the Site. Prior to any demolition/construction activities, all ACM and lead-based paint should be abated in accordance with appropriate local and state regulations. The results and recommendations contained in the Limited Lead-Based Paint Inspection Report and any ACM reports at the Junipero Serra State Building should be provided to any individuals involved in the disruption of any painted surfaces or ACM.

IV. Conclusion

The General Services Administration believes there are no additional outstanding issues to be resolved with respect to the proposed project. GSA will proceed with construction of the Los Angeles U.S. Courthouse at Site B and incorporate all the mitigation measures identified, with the exception of those associated with traffic impacts. The traffic mitigation measures will be implemented by others and are beyond the control of GSA.

Dated: August 22, 2002.

Peter G. Stamison,

Regional Administrator, Pacific Rim Region.
[FR Doc. 02-24200 Filed 9-23-02; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-02-80]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498-1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Reducing Injury Risk from Jarring and Jolting on Mobile Farm Equipment: An Epidemiological Survey of Farm Equipment Operators—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Mobile equipment operators in agriculture, construction, and mining experience a high incidence of back, neck, and other injuries related to the jolting and jarring of equipment compared to other industries. There is a need to establish health and safety baseline data and identify risk factors for such injuries in agriculture. This effort will be carried out under the NIOSH project entitled, "Reducing Injury Risk from Jarring and Jolting on Mobile Equipment in Construction and Agriculture," funded under the NIOSH National Occupational Research Agenda. The objectives of the project are

to: (1) Identify the relationship between mobile equipment type and the frequency and severity of whole-body vibration and jolting/jarring type injuries to the back, neck, or head of operators, and (2) recommend interventions (*i.e.*, engineering controls or other measures) needed to reduce the risk of these injuries in construction, mining, and agricultural environments.

Past NIOSH studies have established the relationship between jolting/jarring and the health of equipment operators. These studies focused on morbidity patterns for operators of heavy equipment, interstate truck drivers, and motor coach drivers. The results of the studies suggested that low-frequency vehicle vibrations (generally shock impacts, jars, or jolts) are associated with an increased incidence of low-back pain, disk and vertebra degeneration of the spine, and several other types of health disorders. In 1994, the state of Washington reported that the three highest rates of back injuries resulting in days away from work were in the transportation, construction, and agriculture industries with 125, 119, and 87 injuries per 10,000 full-time workers, respectively. The Bureau of Labor Statistics (1992-1996) lists truck drivers, as one of the occupations with the highest number of average days away from work per injury (10 days). For all occupations, four out of ten injuries and illnesses resulting in time away from work in 1996 were sprains and strains, most involving the back.

Back injuries are typically expensive. During 1995-1997 in the state of Washington, strains and sprains accounted on average for 54,800 claims per year, costing a total of \$216,816,000 per year or \$3,945 per claim. During the same time, back injuries accounted on average for 26,905 claims per year, costing a total of \$129,426,000 per year or \$4,808 per claim. Seated road and off-road vehicle operators are particularly affected by vibration transmitted through the seat to the back and internal organs. From 1996-1997 in the state of Washington, claims of truck drivers averaged \$5,035 per claim and claims of grader, dozer and scraper operators averaged \$12,057 per claim.

Prior knowledge indicates that the magnitude of the shock is an important factor in causing a back injury but there are other important factors as well, such as the magnitude and frequency of acceleration, the length of work shift, the operator's physical condition, the vehicle's condition, and the type and condition of the vehicle's seat. Using a questionnaire, epidemiological data will be collected from farm equipment operators to assess the frequency of

jarring/jolting-related injuries. Questions will be asked of survey participants regarding health and work history with respect to farm equipment operation. The specific data will include risk factors (both on and off the job) and outcome (the prevalence of symptoms in various body parts). The National Education Center for Agricultural Safety

(NECAS) will assist in administering the questionnaire to survey participants at the American Farm Bureau Federation Annual Meeting in Tampa, FL, in January 19–20, 2003. Since the conference is well attended, researchers expect 10–12 percent of the meeting attendees to participate in the study. Respondents will complete the survey

questionnaire that includes 80 questions. Based on prior experience with a similar questionnaire, the anticipated time for a participant to complete the questionnaire is 20 minutes or less. There will be no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
Attendees at the American Farm Bureau Federation's Annual Meeting	600	1	20/60	200
Total				200

Dated: September 17, 2002.
Nancy E. Cheal,
Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.
 [FR Doc. 02–24177 Filed 9–23–02; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0393]

Assessing Acrylamide in the U.S. Food Supply; Public Meeting; Draft Action Plan on Acrylamide; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting and availability; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of September 12, 2002. The document announced a public meeting entitled “Assessing Acrylamide in the U.S. Food Supply.” The document was published with an incorrect Internet address for an analytical test methodology to measure acrylamide levels. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Doris B. Tucker, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7626.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–23193, appearing on page 57827 in the **Federal Register** of Thursday, September 12, 2002, the following correction is made:

1. On page 57827, in the second column, in the last paragraph, beginning on line 7, the Internet address is corrected to read “<http://www.cfsan.fda.gov/~dms/acrylami.html>”.

Dated: September 18, 2002.
Margaret M. Dotzel,
Associate Commissioner for Policy.
 [FR Doc. 02–24201 Filed 9–23–02; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of

the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Uncompensated Services Assurance Report (OMB No. 0915–0077)—Revision

Under the Hill-Burton Act, the Government provides grants and loans for construction or renovation of health care facilities. As a condition of receiving this construction assistance, facilities are required to provide services to persons unable to pay. A condition of receiving this assistance requires facilities to provide assurances periodically that the required level of uncompensated care is being provided, and that certain notification and record keeping procedures are being followed. These requirements are referred to as the uncompensated services assurance.

Estimate of Information Collection Burden

Type of requirement and regulatory citation	No. of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Disclosure Burden (42 CFR)					
Published Notices (124.504(c))	216	1	216	0.75	162
Individual Notices (124.504(c))	216	1	216	43.6	9,418

Type of requirement and regulatory citation	No. of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Determinations of Eligibility (124.507)	216	216	46,656	0.75	34,992
Subtotal Disclosure Burden					44,572

Reporting

Uncompensated Services Report—HRSA-710 Form (124.509(a))	10	1	10	11.0	110
Application for Compliance Alternatives:					
Public Facilities (124.513)	4	1	4	6.0	24
Small Obligation Facilities (124.514(c))	0				
Charitable Facilities (124.516(c))	2	1	2	6.0	12
Annual Certification for Compliance Alternatives:					
Public Facilities (124.509(b))	141	1	141	0.5	71
Charitable Facilities (124.509(b))	26	1	26	0.5	13
Small Obligation Facilities (124.509(c))	1	1	1	0.5	1
Complaint Information (124.511(a)):					
Individuals	10	1	10	0.25	3
Facilities	10	1	10	0.5	5
Subtotal Reporting Burden					239

Record-keeping	Number of Recordkeepers	Hours per year	Total hour burden
Non-alternative Facilities (124.510(a))	216	50	10,800
Subtotal Record-keeping Burden			10,800

The total burden for this project is estimated to be 55,611 hours.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14-33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 17, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02-24165 Filed 9-23-02; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995: *Proposed Project:* Uniform Data System (OMB No. 0915-0193)—Revision—This is a request for revision of approval of the Uniform Data System (UDS), which contains the annual reporting requirements for the cluster of primary care grantees funded by the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA). The UDS includes reporting requirements for grantees of the following primary care programs: Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Outreach and Primary Health Services for Homeless Children

and Public Housing Primary Care. Authorizing Legislation is found in Public Law 104-299, Health Center Consolidation Act of 1996, enacting Section 330 of the Public Health Service Act.

The Bureau of Primary Health Care collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, BPHC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The UDS includes two components: the Universal Report, completed by all grantees, provides data on services, staffing, and financing; and the Grant Report, completed by grantees funded under the Homeless or Public Housing Program as well as one of the other programs, provides data on characteristics of users whose services fall within the scope of the Homeless or Public Housing Program grant. Grantees are also asked to provide information on the charges, collections, bad debt write off and contractual disallowances by payor sources (Medicaid, Medicare, self pay and private insurance). In addition, grantees need to include categories to some of the lists (e.g., services, ICD codes, CPT codes) and annotating the forms to indicate which lines are subtotals and the lines to which they sum.

Estimates of annualized reporting burden are as follows:

Type of Report	Number of respondents	Hours per response	Total burden hours
Universal Report	172	24	17,088
Grant Report	96	16	1,536

Type of Report	Number of respondents	Hours per response	Total burden hours
Total	757	19,992

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 18, 2002.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 02-24163 Filed 9-23-02; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA)

publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Implement performance standards for Special Projects of Regional or National Significance (SPRANS), Community Integrated Service Systems (CISS) projects, and other grant programs administered by MCHB—NEW.

The Health Resources and Services Administration (HRSA) proposes to modify reporting requirements for SPRANS projects, CISS projects, and other grant programs administered by the Maternal and Child Health Bureau (MCHB) to include national performance measures being developed

in accordance with the requirements of the “Government Performance and Results Act (GPRA) of 1993” (Public Law 103-62). This act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance. Performance measures for States have already been established under the block grant provisions of Title V. Performance measures for other MCHB-funded grant programs are currently being finalized and will be sent to the Office of Management and Budget for approval.

There are approximately 30 proposed new performance measures. However, some measures are specific to certain types of programs and will not apply to all grantees. Furthermore, the measures are expected to be based primarily on existing data. Thus, response burden associated with this proposed requirement will be minimal. The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Application and Annual Report	750	1	6	4,500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 17, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02-24164 Filed 9-23-02; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Clinical Research.

Date: September 30, 2002.

Time: 10 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Sheryl K. Brining, Ph.D., Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892. 301-435-0809. brinings@ncrr.nih.gov.

This notice is 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, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: September 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-24168 Filed 9-23-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Pathophysiologic Mechanisms of Obesity—Associated Cardiovascular Disease.

Date: October 28–29, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: William J. Johnson, Ph.D., Scientific Review Administrator, Review Branch, RM 7184, Division of Extramural Affairs, National Heart, Lung and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892. 301/435–0275.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24166 Filed 9–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, RFA–HL–02–012, Research Scientist Award for Minority Institutions.

Date: October 9, 2002.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Chitra Krishnamurti, Ph.D., Scientific Review Administrator, Review Branch, Room 7206, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24169 Filed 9–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: October 24–25, 2002.

Open: October 24, 2002, 8 a.m. to 5 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: October 25, 2002, 8 a.m. to

Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, Ph.D., Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

Information is also available on the Institute's/Center's Home Page: www.nhlbi.nih.gov/meetings/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24170 Filed 9–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to

attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sickie Cell Disease Advisory Committee.

Date: November 4, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: Discussion of program policies and issues.

Place: National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Conference Room 9112, 9116, Bethesda, MD 20892.

Contact Person: Charles M. Peterson, MD, Director, Blood Diseases Program, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 10158, MSC 7950, 6701 Rockledge Drive, Bethesda, MD 20892. 301/435-0080.

Information is also available on the Institute's/Center's home page: www.nhlbi.nih.gov/meetings/index.htm, where an agenda and any additional information for the meeting will be posted when available

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-24171 Filed 9-23-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Services Research Review Committee II.

Date: October 17, 2002.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC 20036-3305.

Contact Person: Martha Ann Carey, P.D., RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892-9608. 301-443-1606. mcarey@mail.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-24167 Filed 9-23-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren G. Magnuson Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, September 20, 2002, 9 a.m. to September 20, 2002, 12 p.m., National Institutes of Health, Clinical Center Medical Board Room 2C116, 9000 Rockville Pike, Bethesda, MD 20892 which was published in the **Federal Register** on August 15, 2002, 67 FR 53359.

The meeting will be closed to the public from 11 a.m. to adjournment in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: September 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-24172 Filed 9-23-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. CFDA 93.598]

ORR Announcement for Services to Victims of a Severe Form of Trafficking

AGENCY: Office of Refugee Resettlement (ORR), ACF.

ACTION: Request for applications for projects to increase awareness about human trafficking and to support services for individuals determined to be victims of a severe form of trafficking.

SUMMARY: This ORR announcement invites submission of grant applications for funding, on a competitive basis, for Local/Community Outreach and/or Services for Victims of a Severe Form of Trafficking.

DATES: The closing date for receipt of applications is (4:30 p.m. Eastern Time Zone) November 1, 2002. Please note that all applications must be received (as opposed to postmarked) in ACF by this date or they will be considered late. Delays caused by express mailing companies are not the responsibility of ACF and negatively affected applications will be considered late. Mailed and hand-carried applications received after the 4:30 p.m. (Eastern Time Zone) deadline on the closing date will be classified as late.

Announcement Availability: The program announcement and the application materials are available from Jay Womack and Neil Kromash, Office of Refugee Resettlement (ORR), 370 L'Enfant Promenade SW, Washington, DC 20447 and from the ORR Web site at: www.acf.hhs.gov/programs/orr

FOR FURTHER INFORMATION CONTACT: For all categories, contact Jay Womack, (202) 401-5525, jwomack@acf.hhs.gov or Neil Kromash, (202) 401-5702, nkromash@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background, legislative authority, funding availability, CFDA Number, eligible applicants, project and budget periods, program purpose and objectives, allowable activities, non-allowable activities, and review criteria.

Part II: The Review Process—intergovernmental review, initial ACF screening, and competitive review and evaluation criteria.

Part III: The Application—application forms, application submission and deadlines, certifications, assurances, and disclosure required for non-construction programs,

general instructions for preparing a full project description, and length of application.

Part IV: Post-award—applicable regulations, treatment of program income, and reporting requirements.

Paperwork Reduction Act of 1995 (Pub. L. 104-13): Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collection is included in the program announcement: OMB Approval No. 0970-0139, ACF UNIFORM PROJECT DESCRIPTION (UPD) attached as Appendix A, which expires 12/30/03. 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.

Part I: Background

Since 1994, ORR has provided assistance for social services to meet the needs of newly arriving refugees through a standing announcement. In May 2001, ORR modified that announcement to include services to victims of a severe form of trafficking. However, in February 2002, ORR further modified Category 3 of the existing standing announcement by removing services to victims of a severe form of trafficking in order to proceed with a new and separate announcement specifically aimed at promoting awareness about human trafficking and addressing the service needs of victims of a severe form of trafficking. That notice of modification was published in the **Federal Register** on February 8, 2002 (67 FR 6048).

On May 24, 2002, ORR published an announcement in the **Federal Register** (67 FR 36622) to request applications to provide local/community outreach and/or services to victims of a severe form of trafficking. Due to the positive response from that grant announcement, ORR has decided to provide additional funding in Fiscal Year 2003. Though the May 24, 2002 announcement was for multiple categories of funding, this new announcement is only requesting applications to provide local/community outreach and/or services to victims of a severe form of trafficking.

Legislative Authority

These grants are authorized by three provisions of law: section 107(b)(1)(B) of the Trafficking Victims Protection Act of 2000 (TVPA)(22 U.S.C. 7105(b)(1)(B)); section 412(c)(1)(A) of the Immigration and Nationality Act (INA)(8 U.S.C.

1522(c)(1)(A)), as amended; and section 106(b) of the TVPA.

Section 107(b)(1)(B) of the TVPA, Public Law 106-386, Division A, 114 Stat. 1464 (2000), provides that "Federal agencies shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, without regard to the immigration status of such victims." Individuals who are determined to be victims of a severe form of trafficking will be issued a certification letter (for adults) or eligibility letter (for minors under the age of 18) from the U.S. Department of Health and Human Services (HHS). In conducting a benefits eligibility determination for a victim of a severe form of trafficking, benefit-granting agencies should accept the HHS certification letter or HHS eligibility letter for minors in lieu of documentation from the Immigration and Naturalization Service and as proof of a status that confers eligibility for benefits.

Section 412(c)(1)(A) of the INA authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) To assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other re-certification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services."

Section 106(b) of the TVPA provides: "The President, acting through the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General, and the Secretary of State, shall establish and carry out programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking and the protections that are available for victims of trafficking.

Funding Availability

In FY 2003, ORR expects to award an estimated \$1.25 million in funds to carry out the Trafficking Victims Protection Act of 2000. ORR expects to make approximately three to five grants under this grant announcement—Local/Community Outreach and/or Services for Victims of a Severe Form of Trafficking—ranging from \$50,000 to \$250,000 for a total of up to \$1,250,000;

renewable on a yearly basis for up to three years, subject to the availability of funds.

The Director reserves the right to award less or more than the funds described in this announcement. In the absence of worthy applications, the Director may decide not to make an award if deemed in the best interest of the government. The ORR Director reserves the right to award grants after taking into consideration the geographic distribution of services among the major cities and areas throughout the United States where victims are most likely to be found and/or are in need of assistance. Funding availability for future years is at the Director's discretion.

CFDA Number—93.598

Eligible Applicants

Public and private nonprofit organizations, including faith-based organizations and state, local, and tribal governments, are eligible to apply for any of these grants (see section 412(c) of the INA). For-profit entities are eligible to apply for local/community outreach grants only (see section 106(b) of the TVPA), although HHS funds may not be paid as profit to any recipient even if the recipient is a commercial organization (45 CFR 74.81). ORR expects that applicants will coordinate with other local organizations in considering projects and proposing services.

Any private nonprofit organization submitting an application must submit proof of its status in its application at the time of submission. The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Applicants are not required to match or cost share in the application.

Project and Budget Periods

This announcement is inviting applications for project periods of up to three years. Awards, on a competitive basis, will be for a one-year budget period although project periods may be up to three years. Applications for continuation grants funded under these awards, beyond the one-year budget period but within the three-year project period, will be entertained in

subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Local/Community Outreach and/or Services for Victims of a Severe Form of Trafficking

Program Purpose and Objectives

The purpose of Local/Community Outreach and/or Services for Victims of a Severe Form of Trafficking is multifaceted. It combines the need to increase local/community awareness about the burgeoning problem of human trafficking with the need to provide resources that will address the needs of individuals determined by HHS to be victims of a severe form of trafficking. Applications may choose to concentrate exclusively on one of these two areas, or focus more comprehensively on a combination of activities that incorporates both.

Local/Community Outreach

The purpose of this area of the announcement is to provide state and local law enforcement, public and private service providers, non-governmental organizations, immigrant and refugee communities, and individual community members with opportunities to learn about the Trafficking Victims Protection Act of 2000 (TVPA). The TVPA has presented an unprecedented opportunity to address the previously hidden problem of human trafficking. However, knowledge of the TVPA is limited among service professionals, law enforcement agencies, and the general public. Knowledge of benefits available to victims is similarly limited, especially among groups that do not normally access benefits or have connections with benefit-providing agencies and organizations.

Educational opportunities need to be extended to these groups to allow them to learn about the existence of human trafficking within the United States and to recognize trafficking, particularly in their local communities. Integral in these outreach activities should be familiarity with the legal definition of "severe forms of trafficking in persons" as described in the TVPA. Subsequently, a clear understanding should be established of the criteria necessary to qualify as a victim of a severe form of trafficking for benefits and services purposes.

Once trafficking victims have been identified, organizations must be empowered to provide victims with

additional information and resources to access services available to them. Law enforcement agencies that have contact with immigrant or refugee populations must also be educated to look below the surface of people's circumstances in such areas as prostitution and immigrant labor. Service providers need to learn about the varied backgrounds from where the victims come and, most importantly, the unique issues that trafficking victims will present following their emancipation.

Organizations must establish that within their geographic locality/area there is a reasonable expectation that victims of a severe form of trafficking may be identified. Effective applications will also identify and aim to raise awareness about victim service needs that should be enhanced or increased based on the level of community awareness (or lack thereof) that exists regarding trafficking in a particular geographic locality/area.

ORR is interested in providing resources for organizations to cover the costs of reaching out to community-based organizations so that victims are identified where they have the best chance for receiving assistance. In turn, communities where outreach and educational opportunities are being extended may experience an increase in the numbers of victims being identified and requesting services.

Services to Victims of a Severe Form of Trafficking

Through Services to Victims of a Severe Form of Trafficking, ORR seeks to provide resources that will address the needs of individuals determined to be victims of a severe form of trafficking. Victims must be the recipients of a certification or eligibility letter from HHS in order to gain access to this assistance. We believe that enhanced case management, education, and culturally and linguistically appropriate linkages and coordination with other service providers contribute to the overall well-being of trafficking victims. Victims may also require initial assistance accessing refugee and/or mainstream services for which they are eligible. The services funded should enhance the likelihood that victims of a severe form of trafficking receive needed support as they work with the criminal justice system to assist in the investigation and prosecution of trafficking crimes.

An applicant should provide anecdotal evidence that there have been victims of a severe form of trafficking within their community and/or a reasonable assumption that there may

be additional unidentified victims in that community.

This grant program is intended to support services that address the special conditions of victims of a severe form of trafficking. ORR's expectation is that victims of trafficking will most likely, after a brief period of time, access mainstream services. Therefore, grantees should view these resources as a temporary solution.

According to post award requirements, grantees are expected to file periodic program reports. In the last two Program Performance Reports, grantees will discuss the transition of services indicating whether the services are now supported by the State, other public or private resources, or are no longer needed. These reports must also provide supporting information on the impact of the services provided to the target population.

Allowable Activities

Local/Community Outreach

Allowable activities for local/community outreach include hosting community forums (including coordination and facilitation of outreach events) to raise general awareness about the problem of trafficking in their local community. In addition, applicants should emphasize the development of advertising and marketing anti-trafficking materials that reflect the broad scope of the various forms of trafficking (including debt bondage, peonage, forced labor and forced prostitution) and that are linguistically and culturally accessible, appropriate, and sensitive.

Applications focusing on Local/Community Outreach should indicate approximate timelines for development, dissemination, and review of actions presented to measure the effectiveness of the communication.

Services to Victims of a Severe Form of Trafficking

Allowable activities for Services to Victims of a Severe Form of Trafficking are restricted solely to individuals who are the recipients of a certification (for adults) or eligibility letter (for minors) from HHS. Some of the services needed for victims of a severe form of trafficking might include:

- Special medical care that is not otherwise available to the individual;
- Assistance with temporary transportation needs;
- Temporary housing;
- Temporary housing for young adults with limited experience living in families;
- Independent living skills and cultural orientation;

- Access to appropriate educational programs;
- Legal assistance/referrals and administrative costs (excluding T-visa application fees and/or attorney fees).
- Case management, to include information and referral to needed services in the community, either funded refugee services or mainstream services as appropriate;
- Special mental health services, such as trauma counseling, and
- Other services needed to bridge the time between the certification or eligibility date indicated directly on the Department's letter, and the receipt of public benefits and support services.

Applicants focusing on Services to Victims of a Severe Form of Trafficking should indicate how they will ensure that services are appropriate and accessible both linguistically and culturally.

Non-Allowable Activities

Funds will not be awarded to applicants for the purpose of engaging in activities of a distinctly political nature, activities designed exclusively to promote the preservation of a specific cultural heritage, or activities with an international objective (*i.e.*, activities related to events in the refugees' country of origin). No funds will be used to provide direct services or benefits to trafficking victims who have not been certified by HHS and are therefore not yet eligible to receive direct benefits and/or services. HHS Trafficking funds may not be used by any agency or organization to support activities relating to or supporting the legalization of prostitution.

Review Criteria

1. *Objectives and Need—Local/Community Outreach*—The applicant demonstrates a clear understanding of the population to be served. The conditions in proposed communities are clearly described, including the reasonable expectation of identifying trafficking victims within the community. The need for additional information leading to enhanced acknowledgment of trafficking is documented. The applicant provides anecdotal evidence that there are enough people and/or organizations that would benefit from this type of outreach/educational opportunity. *Services for Victims of a Severe Form of Trafficking*—The applicant demonstrates a clear understanding of the population to be served. The number of projected victims of trafficking to be served is reasonable in light of the organization's capacity. The application proposes to address a

program of services for victims of trafficking. (25 points)

2. *Results or Benefits Expected*—The applicant clearly describes the results and benefits to be achieved. The application clearly describes how the specific target population will benefit from proposed services, *e.g.*, enhanced case management, special medical care, referrals and follow-up with culturally and linguistically appropriate mainstream providers. Results or benefits are described also in terms of the opportunities provided for victims, benefit-providing agencies, and law enforcement. The application describes how the impact of the funds will be measured on key indicators associated with the purpose of the project. Proposed outcomes are measurable and achievable within the grant project period, and the proposed monitoring and information collection is adequately planned. (25 points)

3. *Approach*—The strategy and plan, including a description of each proposed geographic area/community and an assessment of appropriateness of activities, are likely to achieve proposed results. The proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to generate additional interest in outreach to victim populations and coordination with other services. The application includes a clear and comprehensive description of the geographic area/communities to be served and how it/they will be impacted by this project. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. The applicant has described the planning and/or consultation efforts undertaken. Where coalition partners are proposed, the applicant describes each partner agency's respective role and financial responsibilities and describes how the coalition will enhance the accomplishment of the project goals. Evidence of commitment of coalition partners in implementing the activities is demonstrated, *i.e.*, by Memoranda of Understanding (MOUs) among participants. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. (25 points)

4. *Organizational Profiles*—The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity and planning activities, are described in detail with proposed start-

up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, management of affiliates, and a staffing chart of affiliate network. The qualifications of project staff, both applicant and affiliate agencies, as well as any volunteers, are documented. The applicant has provided a copy of its most recent audit report. (10 points)

5. *Budget and Budget Justification*—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. The applicant clearly indicates how awarded funds will complement other community outreach efforts and/or social services to achieve the objectives. Planning for continuation of services beyond the project period is realistic. (15 points)

Part II: The Review Process

Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed federal assistance under covered programs.

- All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process. Applicants from these twenty-seven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants should contact their Single-Points-of-Contact (SPOC) as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants from participating jurisdictions must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (the date of contact) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Grants Management Officer, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., 4th floor, Washington DC 20447.

A list of the Single Points of Contact for each participating State and Territory can be found on the Web at: <http://www.whitehouse.gov/omb/index.html>.

Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date of November 1, 2002, and submitted in accordance with the instructions in this announcement; and (2) the applicant is eligible for funding.

Competitive Review and Evaluation Criteria

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of evaluation criteria specified in Part I. The evaluation criteria were designed to assess the quality of a proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement.

Part III: The Application

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Selected elements of the ACF Uniform Project Description (UPD) relevant to this program announcement are attached as Appendix A.

Application Forms

Applicants requesting financial assistance under this announcement

must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Application materials including forms and instructions are also available from the Contact named in the preamble of this announcement.

Application Submission and Deadlines

An application with an original signature and two clearly identified copies are required. Applicants must clearly indicate on the SF 424 the grant announcement number under which the application is submitted.

The closing date for receipt of applications is (4:30 p.m. Eastern Time Zone) November 1, 2002. Please note that all applications must be received (as opposed to postmarked) in ACF by this date or they will be considered late. Delays caused by express mailing companies are not the responsibility of ACF and negatively affected applications will be considered late. Mailed and hand-carried applications received after the 4:30 p.m. (Eastern Time Zone) deadline on the closing date will be classified as late.

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline time and date at the: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Grants Management Officer, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447. Applicants are responsible for mailing applications well in advance to ensure that applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, overnight/express mail couriers, or by other representatives on behalf of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Grants Management Officer, 4th Floor, Aerospace Building, 901 D Street, SW., Washington, DC 20447 between Monday and Friday (excluding federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Grants Management

Officer." (Applicants are cautioned that express/overnight mail services do not always deliver as agreed. Delays caused by express mailing companies are not the responsibility of ACF and negatively affected applications will be considered late.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

The federal government has experienced periodic delays in mail delivery through the U.S. Postal Service since fall 2001. In some instances, mail has been delayed up to or over four months. To ensure that ACF receives your application by the (4:30 p.m. Eastern Time Zone) November 1, 2002 deadline, you may wish to send your application via an express mailing service. Also, please send an electronic notification that you have sent an application to Jay Womack at jwomack@acf.hhs.gov and Neil Kromash at nkromash@acf.hhs.gov.

Late applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (e.g. floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

For Further Information on Application Deadlines Contact: Grants Management Officer, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447, Telephone: (202) 401-4577.

Certifications, Assurances, and Disclosure Required for Non-Construction Programs

Applicants must sign and return the disclosure form, if applicable, with their applications. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a signed certification regarding lobbying with their applications, when applying for an award in excess of \$100,000. Applicants who have used non-federal funds for

lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

General Instructions for Preparing a Full Project Description

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested. Please refer to the UPD sections in the appendix.

Length of Applications

Each application narrative should not exceed 20 pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. A table of contents and an executive summary should be included but will not count in the page limitations. Each page should be numbered sequentially, including the attachments and appendices. This limitation of 20 pages should be considered as a maximum, and not

necessarily a goal. Application forms are not to be counted in the page limit.

Please do not include books or videotapes as they are not easily reproduced and are, therefore, inaccessible to the reviewers.

Part IV: Post-Award

Applicable Regulations

Applicable DHHS regulations can be found in 45 CFR Part 74 or 92.

Treatment of Program Income

Program income from activities funded under this program may be retained by the recipient and added to the funds committed to the project, and used to further program objectives.

Reporting Requirements

Grantees are required to file the Financial Status Report (SF-269) semi-annually and the Program Performance Reports quarterly, along with the Schedule C of the ORR Quarterly Performance Report.

Funds awarded must be accounted for, and reported under, the distinct grant number ascribed. Although ORR does not expect the proposed projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures. The official receipt point for all reports and correspondence is the Grants Management Officer, Administration for Children and Families/Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447, Telephone: (202) 401-4577. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Office of Grants Management.

A Final Financial and Program Report shall be due 90 days after the project expiration date or termination of federal budget support.

Dated: August 29, 2002.

Carmel Clay-Thompson,

Deputy Director, Office of Refugee Resettlement.

Appendix A—Uniform Project Description OMB No. 0970-0139

The project description is approved under OMB control number 0970-0139 which expires 12/31/03.

Part I: The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for

which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Part II: General Instructions for Preparing a Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Approach

Outline a plan of action which describes the scope and detail of how the proposed

work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application OR by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF-424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) currently set at \$100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may

include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application that contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF-424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

[Self-explanatory]

[FR Doc. 02-24238 Filed 9-23-02; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of a Telephone Conference meeting of the Center for Mental Health Services (CMHS) National Advisory Council in September 2002.

The meeting will include the review, discussion and evaluation of individual grant applications.

Therefore the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b (c)(6) and 5 U.S.C. App. 2. & 10 (d).

A summary of the meeting and a roster of Council members may be obtained from: Ms. Tracey Cooper, Committee Management Officer, CMHS National Advisory Council, 5600 Fishers Lane, Room 15-105, Rockville, Maryland 20857. Telephone: (301) 443-1158. Substantive program information may be obtained from the person listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: September 23, 2002 (Closed).

Time: 12 p.m.-2 p.m.

Place: Parklawn Building, 5600 Fishers Lane, Conference Room 17-94, Rockville, Maryland 20857.

Contact: Eileen S. Pensinger, M.Ed., 5600 Fishers Lane, Parklawn Building, Room 17C-14, Rockville, Maryland 20857, Telephone: (301) 443-4823.

Dated: September 8, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02-24162 Filed 9-23-02; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-350-1430-EY-24 1A]

OMB Approval Number 1004-0153; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted an extension of a currently approved collection to collect the information listed below to the

Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On October 11, 2001, the BLM published a notice in the **Federal Register** (66 FR 51968) requesting comment on this information collection. The comment period ended on December 10, 2001. BLM received no comments from the public. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004-0153), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO-630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Conveyance of Federally-Owned Mineral Interests, 43 CFR part 2720.

OMB Approval Number: 1004-0153.

Bureau Form Number: No Form.

Abstract: We use the information to determine if private surface estate land owners seeking conveyance of the Federally-owned mineral interests lying beneath the surface of their privately owned lands meet the requirements of 43 CFR part 2720.

Frequency: Once.

Description of Respondents: Privately-owned surface estate land owners with Federally-owned mineral interests lying

beneath the surface of their privately owned lands.

Estimated Completion Time: 10 hours.

Annual Responses: 30.

Application Fee Per Response: \$50.

Annual Burden Hours: 300.

Bureau Clearance Officer: Michael Schwartz, (202) 452-5033.

Dated: June 6, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02-24160 Filed 9-23-02; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-920-1330-GEOT-FI]

Classification; Salt Wells Known Geothermal Resources Area, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of the Salt Wells Known Geothermal Resources Area, Nevada.

SUMMARY: This notice alerts the public that the Bureau of Land Management has expanded the size of the Salt Wells Known Geothermal Resources Area by 6,576.56 acres.

EFFECTIVE DATE: July 1, 2002.

SUPPLEMENTARY INFORMATION: Under the Secretary of the Interior's authority contained in Sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020) we are expanding the boundaries of the Salt Wells Known Geothermal Resources Area by 6,576.56 acres to include:

Mt. Diablo Meridian, Nevada

T. 16 N., R. 30 E.,
Secs. 1, 2, 3.

T. 16 N., R. 31 E.,
Sec. 6.

T. 17 N., R. 30 E.,
Secs. 22, 27, 34.

T. 17 N., R. 31 E.,
Secs. 19, 30, 31.

The description of the entire Salt Wells Known Geothermal Area is now as shown below:

Nevada—Salt Wells Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 16 N., R. 30 E.,
Secs. 1, 2, 3.

T. 16 N., R. 31 E.,
Sec. 6.

T. 17 N., R. 30 E.,
Secs. 22-27, 34-36.

T. 17 N., R. 31 E.,
Secs. 19, 30, 31.

The above area aggregates 10,410.56 acres, more or less.

Dated: August 29, 2002.

Jean Rivers-Council,

Acting State Director, Nevada.

[FR Doc. 02-24296 Filed 9-23-02; 8:45 am]

BILLING CODE 4310-HC-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-749 (Review)]

Persulfates From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on persulfates from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on persulfates from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 6, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202-205-3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background.—On September 6, 2002, the Commission determined that the domestic interested party response to its notice of institution (67 FR 38333, June 3, 2002) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant

conducting a full review.¹ Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on October 3, 2002, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 8, 2002, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 8, 2002. However, should Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

² The Commission has found the response submitted by FMC Corporation to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: September 19, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02-24239 Filed 9-23-02; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 286-2002]

Privacy Act of 1974 as Amended by the Computer Matching and Privacy Protection Act of 1988

This notice is published as an addendum to AAG/A Order No. 277-2002, published in the **Federal Register** on July 25, 2002 (67 FR 48671) in accordance with the requirements of the Privacy Act, as amended by the Computer Matching and Privacy Protection Act of 1988 (CMPPA) (5 U.S.C. 552a(e)(12)). That notice announced that the Immigration and Naturalization Service (INS) is participating in computer matching programs with the District of Columbia and seven State agencies, to permit eligibility determinations specified in the notice. Paragraph 2 of the notice stated:

Specifically, the matching activities will permit the following eligibility determinations:

* * * * *

(2) The California Department of Social Services will be able to determine eligibility status of aliens applying for or receiving benefits under the TANF ("Temporary Assistance for Needy Families") program, and upon the submission of favorable cost-benefit data to the Department of Justice (DOJ) Data Integrity Board, will also be able to determine eligibility status of non-TANF Food Stamp applicants and recipients.

* * * * *

The purpose of this addendum is to provide notice that the California Department of Social Services has submitted favorable cost-benefit data to the DOJ Data Integrity Board. Based on that data, the Board has approved verifications of immigration status for non-TANF Food Stamp applicants and recipients under the subject computer matching agreement.

* * * * *

Inquiries may be addressed to Kathleen M. Riddle, Procurement Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530.

Dated: September 12, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02-24208 Filed 9-23-02; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 287-2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to establish a new Department-wide system of records entitled "Personnel Investigation and Security Clearance Records for the Department of Justice" DOJ-006, which generally covers the described records maintained by all components other than the Federal Bureau of Investigation (FBI). The Justice Management Division's (JMD's) system of records for background investigation records, "Security Clearance Information System," JMD-008, was previously published in the **Federal Register** at 55 FR 34629, dated Thursday, August 23, 1990. JMD maintains the personnel investigation and clearance records of certain categories of individuals, while the records of other categories of individuals are maintained by individual Bureaus and some other components. This notice of a new system of records replaces JMD's notice, and it also provides notice for components to the extent that they maintain records that are not covered by an existing system notice. For example, some components' personnel investigation and clearance records are covered by Office of Personnel Management (OPM)/Central-9 to the extent that the components maintain only a copy of what OPM maintains; however, to the extent that such components may also maintain additional personnel investigation and clearance records, as described in this notice, those records and any new compilation of the file are covered by this system notice. Disclosure determinations regarding any investigative records from an OPM or FBI investigation will be made only in accordance with the investigating agency's disclosure policies.

The purpose of publishing this Department-wide notice is to update and clarify what records are maintained by the Department, including the addition of certain categories of individuals and categories of records, and to increase administrative efficiency

by publishing a centralized notice, while providing the public with a relatively simple procedure for requesting access to such information. This system notice does not supersede systems of records covered by separately-noticed systems, except for JMD-008 and Subsystem O of INS-001.

Accordingly, this Department-wide system notice replaces, and the Department hereby removes, on the effective date of this notice, the following:

Justice Management Division, "Security Clearance Information System (SCIS)," Justice/JMD-008 (55 FR 34629, Aug. 23, 1990) Immigration and Naturalization Service, "Security Access Clearance Index," Justice/INS-001, Subsystem O only. INS-001 was last published at 58 FR 51847, October 5, 1993.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by October 24, 2002. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: September 12, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

Department of Justice-006

SYSTEM NAME:

Personnel Investigation and Security Clearance Records for the Department of Justice, DOJ-006.

SYSTEM LOCATION:

U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, other Department of Justice Component locations (see system manager listings). Working copies of records may reside temporarily at locations operated by contractors authorized to provide computer services and other agency functions related to this system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Department, including but not limited to full and part time employees, interns,

detailées, volunteers, and task force personnel;

Current and former contractor employees and prospective contractor employees, for whom an investigation is initiated and/or conducted; Current and former Congressional staff personnel, Executive Office of National Security personnel, Office of Independent Counsel personnel, Special Counsel personnel, Foreign Intelligence Surveillance Act judges and staff, Presidential Transition personnel, and other individuals employed by or performing services for the Federal Government who require background investigations;

Any or all persons associated with and/or acting for the defense or for the courts in a criminal proceeding involving classified information and any Department component;

Applicants for paid or unpaid employment with the Department for whom an investigation is initiated and/or conducted; and

Individuals who have been investigated for purposes of determining eligibility for access to sensitive or national security information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying information regarding the individuals in the Categories of Individuals above, including one or more of the following: (1) Standard Form 86 "Questionnaire for National Security Position," Standard Form 85P "Questionnaire for Public Trust Positions," Standard Form 85P-S "Supplemental Questionnaire for Selected Positions," and/or Standard Form 85 "Questionnaire for Non-Sensitive Positions" and predecessor and successor forms of the same type; (2) Copies of investigative reports from the Office of Personnel Management, the Federal Bureau of Investigation (FBI), and/or other Federal investigative agencies; (3) Correspondence, information, and other supporting documentation related to the investigation and adjudication for public trust and national security information positions (references in this notice to classified and national security information include Sensitive Compartmented Information); (4) Form DOJ-555 "Disclosure and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act" and other consent or waiver forms, and the results of credit checks; (5) Waivers of the pre-employment background investigation requirement; (6) Records of security clearance certifications; (7) Other information relating to the loyalty or trustworthiness of the individual, or relevant to the

individual's eligibility for access to national security information; and (8) Records reviewed by the Access Review Committee (ARC) and generated in connection with the ARC appeals procedure (Executive Order 12968, Section 5.2.(a)(7)).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Presidential Executive Orders 10450, "Security Requirements for Government Employment" and 12968, "Access to Classified Information," and the Classified Information Procedures Act of 1980.

PURPOSE(S):

Records in this system are used to determine the loyalty, trustworthiness, suitability, eligibility and/or qualifications of employees for initial or continued employment in the Department of Justice, and for employment in sensitive positions involving eligibility and continued eligibility for access to classified information. The records are also used to make similar suitability and security determinations regarding the employment of contractors to perform a service for the Department and to establish the trustworthiness for access to classified information of persons associated with and/or acting for the court or the defense during criminal proceedings, or in other specified cases where individuals employed by or performing services for the Federal Government require background investigations, including during Presidential transitions. Records in this system are also used by the Access Review Committee when an appeal is made to the ARC to review a security clearance denial or revocation pursuant to E.O. 12968. Records in this system are also used to track the status and types of investigations, the dates of clearances and level of clearances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure determinations regarding any investigative records from an OPM or Federal Bureau of Investigation (FBI) investigation will be made only in accordance with the investigating agency's disclosure policies.

Records or information in this system of records may be disclosed to the following parties when it has been determined by the Department of Justice that such a need exists:

(a) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, in connection with

the hiring or continued employment of an employee or contractor, the conduct of a suitability or security investigation of an employee or contractor, or the grant, renewal, suspension, or revocation of a security clearance, to the extent that the information is relevant and necessary to the hiring agency's decision.

(b) Designated officers and employees of state or local (including the District of Columbia) law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

(c) Members of a Presidential Transition Team for evaluating potential appointees.

(d) Security officials and investigators of Federal Government Agencies or Departments for liaison or training purposes where appropriate during meetings, conferences, or training courses involving access to classified material.

(e) Federal, state, local, or private entities where appropriate for purposes of certification of security clearances of participants in training, conferences, meetings, facility visits, and similar activities.

(f) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

(g) The intelligence agencies of the Department of Defense, the National Security Agency, and the Central Intelligence Agency for use in intelligence activities.

(h) In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

(i) An employee's designated representative in connection with the ARC appeals process.

(j) The news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific

information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(k) A Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(l) The National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(m) Contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

(n) Former employees of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(o) An actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

(p) Federal, state, and local licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(q) Such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in electronic media via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, compact discs, magnetic tape, and/or optical disks. Paper files are stored as follows: (1) In a secure file room with controlled access; (2) locked file cabinets; and/or (3) other

appropriate GSA approved security containers.

RETRIEVABILITY:

Data is retrieved by searching under the individual's name, social security account number, or other identifier.

SAFEGUARDS:

Security measures include the use of safes, locked file cabinets, and/or restricted access space for manual records. Electronic records are safeguarded in accordance with DOJ rules and policy governing automated systems security and access. These safeguards include the maintenance of technical equipment in restricted areas, and the required use of individual passwords and user identification codes to access the system.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with items 22, 23, 24, and 25 of the General Records Schedule 18 as approved by the Archivist of the United States. Some records (such as Presidential Transition records) are retained only temporarily and then transferred to the appropriate agency.

SYSTEM MANAGERS AND ADDRESSES:

For records regarding former and current personnel and contractors employed by the Offices, Boards, or Divisions (OBDs) as well as records regarding all Department attorneys, interns, honor program applicants, Schedule C personnel, non-career SES appointments, Presidential appointees, non-Departmental Federal Government personnel, and ARC appeals for OBDs, contact: Director, Security and Emergency Planning Staff, Attention: Associate Director Personnel Security Group, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

For records regarding former and current Bureau non-attorney personnel not specifically listed above and contractors, contact the individual Bureaus:

Security Programs Manager, Drug Enforcement Administration (DEA), 700 Army Navy Drive, Arlington, VA 22202.

Security Programs Manager, Federal Bureau of Prisons (BOP), 320 First Street, NW., Washington, DC 20543.

Security Programs Manager, Immigration and Naturalization Service (INS), 425 I Street, NW., Washington, DC 20536.

Security Programs Manager, Federal Bureau of Investigation (FBI), 935 Pennsylvania Avenue, NW., Washington, DC 20535.

Security Programs Manager, U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, VA 22202.

Security Programs Manager, Executive Office for U.S. Trustees (EOUST), 901 E Street, NW., Washington, DC 20530.

Security Programs Manager, National Drug Intelligence Center (NDIC), 319 Washington Street, Johnstown, PA 15901.

NOTIFICATION PROCEDURES:

Address inquiries to System Manager named above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing to the System Manager, or in the case of BOP and INS records, to the FOIA/PA Section, with the envelope and the letter clearly marked "Privacy Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled "Systems Exempted from Certain Provisions of the Act." An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

Requests for copies of the investigative report should be directed to the appropriate investigative agency: the Office of Personnel Management at 1900 E St., NW., Room 5416, Washington, DC 20415; the Federal Bureau of Investigation at the address above, or other investigative agency.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information. Some information may be exempt from contesting record procedures as described in the section entitled "Systems Exempted from Certain Provisions of the Act." An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the individuals covered by the system, individuals and entities contacted by investigators, adjudicators, or other authorized personnel regarding individuals covered by the system, government records, and consumer reporting agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5) and (8); and (g). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). A determination as to exemption shall be made at the time a request for access or amendment is received. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 02-24206 Filed 9-23-02; 8:45 am]

BILLING CODE 4410-FB-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02-110]

U.S. Centennial of Flight Commission

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the U.S. Centennial of Flight Commission and the First Flight Centennial Federal Advisory Board.

DATES: Thursday, October 24, 2002, 9:00 a.m. to 12 noon.

ADDRESSES: Paul Laurence Dunbar Library, First Floor Group Study Room, Wright State University, 3640 Col. Glenn Hwy, Dayton, OH.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Farmarco, Code I-2, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1903.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Opening Comments
- Inventing Flight—Educational Curriculum
- Educational Tool Kit
- Status of EAA Centennial Activities

- Wolf Trap Foundation for the Performing Arts
- Rockefeller Center Exhibition
- Space Day Foundation
- Centennial Partners
- Kick-Off Update
- Outreach Activities
- Centennial Song by Tena Clark
- Closing Comments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

*Advisory Committee Management Officer,
National Aeronautics and Space Administration.*

[FR Doc. 02-24205 Filed 9-23-02; 8:45 am]

BILLING CODE 7510-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-267, 50-270, and 50-287]

Duke Energy Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its December 20, 2001, application for proposed amendment to Renewed Facility Operating License No. DPR-38, DPR-47, and DPR-55 for the Oconee Nuclear Station, Units 1, 2, and 3, located in Seneca, South Carolina.

The proposed amendment would have revised the licensing basis associated with the failure of non-Category I (non-seismic) piping in the auxiliary building.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 22, 2002 (67 FR 2922). However, by letter dated April 23, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 20, 2001, and the licensee's letter dated April 23, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading

Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams/html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 18th day of September 2002.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02-24222 Filed 9-23-02; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION**Sunshine Act Meeting Notice**

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 23, 30, October 7, 14, 21, 28, 2002.

PLACE: Commissioner' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 23, 2002

There are no meetings scheduled for the Week of September 23, 2002.

Week of September 30, 2002—Tentative
Tuesday, October 1, 2002

9:25 a.m.—Affirmation Session (Public Meeting) a. Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72-22-ISFSI; Review of LBP-02-08, consideration under NEPA of environmental justice issues b. International Uranium (USA) Corporation (White Mesa Uranium Mill) (MLA-10/Maywood material) Appeal of LBP-02-12

9:30 a.m.—Briefing on Decommissioning Activities and Status (Public Meeting) (Contact: John Buckley, 301-415-6607)

This meeting will be webcast live at the Web address—www.nrc.gov.

Wednesday, October 2, 2002

10:00 a.m.—Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of October 7, 2002—Tentative

There are no meeting scheduled for the Week of October 7, 2002.

Week of October 14, 2002—Tentative

There are no meetings scheduled for the Week of October 14, 2002.

Week of October 21, 2002—Tentative

There are no meetings scheduled for the Week of October 21, 2002.

Week of October 28, 2002—Tentative

Wednesday, October 30, 2002

2:00 p.m.—Discussion of Security Issues (Closed—Ex. 1–9)

Thursday, October 31, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on EEO Program (Public Meeting)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: www.nrc.gov/what-we-do/policy-making/schedule/html.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: September 19, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–24361 Filed 9–20–02; 2:05 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedule C in the excepted service as required by 5 CFR 6.1 and 213.103.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service, (202) 606–1015.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule C between August 01, 2002 and August 31, 2002. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

Commission on Civil Rights

Special Assistant to the Staff Director, Office of the Staff Director. Effective August 2, 2002.

Special Assistant to the Commissioner. Effective August 2, 2002.

Special Assistant to the Staff Director, United States Commission on Civil Rights. Effective August 8, 2002.

Commodity Futures Trading Commission

Administrative Assistant to the Chairman. Effective August 19, 2002.

Consumer Product Safety Commission

Staff Assistant (Legal) to the Chairman. Effective August 15, 2002.

Special Assistant to the Chairman. Effective August 16, 2002.

Department of Agriculture

Deputy Press Secretary to the Deputy Chief of Staff. Effective August 12, 2002.

Staff Assistant to the Deputy Chief of Staff. Effective August 14, 2002.

Confidential Assistant to the Chief of Staff. Effective August 27, 2002.

Department of the Army (DOD)

Water Resources Project Specialist to the Deputy Assistant Secretary of Army (Legislation). Effective August 15, 2002.

Department of Commerce

Confidential Assistant to the Chief of Staff. Effective August 5, 2002.

Director of Scheduling to the Chief of Staff. Effective August 15, 2002.

Senior Analyst to the Director, Bureau of Census. Effective August 22, 2002.

Special Assistant to the Director, Advocacy Center. Effective August 22, 2002.

Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective August 27, 2002.

Department of Defense

Defense Fellow to the Special Assistant to the Secretary for White House Liaison. Effective August 7, 2002.

Deputy White House Liaison to the Special Assistant to the Secretary of Defense for White House Liaison. Effective August 7, 2002.

Special Assistant to the Director, Program Analysis and Evaluation. Effective August 29, 2002.

Department of Education

Special Assistant to the Deputy Chief of Staff of Operations. Effective August 5, 2002.

Confidential Assistant to the Assistant Secretary for Civil Rights. Effective August 6, 2002.

Confidential Assistant to the Assistant Secretary for Civil Rights. Effective August 6, 2002.

Special Assistant to the Assistant Secretary for Civil Rights. Effective August 8, 2002.

Confidential Assistant to the Deputy Director, English Language Acquisition. Effective August 14, 2002.

Special Assistant to the Secretary, Department of Education. Effective August 15, 2002.

Special Assistant to the Deputy Assistant Secretary, Office of Legislation and Congressional Affairs. Effective August 15, 2002.

Confidential Assistant to the Assistant Secretary for Educational Research and Improvement. Effective August 16, 2002.

Confidential Assistant to the Deputy Assistant Secretary, Office of Legislative and Congressional Affairs. Effective August 22, 2002.

Special Assistant to the Director, White House Initiative on Hispanic Education. Effective August 22, 2002.

Special Assistant to the Director, Office of Educational Technology. Effective August 22, 2002.

Special Assistant to the Director, Office of Educational Technology. Effective August 28, 2002.

Confidential Assistant to the Deputy Chief of Staff for Operations. Effective August 29, 2002.

Department of Energy

Senior Policy Advisor to the Assistant Secretary for Environment, Safety and Health. Effective August 13, 2002.

Senior Policy Advisor to the Secretary of Energy. Effective August 20, 2002.

Department of Health and Human Services

Special Assistant to the Director for Global Health Affairs. Effective August 16, 2002.

Confidential Assistant to the Executive Secretary. Effective August 28, 2002.

Department of Housing and Urban Development

Intergovernmental Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective August 2, 2002.

Advance Coordinator to the Director, Executive Scheduling. Effective August 7, 2002.

Staff Assistant to the Assistant to the Secretary and White House Liaison. Effective August 13, 2002.

Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective August 14, 2002. Special Projects Coordinator to the Regional Administrator (Southeast/Caribbean). Effective August 14, 2002.

Staff Assistant to the Deputy Assistant Secretary for International Affairs. Effective August 15, 2002.

Staff Assistant to the Assistant to the Secretary and White House Liaison. Effective August 21, 2002.

Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective August 22, 2002.

Director, Center for Faith Based and Community Initiatives to the Assistant Secretary for Administration. Effective August 26, 2002.

Department of the Interior

Special Assistant to the Chief of Staff. Effective August 13, 2002.

Special Assistant to the Assistant Secretary, Land and Minerals Management. Effective August 29, 2002.

Special Assistant and Counselor to the Assistant Secretary, Policy, Management and Budget. Effective August 30, 2002.

Department of Justice

Public Affairs Specialist to the Director, Office of Public Affairs. Effective August 7, 2002.

Secretary (Office Automation) to the United States Attorney, Western District of Louisiana. Effective August 14, 2002.

Public Affairs Specialist to the United States Attorney, Western District of New York. Effective August 22, 2002.

Department of Labor

Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective August 5, 2002.

Special Assistant to the Secretary of Labor. Effective August 7, 2002.

Staff Assistant to the Deputy Assistant Secretary for Office of Labor Management Standards. Effective August 14, 2002.

Chief of Staff to the Assistant Secretary for Mine Safety and Health. Effective August 21, 2002.

Staff Assistant to the Secretary of Labor. Effective August 22, 2002.

Staff Assistant to the Executive Secretary. Effective August 22, 2002.

Special Assistant to the Director, Office of Public Liaison. Effective August 26, 2002.

Associate Deputy Under Secretary for Public Liaison to the Deputy Under Secretary for International Affairs. Effective August 27, 2002.

Staff Assistant to the Director, Office of the 21st Century Workforce. Effective August 27, 2002.

Special Assistant to the Chief Financial Officer. Effective August 28, 2002.

Special Assistant to the Director of Scheduling and Advance. Effective August 28, 2002.

Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective August 28, 2002.

Special Assistant to the Deputy Assistant Secretary, Office of Federal Contract Compliance Programs. Effective August 28, 2002.

Special Assistant to the Assistant Secretary for Administration and Management. Effective August 29, 2002.

Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration. Effective August 29, 2002.

Special Assistant to the Secretary of Labor. Effective August 30, 2002.

Department of State

Special Assistant to the Assistant Secretary for Resource Management. Effective August 6, 2002.

Staff Assistant to the Deputy Secretary of State. Effective August 15, 2002.

Senior Advisor to the Commissioner, International Joint Commission. Effective August 28, 2002.

Department of Transportation

Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs. Effective August 1, 2002.

Special Assistant to the Administrator, Maritime Administration. Effective August 6, 2002.

Associate Director to the Assistant Secretary for Governmental Affairs. Effective August 28, 2002.

Federal Housing Finance Board

Counsel to the Chairman. Effective August 5, 2002.

Special Assistant to the Board Director. Effective August 5, 2002.

Counsel to the Chairman. Effective August 12, 2002.

Special Assistant to the Board Director. Effective August 29, 2002.

General Services Administration

Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective August 5, 2002.

Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective August 26, 2002.

Special Assistant to the Regional Administrator, New England Region. Effective August 26, 2002.

National Endowment for the Humanities

Special Assistant to the Chairman. Effective August 14, 2002.

National Mediation Board

Confidential Assistant to the Board Member. Effective August 28, 2002.

Office of Personnel Management

Policy Analyst to the Director, Office of Personnel Management. Effective August 14, 2002.

Small Business Administration

Deputy Associate Administrator to the Associate Administrator for Communications and Public Liaison. Effective August 12, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Kay Coles James,

Director.

[FR Doc. 02–24086 Filed 9–23–02; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25736, 812–12480]

Prudential Investments LLC, et al.; Notice of Application

September 18, 2002.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice of an application under: (a) section 6(c) of the Investment Company Act of 1940 (“Act”) requesting an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e–1 under the Act; (b) sections 6(c) and 17(b) of the Act requesting an exemption from section 17(a) of the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) of the Act.

Summary of Application: Applicants request an order to permit certain registered management investment companies advised by one or more investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between a broker-dealer and a portion of the investment company’s

portfolio or another portfolio that is not advised by the adviser affiliated with the broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by a broker-dealer which is an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3-1 under the Act.

Applicants: Prudential Investments LLC ("PI"), Prudential Investment Management Inc. ("PIM"), Jennison Associates LLC ("Jennison"), and Cash Accumulation Trust, Command Government Fund, Command Money Fund, Command Tax-Free Fund, Prudential California Municipal Fund, Prudential Core Investment Fund, Prudential Equity Fund, Inc., Prudential Europe Growth Fund, Inc., Prudential's Gibraltar Fund, Inc., Prudential Global Total Return Fund, Inc., Prudential Government Income Fund, Inc., Prudential Government Securities Trust, Prudential High Yield Fund, Inc., Prudential Index Series Fund, Prudential Institutional Liquidity Portfolio, Inc., Prudential MoneyMart Assets, Inc., Prudential Municipal Bond Fund, Prudential Municipal Series Fund, Prudential National Municipals Fund, Inc., Prudential Natural Resources Fund, Inc., Prudential Pacific Growth Fund, Inc., Prudential Real Estate Securities Fund, Prudential Sector Funds, Inc., Prudential Short-Term Corporate Bond Fund, Inc., Prudential Small Company Fund, Inc., Prudential Tax-Free Money Fund, Inc., Prudential Tax-Managed Funds, Prudential Tax-Managed Small-Cap Fund, Inc., Prudential Total Return Bond Fund, Inc., Prudential 20/20 Focus Fund, Prudential U.S. Emerging Growth Fund, Inc., Prudential Value Fund, Prudential World Fund, Inc., Special Money Market Fund, Inc., Strategic Partners Asset Allocation Funds, Strategic Partners Opportunity Funds, Strategic Partners Style Specific Funds, The High Yield Income Fund, Inc., The Prudential Investment Portfolios, Inc., The Prudential Series Fund, Inc., The Target Portfolio Trust, The Prudential Variable Contract Account-2, The Prudential Variable Contract Account-10, and The Prudential Variable Contract Account-11 (collectively, the registered investment companies and any existing and future series thereof, the "Funds").

Filing Dates: The application was filed on March 21, 2001 and amended on September 17, 2002.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 15, 2002 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549-0609. Applicants, Gateway Center Three, 100 Mulberry Street, Newark, New Jersey 07102-4077.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942-0614, or Janet M. Grossnickle, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. Each Fund is a management investment company registered under the Act. PI is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act") and is an indirect wholly owned subsidiary of The Prudential Insurance Company of America ("Prudential"). PI serves as investment adviser to each Fund. PI has appointed one or more investment subadvisers ("Sub-Advisers") to manage certain of the Funds ("Sub-Advised Portfolios"). The Sub-Advised Portfolios that are managed by more than one Sub-Adviser are referred to herein as "Multi-Managed Portfolios". Each Sub-Adviser is registered under the Advisers Act or is exempt from registration. Each Sub-Adviser is responsible for making independent investment and brokerage allocation decisions for its discrete segment ("Portion") of a Multi-Managed Portfolio or its Sub-Advised Portfolio based on its own research and credit evaluations. Each Sub-Adviser is paid a

fee, based on a percentage of the value of assets under the Sub-Adviser's management, by PI out of the proceeds of the management fee received by PI from the Fund. PIM and Jennison, both of which are indirect wholly owned subsidiaries of Prudential, directly advise Portions of Multi-Managed Portfolios and Sub-Advised Portfolios. PI may also directly advise a Portion of a Multi-Managed Portfolio.

2. Applicants request relief to permit: (a) A broker-dealer that serves as a Sub-Adviser or is an affiliated person of a Sub-Adviser (the broker-dealer, an "Affiliated Broker-Dealer;" the Sub-Adviser, an "Affiliated Sub-Adviser") to engage in principal transactions with a Portion of a Multi-Managed Portfolio that is advised by another Sub-Adviser that is not an affiliated person of the Affiliated Broker-Dealer or Affiliated Sub-Adviser (the Portion, an "Unaffiliated Portion"; the other Sub-Adviser, an "Unaffiliated Sub-Adviser"); (b) Affiliated Broker-Dealers to provide brokerage services to an Unaffiliated Portion of the Multi-Managed Portfolios, and the Unaffiliated Portion to use such brokerage services, without complying with rule 17e-1(b) and (d) under the Act; (c) Unaffiliated Portions of the Multi-Managed Portfolios to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Sub-Adviser or a person of which an Affiliated Sub-Adviser is an affiliated person ("Affiliated Underwriter"); (d) a Portion advised by an Affiliated Sub-Adviser ("Affiliated Portion") to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f-3, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion; and (e) the Unaffiliated Portions of the Multi-Managed Portfolios to purchase securities issued by an Affiliated Sub-Adviser, or an affiliated person of an Affiliated Sub-Adviser, engaged in securities-related activities ("Securities Affiliate"), subject to the limits in rule 12d3-1 under the Act.¹

¹ "Affiliated Broker-Dealer" does not include any broker-dealer that is an affiliated person of PI. The terms "Unaffiliated Sub-Adviser", "Sub-Adviser", "Unaffiliated Portion" and "Unaffiliated Portfolio" include PI, PIM and Jennison and any other entity that is an affiliated person of PI, and the discrete Portion of a Sub-Advised Portfolio directly advised by these entities, respectively, provided that each of these entities manages the Sub-Advised Portfolio (or Portion thereof) independently of any other Sub-Advised Portfolio (or Portion thereof) managed by

3. Applicants also request relief to permit: (a) An Affiliated Broker-Dealer to engage in principal transactions with a Sub-Advised Portfolio (which may or may not be a Multi-Managed Portfolio) that is advised by another Sub-Adviser that is not an affiliated person of the Affiliated Broker-Dealer or Affiliated Sub-Adviser (an "Unaffiliated Portfolio"); and (b) Affiliated Broker-Dealers to provide brokerage services to an Unaffiliated Portfolio, and the Unaffiliated Portfolio to use such brokerage services, without complying with rule 17e-1(b) and (d) under the Act.

4. Applicants request that the exemptive relief apply to each Fund and any existing or future registered management investment company or series thereof that is advised by PI or any entity controlling, controlled by, or under common control with (within the meaning of section 2(a)(9) of the Act), PI. In addition, applicants request that the relief apply to any existing or future entity that serves as Sub-Adviser, Affiliated Broker-Dealer or Affiliated Underwriter to a Multi-Managed or Unaffiliated Portfolio. All existing entities affiliated with PI that currently intend to rely on the order have been named as applicants. PI will take steps designed to ensure that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

Applicants' Legal Analysis

A. Principal Transactions Between Unaffiliated Portions, Unaffiliated Portfolios, and Affiliated Broker-Dealers

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter ("second-tier affiliate"). Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Sub-Adviser would be an affiliated person of a Multi-Managed Portfolio, and an Affiliated Broker-Dealer would be either an Affiliated Sub-Adviser or an affiliated person of the Affiliated Sub-Adviser to the same

Multi-Managed Portfolio, and thus a second-tier affiliate of a Multi-Managed Portfolio, including the Unaffiliated Portions. Applicants believe that an Affiliated Broker-Dealer that is the Sub-Adviser to a Sub-Advised Portfolio is an affiliated person of the Sub-Advised Portfolio, and an Unaffiliated Portfolio may also be an affiliated person of that Sub-Advised Portfolio by virtue of being under the common control of PI. Thus, the Affiliated Broker-Dealer may be an affiliated person of an affiliated person of the Unaffiliated Portfolio. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Sub-Adviser on behalf of an Unaffiliated Portion of a Multi-Managed Portfolio with an Affiliated Broker-Dealer or by an Unaffiliated Sub-Adviser on behalf of an Unaffiliated Portfolio with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) of the Act, to exempt principal transactions prohibited by section 17(a) where: (a) An Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Sub-Adviser is the Sub-Adviser to another Portion of the same Multi-Managed Portfolio or (b) an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portfolio solely because the Affiliated Broker-Dealer is the Sub-Adviser to another series of the same or an affiliated investment company.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction or classes of persons or transactions from any provisions of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provision of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an

investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) was designed to prevent are not present. Applicants state that if an Unaffiliated Sub-Adviser were to purchase securities on behalf of an Unaffiliated Portion or an Unaffiliated Portfolio in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Sub-Adviser. In addition, applicants state that Sub-Advisers are paid on the basis of a percentage of the value of the assets under their management. The execution of a transaction to the disadvantage of an Unaffiliated Portion or an Unaffiliated Portfolio would also disadvantage the Unaffiliated Sub-Adviser to the extent that it diminishes the value of the Unaffiliated Portion or Unaffiliated Portfolio. Applicants further state that PI's power to dismiss Sub-Advisers or to change the Portion of a Multi-Managed Portfolio allocated to each Sub-Adviser reinforces a Sub-Adviser's incentive to maximize the investment performance of its own Portion of the Multi-Managed Portfolio or Unaffiliated Portfolio.

5. Applicants state the each Sub-Adviser's contract assigns it responsibility to manage a Portion of the Multi-Managed Portfolio or an entire Unaffiliated Portfolio. Each Sub-Adviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants state that PI does not dictate brokerage allocation or investment decisions for Funds advised by a Sub-Adviser, or have the contractual right to do so, except for any Portion of a Multi-Managed Portfolio advised directly by PI. Applicants submit that, in managing a Portion of a Multi-Managed Portfolio or all of a Fund, each Sub-Adviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Funds since each Unaffiliated Sub-Adviser is required to manage the assets allocated to it in accordance with the investment objectives and related investment policies of the Fund involved as described in its registration statement. Applicants assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in such transactions increases the likelihood of the Sub-Advised Portfolio achieving best price and execution on its principal transactions,

a different Sub-Adviser, and these entities do not control or influence any other Sub-Adviser's investment decisions for its Portion of the Multi-Managed Portfolios.

while giving rise to none of the abuses that the Act was designed to prevent.

B. Payment of Brokerage Compensation by an Unaffiliated Portion or Unaffiliated Portfolio to an Affiliated Broker-Dealer

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as a broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e-1 under the Act. Rule 17e-1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission, fee or other remuneration as a broker in a securities transaction that would not exceed the "usual and customary broker's commission" for purposes of section 17(e)(2) of the Act. Rule 17e-1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e-1(d) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e-1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Sub-Adviser to another portion of a Multi-Managed Portfolio) or a second-tier affiliate of an Unaffiliated Portion, or an affiliated person or a second-tier affiliate of the Unaffiliated Portfolio and thus subject to section 17(e). Applicants request relief under section 6(c) of the Act from section 17(e) of the Act and rule 17e-1 under the Act to the extent necessary to permit the Unaffiliated Portion or Unaffiliated Portfolio to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business without complying with the requirements of rule 17e-1(b) and (d). The requested exemption would apply only where (a) an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Sub-Adviser is the Sub-Adviser to another Portion of the Multi-Managed Portfolio or (b) an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portfolio because the Affiliated Broker-Dealer is a

Sub-Adviser (*i.e.*, the Affiliated Broker-Dealer is part of the same legal entity as the Sub-Adviser) to another portfolio of the same or an affiliated investment company. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of serving as a Sub-Adviser to a Portion of a Multi-Managed Portfolio or an Unaffiliated Portfolio) is an affiliated person or second-tier affiliate of PI, the Unaffiliated Sub-Adviser making the investment decision with respect to the Unaffiliated Portion of the Multi-Managed Fund or Unaffiliated Portfolio, a principal underwriter, promoter, or any officer, trustee or employee of the Multi-Managed Portfolio or Unaffiliated Portfolio.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c) of the Act. Applicants assert that the interests of an Unaffiliated Sub-Adviser are directly aligned with the interests of the Unaffiliated Portion or Unaffiliated Portfolio it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair, as required by rule 17e-1(a). Applicants note that an Unaffiliated Sub-Adviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion or Unaffiliated Portfolio.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) when a principal underwriter of the security, or an affiliated person of the principal underwriter, is an officer, director, member of an advisory board, investment adviser or employee of the investment company. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f-3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f-3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Sub-Adviser, although under contract to manage only a Portion of a Multi-Managed Portfolio, is an investment adviser to the entire Multi-Managed Portfolio. Therefore, all purchases of securities by an Unaffiliated Portion from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, would be subject to section 10(f).

3. Applicants request relief under section 10(f) to permit an Unaffiliated Portion to purchase securities in the ordinary course of business during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Sub-Adviser is an investment adviser to the Multi-Managed Portfolio. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Sub-Adviser to a Portion of a Multi-Managed Portfolio) is an affiliated person or a second-tier affiliate of PI, the Unaffiliated Sub-Adviser making the investment decision, a principal underwriter, promoter, or any officer, trustee or employee of the Multi-Managed Portfolio. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase is in accordance with the conditions of rule 10f-3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the "dumping" of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Managed Portfolios because a decision by an Unaffiliated Sub-Adviser to a Portion of a Multi-Managed Portfolio to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for "dumping". In addition, applicants state that aggregating purchases would serve no purpose because there is no collaboration among Sub-Advisers, and

any common purchases by an Affiliated Sub-Adviser and an Unaffiliated Sub-Adviser would be coincidence.

D. Purchases of Securities Issued by Securities Affiliates

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3-1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in paragraph (c) of rule 12d3-1, provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment adviser, promoter, or principal underwriter.

2. Applicants state that because each Sub-Adviser to a Multi-Managed Portfolio is considered to be an investment adviser to the entire Multi-Managed Portfolio, an Unaffiliated Portion may not purchase securities of a Securities Affiliate in reliance on rule 12d3-1. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit an Unaffiliated Portion to acquire securities issued by a Securities Affiliate subject to the limits in rule 12d3-1, except for paragraph (c) to the extent that the paragraph applies solely because the Securities Affiliate is an Affiliated Sub-Adviser, or an affiliated person of an Affiliated Sub-Adviser. The requested relief would not extend to securities issued by the Sub-Adviser making the purchase, PI, a principal underwriter or promoter of the Fund or any affiliated person of any of these entities.

3. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3-1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Sub-Adviser acts independently of the other Sub-Advisers in making investment decisions for the assets allocated to its portion of the Multi-Managed Portfolio. Further, applicants assert that prohibiting the Unaffiliated Portions from purchasing securities issued by Securities Affiliates could harm the interests of shareholders by causing the Unaffiliated Sub-Advisers to forego investment opportunities that would be in the best interests of the Unaffiliated Portions that they manage.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Multi-Managed Portfolio relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Sub-Adviser, and will be operated in the manner described in the application.

2. No Affiliated Sub-Adviser, Affiliated Broker-Dealer, Affiliated Underwriter or Securities Affiliate (except by virtue of serving as Sub-Adviser to an Unaffiliated Portfolio or a Portion of a Multi-Managed Portfolio) will be an affiliated person or second-tier affiliate of PI, any Unaffiliated Sub-Adviser, or any principal underwriter, promoter, officer, director or employee of the Sub-Advised Portfolio.

3. No Affiliated Sub-Adviser will directly or indirectly consult with any Unaffiliated Sub-Adviser concerning allocation of principal or brokerage transactions.

4. No Affiliated Sub-Adviser will participate in any arrangement whereby the amount of its sub-advisory fees will be affected by the investment performance of an Unaffiliated Sub-Adviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f-3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3-1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Sub-Adviser or an affiliated person of an Affiliated Sub-Adviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-24212 Filed 9-23-02; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 4136]

Culturally Significant Object Imported for Exhibition Determinations: "Whistler, Sargent and Steer: Impressionists in London From Tate Collections"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Whistler, Sargent and Steer: Impressionists in London from Tate Collections," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Frist Center for the Visual Arts, from on or about October 11, 2002 to on or about January 5, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619-5078). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: September 18, 2002.

Miller Crouch,

Assistant Secretary for Educational and Cultural Affairs (Acting), Department of State.

[FR Doc. 02-24234 Filed 9-23-02; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-2002-13262]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on regulatory review II of recreational boating safety regulations, boats and associated equipment, aftermarket marine equipment, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Monday, October 28, 2002, from 8:30 a.m. to 5 p.m. and Tuesday, October 29 from 8:30 a.m. to 12 noon. The Recreational Boating Safety Regulatory Review II Subcommittee will meet on Saturday, October 26, 2002, from 1:30 p.m. to 4:30 p.m. The Boats and Associated Equipment Subcommittee will meet on Sunday, October 27, 2002, from 9 a.m. to 12 noon. The Aftermarket Marine Equipment Subcommittee will meet on Sunday, October 27, 2002, from 1 p.m. to 3 p.m. The Prevention Through People Subcommittee will meet on Sunday, October 27, 2002, from 3:30 p.m. to 5:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 15, 2002. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before October 7, 2002.

ADDRESSES: NBSAC will meet at the Marriott San Mateo, 1770 South Amphlett Blvd., San Mateo, CA 94010. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Jeff Hoedt, Executive Director of NBSAC, Commandant (G-OPB-1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. This notice is available on the Internet at <http://dms.dot.gov> or at the Web site for the Office of Boating Safety at URL address www.uscgboating.org.

FOR FURTHER INFORMATION CONTACT: Jeff Hoedt, Executive Director of NBSAC, telephone 202-267-0950, fax 202-267-4285. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1-800-368-5647.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

- (1) Executive Director's report.

- (2) Chairman's session.

- (3) Recreational Boating Safety Regulatory Review II Subcommittee report.

- (4) Boats and Associated Equipment Subcommittee report.

- (5) Aftermarket Marine Equipment Subcommittee report.

- (6) Prevention Through People Subcommittee report.

- (7) Recreational Boating Safety Program report.

- (8) Coast Guard Auxiliary report.

- (9) Canadian Coast Guard report.

- (10) National Association of State Boating Law Administrators Report.

- (11) Presentation on the promulgation and monitoring of DSC—VHF emergency radio service.

- (12) Wallop Breaux reauthorization update.

- (13) Vessel Identification System (VIS) update.

- (14) NOAA's activities in regard to navigation charts and recreational boaters.

- (15) Aids to Navigation Issues That Affect Recreational Boaters.

- (16) Interpretation on Barge Lighting—relationship between the recreational boaters and commercial vessel operators.

- (17) Impact of proposed Department of Homeland Security on the Recreational Boating Safety Program.

Recreational Boating Safety Regulatory Review II Subcommittee. The agenda includes the following:

- (1) Review recreational boating safety regulations concerning requirements for manufacturers and importers of recreational vessels to prevent drownings (33 CFR part 183, subparts B, C, D, F, G, H, and L).

- (2) Present recommendations to the Council as to whether the current recreational boating safety regulations need to be changed or removed based on a review of need, technical accuracy, cost/benefit, problems and alternatives.

Boats and Associated Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting boats and associated equipment.

Aftermarket Marine Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting aftermarket marine equipment.

Prevention Through People Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting prevention through people.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than October 15, 2002. Written material for distribution at a meeting should reach the Coast Guard no later than October 7, 2002. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than October 7, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: September 16, 2002.

Harvey E. Johnson,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 02-24199 Filed 9-23-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-2002-13380]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) and its Liftboat Subcommittee will meet to discuss various issues relating to offshore safety. Both meetings will be open to the public.

DATES: NOSAC will meet on Thursday, November 7, 2002, from 9 a.m. to 3 p.m. The Liftboat Subcommittee will meet on Wednesday, November 6, 2002, from 1 p.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 24, 2002. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before October 24, 2002.

ADDRESSES: NOSAC will meet in the West Alabama Room, of the Westin Galleria & Westin Oaks Hotel, 5060

West Alabama, Houston, Texas. The Liftboat Subcommittee will meet in the Royal Room of the same hotel. Send written material and requests to make oral presentations to Captain M.W. Brown, Executive Director of NOSAC, Commandant (G-MSO), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593-0001. This notice is available on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Captain M.W. Brown, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202-267-0214, fax 202-267-4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

National Offshore Safety Advisory Committee. The agenda includes the following:

(1) Report on issues concerning the International Maritime Organization and the International Organization for Standardization.

(2) Report from Liftboat Subcommittee.

(3) Report from Offshore Security Subcommittee.

(4) Report from Task Force on development and implementation of the Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Convention for offshore supply vessels (OSVs).

(5) Progress report from the Subcommittee on Pipeline-Free Anchorages.

(6) Revision of 33 CFR subchapter N.

(7) Status report on Coast Guard/Minerals Management Service Inspection of Fixed Facilities.

(8) MMS/USCG discussion on guarding of temporary deck openings. Liftboat Subcommittee. The agenda includes the following:

(1) Review and discuss previous work.

(2) Work on outline of Draft Report.

Procedural

Both meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than October 24, 2002. Written material for distribution at a meeting should reach the Coast Guard no later than October 24, 2002. If you

would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to the Executive Director (*see ADDRESSES*) no later than October 24, 2002.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, telephone the Executive Director at 202 267-0214 as soon as possible.

Dated: September 18, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02-24218 Filed 9-23-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02-02-C-00-BFD To Impose, and Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bradford Regional Airport, Bradford, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose, and impose and use, the revenue from a PFC at Bradford Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 24, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Sharon Daboin/Manager HAR-ADO, FAA, Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Tom Frungillo, Airport Manager of the Bradford Regional Airport Authority at the following address: Star Route Box 176, Lewis Run, PA 16738.

Air carriers and foreign air carriers may submit copies of written comments

previously provided to the Bradford Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm/Planner, Airports District Office, 3905 Hartzdale Drive, Suite 508 Camp Hill, PA 17011, 717-730-2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose, and impose and use the revenue from a PFC at Bradford Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 19, 2002, the FAA determined that the application to impose, and impose and use the revenue from a PFC submitted by Bradford Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 14, 2002.

The following is a brief overview of the application.

PFC Application No.: 02-02-C-00-BFD.

Level of the proposed PFC: \$4.50.

Proposed charge effective date: May 1, 2003.

Proposed charge expiration date: December 31, 2009.

Total estimated PFC revenue: \$414,738.00.

Brief description of proposed project(s):

Impose and Use

- Passenger Chairlift
- T-hanger TWY & Drainage Swale
- Runway 5-23 Lighting
- Parallel TWY Runway 32 Phase I
- Water Treatment Plant Upgrade
- Parallel TWY Runway 14 Phase II
- Airport Master Plan
- Rehabilitate TWY A and B
- Rehabilitate T-Hanger Taxiway
- Acquire Multi Purpose Safety Vehicle
- Conduct 5 Year E.A.
- Rehabilitate Runway 5-23/Improve RSA
- Acquire Snow Removal Equipment
- Acquire Snow Plow
- PFC Application/Formulation Impose Only
- Deicing Facility/Equipment
- Rehabilitate Access Road
- Land Acquisition/Obstruction Removal
- RSA Phase II

Class or classes of air carriers which the public agency has requested not be

required to collect PFCs: Air Taxi/ Commercial Operators filing FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and the FAA regional airports office located at: Eastern Region, Airports Division, AEA-610, 1 Aviation Plaza, Jamaica, New York, 11443.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bradford Regional Airport Authority.

Issued in Camp Hill, Pennsylvania; on September 16, 2002.

John Carter,

Acting Manager, HARADO, Eastern Region.
[FR Doc. 02-24243 Filed 9-23-02; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (#02-04-U-00-DRO) To Use the Revenue From a Passenger Facility Charge (PFC) at Durango-La Plata County Airport, Submitted by the Durango-La Plata County Airport, Durango, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Durango-La Plata County Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 22, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249-6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ron Dent, A.A.E., Director of Aviation, at the following address: Durango-La Plata County Airport, 1000 Airport Road, Box 1, Durango, CO 81303.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Durango-La Plata

County Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342-1258; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249-6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#02-04-U-00-DRO) to use PFC revenue at Durango-La Plata County Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 16, 2002, the FAA determined that the application to use the revenue from a PFC, submitted by the Durango-La Plata County Airport, Durango, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 17, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: September 1, 2001.

Proposed charge expiration date: June 1, 2004.

Total requested for approval: \$973,140.00.

Brief description of proposed project: Rehabilitate Runway 2/20; Install distance remaining signs.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's. None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Durango-La Plata County Airport.

Issued in Renton, Washington on September 16, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02-24244 Filed 9-23-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2002-13358]

Notice of Request for Renewal of a Currently Approved Information Collection: Highway Performance Monitoring System (HPMS)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew the information collection that is summarized below under Supplementary Information. We are required by the Paperwork Reduction Act of 1995 to publish this notice in the **Federal Register**.

DATES: Please submit comments by November 25, 2002.

ADDRESSES: You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to (202) 493-2251; or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number in this notice's heading. All comments may be examined and copied at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you desire a receipt you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rozycki, (202) 366-5059, Highway Systems Performance (HPPI-20), Office of Highway Policy Information, Office of Policy, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Performance Monitoring System (HPMS).

OMB Control Number: 2125-0028 (Expiration Date: February 28, 2003).

Background: The HPMS data that is collected is used for management decisions that affect transportation, including estimates of the Nation's future highway needs and assessments of highway system performance. The

information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-aid highway program. The HPMS also provides miles, lane-miles and travel components of the Federal-Aid Highway Fund apportionment formulae. The data that is required by the HPMS is continually reassessed and streamlined by the FHWA.

Respondents: State governments of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the four territories (American Samoa, Guam, Northern Marianas, and Virgin Islands).

Estimated Average Burden Per Response: The estimated average burden per response for the annual collection and processing of the HPMS data is 1,440 hours for the States, the District of Columbia and the Commonwealth of Puerto Rico; and 20 hours for each of the four territories.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 74,960 hours.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202-512-1661. Internet users may reach the **Federal Register's** Home Page at <http://www.nara.gov/fedreg> and the

Government Printing Office's database at <http://www.access.gpo.gov/nara>.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: September 19, 2002.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 02-24253 Filed 9-23-02; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2002-13359]

Notice of Request for Renewal of a Currently Approved Information Collection: A Guide to Reporting Highway Statistics

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew the information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required by the Paperwork Reduction Act of 1995 to publish this notice in the **Federal Register**.

DATES: Please submit comments by November 25, 2002.

ADDRESSES: You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to (202) 493-2251; or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number in this notice's heading. All comments may be examined and copied at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you desire a receipt you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Mauney, (202) 366-5045, Department of Transportation, Federal Highway Administration, Office of Policy, Office of Highway Policy Information, Highway Funding and Motor Fuels (HPPI-10), 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7 a.m. to 4:30

p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: A Guide to Reporting Highway Statistics.

OMB Control Number: 2125-0032 (Expiration Date: March 31, 2003).

Background: A Guide to Reporting Highway Statistics provides for the collection of information by describing policies and procedures for assembling statistical data from the existing files of State agencies. The data includes motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, and highway taxation and finance. Federal, State, and local governments use the data for transportation policy discussions and decisions. Motor-fuel data are used in attributing receipts to the Highway Trust Fund and subsequently in the apportionment formulas that are used to distribute Federal-Aid Highway Funds. The data are published annually in the FHWA's Highway Statistics and Our Nation's Highways. Information from Highway Statistics is used in the joint FHWA and Federal Transit Administration required biennial report to Congress, The Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance Report to Congress, which contrasts present status to future investment needs.

Respondents: State and local governments of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, and the four territories (American Samoa, Guam, Northern Marianas, and Virgin Islands).

Estimated Average Burden Per Response: The estimated average reporting burden per response for the annual collection of the data is 825.6 hours for the States and the District of Columbia; and 20 hours for the Commonwealth of Puerto Rico and each of the four territories.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 42,206 hours.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request

for OMB's clearance of this information collection.

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202-512-1661. Internet users may reach the **Federal Register's Home Page** at <http://www.nara.gov/fedreg> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: September 19, 2002.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 02-24254 Filed 9-23-02; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34251]

Elk River Railroad, Inc.—Acquisition and Operation Exemption—Line of CSX Transportation, Inc.

Elk River Railroad, Inc. (TERRI), a Class III railroad, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from CSX Transportation, Inc. (CSXT) and operate a 61.1-mile rail line known as the Elk River Subdivision between milepost 6.2, at or near Gilmer, and milepost 67.3, at or near Hartland, in Gilmer, Braxton, and Clay Counties, WV.¹

TERRI certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

TERRI states that it intends to consummate the transaction on or about September 13, 2002. The exemption will not be effective until September 19,

¹ TERRI states that it currently leases the line from CSXT and operates it. See *The Elk River Railroad, Inc.—Lease, Operation and Acquisition Exemption—Line of CSX Transportation, Inc.*, Finance Docket No. 31497 (ICC served July 26, 1989). According to TERRI it intends to exercise its option to purchase the involved property pursuant to the lease dated August 1, 1989.

2002, (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34251, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on F.T. Graff, Bowles Rice McDavid Graff & Love, PLLC, 600 Quarrier Street, Charleston, WV 26301.

Board decisions and notices are available on our Web site at WWW.STB.DOT.GOV.

Decided: September 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 02-23951 Filed 9-23-02; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; Systems of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of alterations to eight Treasury-wide Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (Treasury), gives notice of proposed alterations to existing Treasury-wide systems of records. The systems of records were last published in their entirety on February 19, 2002, beginning at 67 FR 7460.

EFFECTIVE DATE: September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Deputy Chief, Disclosure Services, (202) 622-0930.

SUPPLEMENTARY INFORMATION: Prior to October 26, 2001, the date of enactment of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), Pub. L. 107-56, the Financial Crimes Enforcement Network (FinCEN) was a component of the Departmental Offices of the Department of the Treasury. Section 361 of the USA Patriot Act created a new Section 310 in Subchapter I of Chapter 3 of Title 31,

United States Code, which established FinCEN as a Treasury bureau.

This document revises eight Treasury-wide notices to reflect FinCEN's new status as a new bureau of the Department.

In addition, the Bureau of the Public Debt has moved its Freedom of Information Act and Privacy Act function to its location in Parkersburg, West Virginia. Treasury .004-Freedom of Information/Privacy Act Request Records is being revised to reflect this change in the location of the system and system manager.

Because the described alterations are not considered significant, the reporting requirements of subsection (r) of the Privacy Act of 1974 do not apply. The proposed alterations to the Treasury systems of records are set forth below.

Dated: September 16, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury .002

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

* * * * *

(13) Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, VA 22183-0039.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS: *****

(13) FinCEN: Director, P.O. Box 39, Vienna, VA 22183-0039.

* * * * *

Treasury .004

SYSTEM NAME:

Freedom of Information Act/Privacy Act Request Records.

Description of change: Remove current entry and add the following to read as follows:

SYSTEM LOCATION:

Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Other locations at which the system is maintained by Treasury bureaus and their associated offices are:

(1) Departmental Offices (DO):

a. The Office of Inspector General (OIG): 740 15th Street, NW., Washington, DC 20220.

b. Treasury Inspector General for Tax Administration (TIGTA): 1111 Constitution Ave., NW., Washington, DC 20224.

(2) Bureau of Alcohol, Tobacco and Firearms (ATF): 650 Massachusetts Avenue, NW., Washington, DC 20226.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, SW., Washington, DC 20219-0001.

(4) United States Customs Service (CUSTOMS): 1300 Pennsylvania Avenue, NW., Washington DC 20229

(5) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW., Washington, DC 20228.

(6) Federal Law Enforcement Training Center (FLETC): Glynco, Ga. 31524.

(7) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(8) United States Mint (MINT): 801 9th Street, NW., Washington, DC 20220.

(9) Bureau of the Public Debt (BPD): 200 Third Street, Parkersburg, WV 26101.

(10) (USSS): FOIA/PA Office, FOIA/PA Branch, 950 H Street, NW., Suite 3000, Washington, DC 20001.

(11) Office of Thrift Supervision (OTS): 1700 G Street, NW., Washington, DC 20552.

(12) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22182.
* * * * *

Description of change: Remove current entry and add the following to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

1. (a) DO: Chief, Disclosure Services, Department of the Treasury, Washington, DC 20220.

(b) OIG: 740 15th Street, NW., Washington, DC 20220.

(c) TIGTA: Supervisory Analyst, 1111 Constitution Ave., NW., IC:CC, Room 3039, Washington, DC 20224.

2. ATF: Assistant Director, Liaison and Public Information, 650 Massachusetts Avenue, NW., Washington, DC 20226.

3. BEP: Disclosure Officer, FOIA Office, 14th & C Streets, SW., Washington, DC 20228.

4. FLETC: FOIA/PA Officer, Department of the Treasury, Building 94, Glynco, GA 31524.

5. FMS: Disclosure Officer, 401 14th Street, SW., Washington, DC 20227.

6. Mint: Disclosure Officer, Judiciary Square Building, 801 9th Street, NW., Washington, DC 20220.

7. OCC: Disclosure Officer, Communications Division, Washington, DC 20219.

8. Customs: Chief, Disclosure Law Branch, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

9. BPD: Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, 200 Third Street, Room 211, Parkersburg, WV 26101-5312.

10. USSS: FOIA/PA Officer, FOIA/PA Branch, 950 H Street, NW., Suite 3000, Washington, DC 20001.

11. OTS: Manager, Dissemination Branch, 1700 G Street, NW., Washington, DC 20552.

12. FinCEN: Director, P.O. Box 39, Vienna, VA 22183-0039.

* * * * *

Treasury .005

SYSTEM NAME:

Public Transportation Incentive Program Records.

SYSTEM LOCATION:

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(13) Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, VA 22183-0039.

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SYSTEM MANAGER(S) AND ADDRESS:

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(13) FinCEN: Director, P.O. Box 39, Vienna, VA 22183-0039.

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Treasury .007

SYSTEM NAME:

Personnel Security System.

SYSTEM LOCATION:

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(13) Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, VA 22183-0039.

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SYSTEM MANAGER(S) AND ADDRESS:

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(13) FinCEN: Director, P.O. Box 39, Vienna, VA 22183-0039.

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Treasury .008

SYSTEM NAME:

Treasury Emergency Management System.

SYSTEM LOCATION:

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(13) Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, VA 22183-0039.

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SYSTEM MANAGER(S) AND ADDRESS:

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(13) FinCEN: Director, P.O. Box 39, Vienna, VA 22183-0039.

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Treasury .009

SYSTEM NAME:

Treasury Financial Management Systems.

SYSTEM LOCATION:

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(13) Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, VA 22183-0039.

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SYSTEM MANAGER(S) AND ADDRESS:

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(13) FinCEN: Director, P.O. Box 39, Vienna, VA 22183-0039.

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Treasury .010

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

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(13) Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, VA 22183-0039.

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SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

(13) FinCEN: Director, P.O. Box 39, Vienna, VA 22183-0039.

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Treasury .011

SYSTEM NAME:

Treasury Safety Incident Management Information System (SIMIS).

System location:

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Description of change: Remove paragraph "(1)e. Financial Crimes Enforcement Network (FinCEN); Vienna, VA 22182." and add the following in numerical order: "(13) Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, VA 22183-0039."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

Remove paragraph "1.(e) FinCEN: Safety and Occupational Health Manager, Vienna, VA 22182" and add the following in numerical order: "(13) FinCEN: Safety and Occupational Health Manager, P.O. Box 39, Vienna, VA 22183-0039."

* * * * *

[FR Doc. 02-24185 Filed 9-23-02; 8:45 am]

BILLING CODE 4810-02-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to improve women veterans' health care.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 25, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail ann.bickoff@hq.med.va.gov. Please refer to "OMB Control No. 2900—New" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff, (202) 273-8310 or FAX (202) 273-9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Women Veterans Ambulatory Care Use: Patterns, Barriers, and Influences, VA Form 10-21063(NR).

OMB Control Number: 2900—New.

Type of Review: New collection.

Abstract: The purpose of the study is to gain an understanding of VA women veterans' use of health care from the perspective of women. The data collected will: (1) Provide patterns of VA and non-VA ambulatory care use by women veterans, and contrast them to those of male veterans; (2) identify barriers and influences on VA ambulatory care use, including those related to women's military experience, veteran identity, and perceptions about the availability and quality of VA women's health care; (3) identify factors associated with gender gaps in VA ambulatory care use and; (4) apply these findings to develop interventions and policies to improve access of women veterans to VA ambulatory care.

Affected Public: Individuals or households.

Estimated Annual Burden: 683 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,050.

Dated: September 16, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02-24202 Filed 9-23-02; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS**Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Columbia, SC**

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to designate the VA Medical Center in Columbia, South Carolina, for an enhanced use development. The Department intends to enter into a long-time lease (up to 75 years) of real property with a competitively selected lessee/developer who will finance, design, develop, maintain and manage this project.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset

Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-9489.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.*, specifically provides that the Secretary may enter into an enhanced-use lease, if he determines that: at least part of the property under the lease will be used to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: September 16, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02-24204 Filed 9-23-02; 8:45 am]

BILLING CODE 8302-01-M

DEPARTMENT OF VETERANS AFFAIRS**Performance Review Board Members**

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA) Performance Review Boards which was published in the **Federal Register** on October 12, 2001 (66 FR 52187).

EFFECTIVE DATE: September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Charlotte Moment, Office of Human Resources Management (052B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8165.

VA Performance Review Board (PRB)

Jacob Lozada, Ph.D., Assistant Secretary for Human Resources and Administration (Chairperson)
Nora E. Egan, Chief of Staff
Stanley R. Sinclair, Deputy Under Secretary for Benefits, Veterans Benefits Administration
John H. Thompson, Deputy General Counsel
Laura Miller, Assistant Deputy Under Secretary for Health
D. Mark Catlett, Principal Deputy Assistant Secretary for Management
Lucretia M. McClenney, Special Assistant

Michael G. Sullivan, Deputy Inspector General
 S. Eric Benson, Acting Under Secretary for Memorial Affairs
 Robert Schultz, Alternate, Principal Deputy Assistant Secretary for Human Resources and Administration (Alternate)
 Eligah Clark, Chairman, Board of Veteran's Appeals
 Michael Walcoff, Associate Deputy Under Secretary for Operations, Veterans Benefits Administration (Alternate)
 Nevin Weaver, Chief of Staff, Veteran's Health Administration (Alternate)
 Vincent L. Barile, Deputy Under Secretary for Management, National Cemetery System (Alternate)

Veterans Benefits Administration PRB

Stanley R. Sinclair, Deputy Under Secretary for Benefits, (Chairperson)
 Robert J. Epley, Associate Deputy Under Secretary for Policy & Program Management
 James Bohmbach, Chief Financial Officer
 Michael Walcoff, Associate Deputy Under Secretary for Field Operations
 Geraldine Johnson, Associate Deputy Under Secretary for Management
 Thomas Jensen, VARO Director, Nashville, TN

Veterans Health Administration PRB

Jonathan B. Perlin, M.D., Ph.D., M.S.H.A., Acting Deputy Under Secretary for Health (Chairperson)
 Laura J. Miller, Assistant Deputy Under Secretary for Health (Vice-Chairperson)
 Robert A. Perreault, Director, Business Office

Alfonso R. Batres, Ph.D., Chief Readjustment Counseling Officer
 Terrence S. Batliner, DDS, Network Director, VISN 19
 Linda W. Belton, Network Director, VISN 11
 Lawrence A. Biro, Network Director, VISN 4
 Leslie M. Burger, M.D., Acting Network Director, VISN 20
 Jeanette A. Chirico-Post, M.D., Network Director, VISN 1
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 Kenneth J. Clark, Network Director, VISN 22
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Dated: September 13, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02-24203 Filed 9-23-02; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Tuesday,
September 24, 2002**

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Critical Habitat Designation for
Four Vernal Pool Crustaceans and Eleven
Vernal Pool Plants in California and
Southern Oregon; Proposed Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AI26

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose designation of critical habitat for 4 vernal pool crustaceans and 11 vernal pool plants with a total area being proposed of approximately 672,920 hectares (ha) (1,662,762 acres (ac)). The proposed designation of critical habitat is for Conservancy fairy shrimp (*Branchinecta conservatio*) 165,820 ha (409,735 ac), longhorn fairy shrimp (*Branchinecta longiantenna*) 40,605 ha (100,333 ac), vernal pool fairy shrimp (*Branchinecta lynchi*) 457,556 ha (1,130,605 ac), and vernal pool tadpole shrimp (*Lepidurus packardii*) 291,370 ha (719,965 ac) (collectively referred to as "vernal pool crustaceans" in the remainder of this document), and Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*) 16,320 ha (40,326 ac), Contra Costa goldfields (*Lasthenia conjugens*) 14,499 ha (38,297 ac), Hoover's spurge (*Chamaesyce hooveri*) 81,744 ha (201,987 ac), succulent (or fleshy) owl's-clover (*Castilleja campestris* ssp. *succulenta*) 125,217 ha (309,407 ac), Colusa grass (*Neostapfia colusana*) 132,608 ha (327,670 ac), Greene's tuctoria (*Tuctoria greenei*) 142,984 ha (353,308 ac), hairy Orcutt grass (*Orcuttia pilosa*) 65,671 ha (162,272 ac), Sacramento Orcutt grass (*Orcuttia viscida*) 24,632 ha (60,865 ac), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*) 101,059 ha (249,714 ac), slender Orcutt grass (*Orcuttia tenuis*) 71,035 ha (175,524 ac), and Solano grass (*Tuctoria mucronata*) 7,345 ha (18,149 ac) (collectively referred to as "vernal pool plants" in the remainder of this document), pursuant to the Endangered Species Act of 1973, as amended (Act). Because many of the units proposed for different species overlap, the total critical habitat area we are proposing is much less than the sum of the areas for each species. The proposed units are in 39 counties in California and one county in southern Oregon.

If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise or further refine critical habitat boundaries prior to final designation based on habitat and additional plant and animal surveys, public comments on the proposed critical habitat rule, the completion and approval of Habitat Conservation Plans (HCPs), and new scientific and commercial information, and data concerning potential economic impacts from the proposed designation.

DATES: We will accept comments from all interested parties until November 25, 2002. Public hearing requests must be received by November 8, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may mail written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825.

2. You may hand deliver written comments to our Sacramento Fish and Wildlife Office at the address given above.

3. You may send comments by electronic mail (e-mail) to fw1_vernalpool@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler or Susan Moore, at the Sacramento Fish and Wildlife Office address above (telephone 916/414-6600; facsimile 916/414-6710). Information regarding this proposal is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:**Background**

The vernal pool crustaceans and plants addressed in this proposed rule live in vernal pools (shallow depressions that hold water seasonally),

swales (shallow drainages that carry water seasonally), and ephemeral freshwater habitats. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. The vernal pool habitats of the four vernal pool crustaceans and eleven plants addressed in this proposed rule have a discontinuous distribution west of the Sierra Nevada that extends from southern Oregon through California into northern Baja California, Mexico (Holland and Jain 1978, 1988, Eriksen and Belk 1999).

Vernal pools are a unique kind of wetland ecosystem. Central to their distinctive ecology is the fact that they are vernal or ephemeral, occurring temporarily—typically during the spring—and then disappearing until the next year. They are wet long enough to be different in character and species composition from the surrounding upland habitats, and yet their prolonged annual dry phase prevents the establishment of species typical of more permanent wetlands. In California, where extensive areas of vernal pool habitat developed over long periods of time, unique suites of species specially adapted to the unusual conditions of vernal pools have evolved. Fish and other predators are among the species excluded by vernal pools' annual drying, so vernal pool communities have developed and flourished in the absence of many predators. California vernal pools are also renowned for their showy displays of wildflowers, blooming in concentric rings about the pools in spring. Centres of Plant Diversity, a project of the World Wide Fund for Nature (WWF) and IUCN—The World Conservation Union, has identified the vernal pools of California and Baja California, Mexico, as a center of plant diversity and endemism in North America, and considers them to be severely threatened (WWF and IUCN 2002).

Many areas in California and portions of southern Oregon have the combination of environmental conditions that favors the development of vernal pools (Keeley and Zedler 1998). The climate is of a type classified as Mediterranean, with a wet season when rainfall exceeds evaporation, filling the pools, and a dry season when evaporation is greater, drying the pools. Rainfall is relatively meager even in most wet seasons, so erosion by overflowing waters does not dissect the topographic irregularities that form vernal pool basins. Temperatures during the winter-spring wet season are mild, so plants and animals can grow, mature, and reproduce.

A second major factor in the development of vernal pools is soil. Vernal pools form where there is a soil layer below or at the surface that is impermeable or nearly impermeable to water (Smith and Verrill 1998). Precipitation and surface runoff become trapped or “perched” above this layer. In California, the restrictive soil layers underlying vernal pools are of four main types—hardpans, claypans, volcanic flows, and non-volcanic rock. Volcanic flows include basaltic lavas and cemented mudflows, and are most common along the lower western slope of the Sierra Nevada. Hardpans are formed by leaching, redeposition, and cementing of silica minerals from high in the soil profile to a lower (“B”) horizon (Hobson and Dahlgren 1998, Smith and Verrill 1998). Claypans are formed by another redeposition process—fine clay particles are transported to the B horizon and accumulate there. Claypans may also be augmented by redeposition of saline or alkaline compounds. Hardpans and claypans both develop gradually over thousands of years, and can be a meter (yard) or more thick. Smith and Verrill (1998) list many of the soil series associated with vernal pools in the Central Valley.

A third factor, related to soil and climate, is topography or relief. Vernal pools typically occur in landscapes that, at a broad scale, are shallowly sloping or nearly level, but on a fine scale may be quite bumpy. Complex micro-relief results in shallow, undrained depressions that form vernal pools. Some vernal pool landscapes are dotted with numerous, rounded soil mounds, referred to as mima mounds, after the well-developed mounds of the Mima Prairie in Thurston County, Washington (Scheffer 1947). Scientists still argue about the origins of these mounds, which have been attributed to forces as disparate as gophers acting over millennia (Scheffer 1947, Cox and Gakahu 1983) and the pressures of soil swelling and shrinkage during wetting and drying cycles (Hallsworth *et al.* 1955, Hobson and Dahlgren 1998)—as well as other hypotheses, many much less plausible. Focusing on the troughs rather than the mounds, Californians long referred to vernal pools as “hog wallows,” but unlike the buffalo wallows of the Great Plains, these wetlands have little to do with hogs or wallowing. From the air, vernal pool landscapes often show characteristic patterning, produced by plant responses to mound and trough micro-relief. This patterning has allowed detailed mapping of vernal pool habitats

throughout California’s Central Valley and adjacent areas (Holland 1998).

Vernal pools come in a variety of shapes and sizes, from a square meter (yard) to a hectare (2.5 ac) or more. Some larger vernal wetlands, such as the 36 ha (90 ac) Olcott Lake in the Jepson Prairie Preserve in Solano County, are also referred to as vernal lakes or playa pools or lakes. Playa pools with high alkalinity are termed alkali sinks. These larger wetlands contain many of the same animals and plants of smaller vernal pools, including many rare and endangered species.

Since appropriate combinations of climate, soil, and topography often occur over continuous areas rather than in isolated spots, vernal pools in California, particularly in the Central Valley, tend to occur in clusters, called “complexes.” A landscape that supports a vernal pool complex is typically a grassland, with areas of obstructed drainage that form the pools. Vernal pools can also be found in a variety of other habitats, including woodland, desert, and chaparral. The pools may be fed or connected by low drainage pathways called “swales.” Swales are often themselves seasonal wetlands that remain saturated for much of the wet season, but may not be inundated long enough to develop strong vernal pool characteristics. Vernal pool complexes have historically been considered poor farmland, because of their shallow, seasonally saturated or inundated and sometimes alkaline soils, and their root-restricting subsurface layer. For the same reasons, trees are relatively rare in most vernal pool complexes.

California’s vernal pools begin to fill with the fall and winter rains. Before ponding occurs, there is a period during which the soil is wetted and the local water table may rise. Some pools have a substantial watershed that contributes to their water inputs; others may fill almost entirely from rain falling directly into the pool (Hanes and Stromberg 1998). Although exceptions are not uncommon, the watershed generally contributes more to the filling of larger or deeper pools, especially playa pools. Even in pools filled primarily by direct precipitation, Hanes and Stromberg (1998) report that subsurface inflows from surrounding soils can help dampen water level fluctuations during late winter and early spring. Vernal pools exhibit four major phases—the wetting phase, when vernal pool soils become saturated; the aquatic phase, when a perched water table develops and the vernal pool contains water; a water-logged drying phase, when the vernal pool begins to lose water as a result of evaporation and loss to the

surrounding soils but soil moisture remains high; and the dry phase, when the vernal pool and underlying soils are completely dry (Keeley and Zedler 1998). Upland areas associated with vernal pools are also an important source of nutrients to vernal pool organisms (Wetzel 1975). Vernal pool habitats derive most of their nutrients from detritus which is washed into the pool from adjacent uplands, and these nutrients provide the foundation for vernal pool aquatic communities food chain. Detritus is a primary food source for the vernal pool crustaceans addressed in this proposed rule (Eriksen and Belk 1999).

Both the amount and timing of rainfall in California vary greatly from year to year. As a result, pools may fill to different extents at different times. The duration of ponding of vernal pools also varies, and in certain years some pools may not fill at all. Many characteristics of vernal pool plants and animals are adaptations to the highly variable and unpredictable nature of vernal pools (Holland 1976, Holland and Dains 1990, King *et al.* 1996, Hanes and Stromberg 1998).

California’s vernal pools are rich in species composition compared to vernal pools worldwide and contain many species that are endemic to the region (found nowhere else). In addition, while most of California’s grasslands are now dominated by non-native grasses and other introduced plants, vernal pools remain a haven for native species. Invasive non-native plants have been introduced into California and have so successfully spread and reproduced in upland habitats that it is not unusual for non-natives to account for a third of the species and more than 90 percent of the biomass in a California grassland. Vernal pools have dramatically resisted this invasion with 75 to 95 percent of plant species found in vernal pools being native; and natives dominate in biomass as well as number (Holland and Jain 1978, Jokerst 1990, Spencer and Rieseberg 1998). Vernal pool communities dominated by natives persist even though they are surrounded by seas of grassland raining the seed of non-native plants. Vernal pool plant communities are able to resist invasion because of the severe ecological constraints on plants living in vernal pool environments.

The animal communities that live in vernal pools also contain diverse groups of highly specialized species. The freshwater crustacean communities of vernal pools are particularly well developed (Simovich 1998). The most visible crustaceans in vernal pools are the large branchiopods (literally, “gill-

foots”), about 27 species in California, of which perhaps 10 are endemic (Helm 1998, Belk and Fugate 2000) and 6 are federally listed as threatened or endangered. The large branchiopods are easily visible to the naked eye, ranging up to 5 centimeters (cm) (2 inches (in)) in length, depending on the species. They include the fairy shrimps (Anostraca), tadpole shrimps (Notostraca), and clam shrimps (Conchostraca). Smaller crustaceans that are common in California vernal pools, many large enough to see without magnification, are water fleas (Branchiopoda—Cladocera), copepods (Copepoda), and seed shrimp (Ostracoda).

Amphibians and many insect species also live in vernal pools. The Pacific tree frog (chorus frog) (*Hyla (Pseudacris) regilla*) and western toad (*Bufo boreas*) are common and abundant in and around vernal pools. Two rarer amphibians native to vernal pools are the California tiger salamander (*Ambystoma californiense*) and the western spadefoot toad (*Scaphiopus (Spea) hammondi*) (Morey 1998). While dispersing bullfrogs (*Rana catesbeiana*), which are not native to California, are sometimes found in vernal pools, they do not successfully breed there because bullfrog tadpoles require two years to mature and cannot survive the dry season. These voracious introduced predators will sometimes be found resting and feeding in vernal pools close to more permanent water, frequently associated with human modifications of the landscape. Fish likewise do not inhabit vernal pools, except where temporarily introduced by humans (e.g., mosquitofish (*Gambusia* sp.)) or by flooding of permanent waters.

The insect fauna of vernal pools is numerous, varied and primarily native, including aquatic beetles (Coleoptera—Dytiscidae, Hydrophilidae, Gyrinidae, Halipidae, Hydraenidae), aquatic bugs, including backswimmers (Hemiptera—Notonectidae), water boatmen (Corixidae), and water striders (Gerridae), springtails (Collembola), mayflies (Ephemeroptera), dragonflies and damselflies (Odonata), and various flies with aquatic larvae, including midges (Diptera—Chironomidae), crane flies (Tipulidae) and mosquitoes (Culicidae). Rogers (1998) found that mosquitoes generally made up less than 2 percent of the total macroscopic invertebrate population in natural and two-year old constructed pools—perhaps because many of the other insects listed above are predators. Vernal pool crustaceans are an important food source for a number of aquatic and terrestrial species. Aquatic

predators include insects such as backswimmers (Family Notonectidae) (Woodward and Kiesecker 1994), predaceous diving beetles and their larvae (Family Dystictidae), and dragonflies and damselfly larvae (Order Odonate). Vernal pool tadpole shrimp are another significant predator of fairy shrimp.

The plants, invertebrate and vertebrate animals of vernal pools, and vernal pool landscapes in general, are important providers of food and habitat for waterfowl, shorebirds, wading birds, toads, frogs, and salamanders (Proctor *et al.* 1967, Krapu 1974, Swanson 1974, Morin 1987, Simovich *et al.* 1991, Silveira 1996). There is evidence that vernal pool crustaceans were used as a food source for Native Americans in California's Central Valley (Silveira 1998). During the spring, waterfowl feed on vernal pool crustaceans and other invertebrates, which are sources of protein and calcium needed for migration and egg-laying (Proctor *et al.* 1967, Silveira 1998). Vernal pool complexes contribute to continuity of wetland habitats along the Pacific Flyway (a major bird migration route). Many species feed or nest near vernal pools, for example, cliff swallows (*Hirundo fulva*) glean mud from vernal pool beds for their nests, lesser nighthawks (*Chordeiles acutipennis*) nest in dry vernal pool beds, burrowing owl (*Athene cunicularia*) and gopher (*Thomomys* sp.) burrows are found in mima mounds, and many species graze or hunt along vernal pool shorelines. Before their populations were nearly eliminated by hunting and habitat alteration, elk (*Cervus* sp.) and pronghorn antelope (*Antilocarpa americana*) undoubtedly grazed vernal pool landscapes, and have been replaced by cattle. Fishing net weights found near vernal pools suggests that California's first human populations also made use of vernal pool resources, as do hunters today (Silveira 1998).

Classification of Vernal Pools

The variability of vernal pool types has led many researchers to try and classify these ephemeral habitats. (*i.e.*, Holland (1986), Sawyer and Keeler-Wolf (1995), Ferren *et al.* (1996), Smith and Verrill (1998)). Most of these efforts have focused on classifying vernal pools based on the factors that influence variation in their physical features. Primary physical features that influence vernal pool size, depth, and soil and water chemistry include soil type, geologic formation, and landform. Landforms are physical attributes of the landscape resulting from geomorphological processes such as

erosion and deposition, and include features such as alluvial terraces and basins; and volcanic mudflows and lava flows.

The types and kinds of species that are found in vernal pools are largely determined by these physical factors, including pool size, depth, area, and water and soil chemistry (Holland and Griggs 1976, Zedler 1987, Holland and Dains 1990, Eng *et al.* 1990, Simovich 1998). The physical characteristics of the vernal pool influences the life history characteristics of vernal pool species, such as the speed with which a species can mature and reproduce, the amount of soil moisture required for germination of plant seeds or hatching of invertebrate eggs or cysts, as well as tolerance to turbidity, total dissolved solids, and other aspects of vernal pool water chemistry.

Sawyer and Keeler-Wolf (1995) classified vernal pools according to a number of physical, geographic, and biological characteristics. They identified several general vernal pool types which correspond to the nature of the impermeable layer that underlay the vernal pool and assisted the pool to form. The vernal pools were identified as Northern Hardpan, Northern Claypan, Northern Basalt Flow, Northern Volcanic Mudflow, and Northern Ashflow vernal pools. Northern Hardpan vernal pools are generally formed on alluvial terraces with silicate-cement soil layers. These pool types are generally on acidic soils, and exhibit well developed mima mound topography found on the eastern margins of the Central Valley. Northern Claypan vernal pools are generally formed on impermeable surfaces created by an accumulation of clay particles. These pool types are often found on basin and basin rim landforms and tend to occur in the central portion of the Central Valley and tend to be alkaline. Vernal pools identified as Northern Volcanic Mudflow, Northern Basalt Flow, and Northern Volcanic Ashflow, are generally formed by an impervious bedrock layer of volcanic origin. These pool types are found on the eastern and coastal portions of the Central Valley, and tend to be small and restricted in distribution. Northern Basalt Flow vernal pools occur at greater elevations than other vernal pool types.

Vernal Pool Crustaceans Background

Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool fairy shrimp (*Branchinecta lynchi*) are members of the aquatic crustacean order Anostraca. Vernal pool tadpole shrimp

(*Lepidurus packardii*) is a member of the aquatic crustacean order Notostraca. Vernal pool fairy shrimp are found in California and southern Oregon while the other three shrimp species are found only in California. These species have all evolved similar adaptations to the unique habitat conditions of their vernal pool habitats. The general appearance and life history characteristics of these four species will be described in combination below.

Longhorn fairy shrimp, vernal pool fairy shrimp, and Conservancy fairy shrimp (fairy shrimp) have delicate elongate bodies, large stalked compound eyes, and 11 pairs of phyllopoas, or gill-like structures that also serve as legs. They swim or glide gracefully upside down by means of complex beating movements that pass in a wave-like anterior to posterior direction. Fairy shrimp are filter feeders, and consume algae, bacteria, protozoa, rotifers, and bits of detritus as they move through the water. The second pair of antennae in fairy shrimp adult males are greatly enlarged and specialized for clasping the females during copulation. The females carry eggs in an oval or elongate ventral sac (brood sac). Once fertilized, the eggs are coated with a protective protein layer that allows them to withstand heat, cold, and prolonged dehydration. The fully developed eggs are either dropped to the pool bottom or remain in the brood sac until the female dies and sinks. These dormant eggs are also known as cysts, and they can remain viable in the soil for decades after deposition (Eriksen and Belk, 1999). When the pools refill in the same or subsequent seasons, some, but not all, of the cysts may hatch (Eriksen and Belk, 1999). The cyst bank in the soil may consist of cysts from several years of breeding. The cysts that hatch may do so within days after the vernal pools fill, and rapidly develop into adults within weeks. In pools that persist for several weeks to a few months, fairy shrimp may have multiple hatches during a single season.

Vernal pool tadpole shrimp have dorsal compound eyes, a large shield-like carapace (shell) that covers most of their body and a pair of long cercopods or appendages at the end of the last abdominal segment. They are primarily benthic (living on the bottoms of the pools) animals that swim with their legs down. Vernal pool tadpole shrimp climb or scramble over objects, and plow along bottom sediments as they forage for food. Their diet consists of organic detritus (decaying matter) and living organisms, such as fairy shrimp and other invertebrates (Fryer 1987). The females deposit eggs on vegetation

and other objects on the pool bottom. Like fairy shrimp, vernal pool tadpole shrimp pass the summer months as dormant cysts in the soil. Some of the cysts hatch as the vernal pools are filled with rainwater in the next or subsequent seasons, while other cysts may remain dormant in the soil for many years. When winter rains refill inhabited pools, tadpole shrimp reestablish from dormant cysts and may become sexually mature within three to four weeks after hatching (Ahl 1991, Helm 1998). Mature adults may be present in pools until the habitats dry up in the spring (Ahl 1991, Gallagher 1996).

All of the vernal pool crustacean species addressed in this proposed critical habitat designation have evolved unique physical adaptations to survive in vernal pools. The timing and duration of wet and dry phases can vary significantly from year to year, and in some years vernal pools may not inundate at all. In order to take advantage of the short inundation phase, vernal pool crustaceans have evolved short reproduction times and high reproductive rates. Most of the species addressed in this proposed rule hatch within a few days after their habitats fill with water, and can start reproducing within a few weeks (Eng *et al.* 1990, Helm 1998, Eriksen and Belk 1999). Vernal pool crustaceans can complete their entire life cycle in a single season, and some species may complete several life cycles. Vernal pool crustaceans can also produce thousands viable cysts when environmental conditions are favorable.

To survive the prolonged heat and desiccation of the vernal pool dry phase, vernal pool crustaceans have developed a dormant stage. After vernal pool crustacean eggs are fertilized in the female's brood sac, the embryos develop a thick, usually multi-layered shell. When embryonic development reaches a late stage, further maturation stops, metabolism is drastically slowed, and the egg, now referred to as a cyst, enters a dormant state called diapause. The cyst is then either dropped to the pool bottom or remains in the brood sac until the female dies and sinks. Once the cyst is desiccated, it can withstand temperatures near boiling (Carlisle 1968), fire (Wells *et al.* 1997), freezing, and anoxic conditions without damage to the embryo. The cyst wall cannot be affected by digestive enzymes, and can be transported in the digestive tracts of animals without harm (Horne 1967). Most fairy shrimp cysts can remain viable in the soil for a decade or longer (Belk 1998).

Although the exact signals that cause crustacean cysts to hatch are unknown,

factors such as soil moisture, temperature, light, oxygen, and osmotic pressure may trigger the embryo's emergence from the cyst (Brendonck 1996). Because the cyst contains a well developed embryo, the animal can quickly develop into a fully mature adult. This allows vernal pool crustaceans to reproduce before the vernal pool enters the dry phase, sometimes within only a few weeks (Helm 1998, Eriksen and Belk 1999). In some species, cysts may hatch immediately without going through a dormant stage, if they are deposited while the vernal pool still contains water. These cysts are referred to as quiescent, and allow the vernal pool crustacean to produce multiple generations in a single wet season as long as their habitat remains inundated.

Another important adaptation of vernal pool crustaceans to the unpredictable conditions of vernal pools is the fact that not all of the dormant cysts hatch in every season. Simovich and Hathaway (1997) found that only 6 percent of San Diego fairy shrimp cysts hatched after initial hydration, and only 0.18 percent of Riverside fairy shrimp cysts hatched. The cysts that don't hatch remain dormant and viable in the soil. These cysts may hatch in a subsequent year, and form a cyst bank much like the seed bank of annual plants. The cyst bank may be comprised of cysts from several years of breeding, and large cyst banks of viable resting eggs in the soil of vernal pools containing fairy shrimp have been well documented (Belk 1998). Based on a review of other studies (*e.g.*, Belk 1977, Gallagher 1996, Brendonck 1996), Simovich and Hathaway (1997) concluded that species inhabiting more unpredictable environments, such as smaller or shorter lived pools, are more likely to have a smaller percent of their cysts hatch after their vernal pool habitats fill with water. This strategy reduces the probability of complete reproductive failure if a vernal pool dries up prematurely. This kind of "bet-hedging strategy" has been suggested as a mechanism by which rare species may persist in unpredictable environments (Chesson and Warner 1981, Chesson and Huntly 1989, Ellner and Hairston 1994).

Although the vernal pool crustaceans, and particularly the fairy shrimp, addressed in this proposed rule are not often found in the same vernal pool at the same time, when coexistence does occur, it is generally in deeper, longer lived pools (Eng *et al.* 1990, Thiery 1991, Gallagher 1996, Simovich 1998). In larger pools, closely related species of fairy shrimp may coexist by hatching at different temperatures, and by

developing at different rates (Thiery 1991, Hathaway and Simovich 1996). Vernal pool crustacean species may also be able to coexist by utilizing different physical portions of the vernal pool, or by eating different food sources (Daborn 1978, Mura 1991, Hamer and Appleton 1991, Thiery 1991).

The primary historic dispersal mechanisms for the vernal pool crustaceans probably consisted of large scale flooding resulting from winter and spring rains, and dispersal by migratory birds. As a result of widespread flood control and agricultural water diversion projects developed during the twentieth century, large scale flooding is no longer a major form of dispersal for the vernal pool crustaceans. When being dispersed by migratory birds, the eggs of these crustaceans are either ingested (Krapu 1974, Swanson 1974, Driver 1981, Ahl 1991) and/or adhere to the bird's legs and feathers where they are transported to new habitats. Cysts may also be dispersed by a number of other species, such as salamanders, toads, cattle, and humans (Eriksen and Belk 1999).

The vernal pool crustaceans addressed in this proposed rule are generally confined to habitats that are low to moderate in alkalinity and dissolved salts, when compared with other aquatic systems (Eriksen and Belk 1999). Although potentially moderated by soil type, vernal pools are generally unbuffered and exhibit wide fluctuations in pH and dissolved oxygen (Keeley and Zedler 1998). Vernal pool water ion concentrations, such as sodium, potassium, calcium, chlorine, and magnesium, also experience large daily and seasonal variations. These variations are due to the concentration of ions due to evaporation, and the dilution of ions with additional rainfall throughout the wet season (Barclay and Knight 1981). How vernal pool crustacean species adapt to these fluctuations in water chemistry varies. Definitive conclusion on why the species has certain water chemistry habitat preferences is generally unknown due to the anecdotal nature of observations.

Additional information specific to each of the four individual vernal pool crustacean species described in this proposed rule is provided below.

Conservancy Fairy Shrimp

Conservancy fairy shrimp were first described in 1990 by Eng, Belk, and Eriksen. The type specimens were collected in 1982 at Olcott Lake, Solano County, California. Conservancy fairy shrimp are currently known from only eight disjunct areas—Vina plains and vicinity in southern Tehama and

northern Butte County; Jepson Prairie in Solano County; Suisun Slough in southern Solano County; Sacramento National Wildlife Refuge in Glenn County; near Caswell Memorial State Park in Stanislaus County; Haystack Mountain Area in eastern Merced County; San Luis National Wildlife Refuge Complex in central Merced County, and the Mutau Flat area in the Los Padres National Forest area of northern Ventura County.

Conservancy fairy shrimp look similar to other fairy shrimp species, but can be distinguished by characteristics of the male second antenna. The second antennae of Conservancy fairy shrimp males have a distal segment which is about 30 percent shorter than the basal segment, and has a tip bent medially about 90 degrees (Eng *et al.* 1990). The female brood pouch is tapered at each end, typically extends to abdominal segment 8, and has a terminal opening (Eng *et al.* 1990). Males may be from 14 to 27 millimeters (mm) (0.6 to 1.1 in) in length, and females have been measured between 14.5 and 23 mm (0.6 and 0.9 in) long.

Further discussion on the life history and habitat requirements of Conservancy fairy shrimp can be found in the final rule to list this species (59 FR 48136).

Longhorn Fairy Shrimp

Longhorn fairy shrimp were first collected in 1937, but were not formally described until 1990 by Eng, Belk, and Eriksen. The type specimen was collected from a sandstone outcrop pool on the Souza Ranch in Contra Costa County, California. Longhorn fairy shrimp are extremely rare, and are only known from three widely separated locations; the Altamont Pass area in Contra Costa and Alameda counties; the western and northern boundaries of Soda Lake on the Carrizo Plain in San Luis Obispo County; and Kesterson National Wildlife Refuge in the San Joaquin Valley in Merced County. Vernal pool crustacean surveys conducted by Sugnet (1993) found only 3 occurrences of longhorn fairy shrimp out of 3,092 locations surveyed, and Helm (1998) found occurrences of longhorn fairy shrimp in only 9 of 4,008 wetlands sampled.

Longhorn fairy shrimp are distinguished from other fairy shrimp by the male's very long second antennae, which is about twice as long, relative to its body, as the second antennae of other species of *Branchinecta*. Longhorn fairy shrimp antennae range from 6.7 to 10.4 mm (0.3 to 0.4 in) in length (Eriksen and Belk 1999). Females can be recognized by

their cylindrical brood pouch, which extends to below abdominal segments 6 or 7. Mature males have been measured between 12 and 21 mm (0.5 to 0.8 in) in length, and females range from 13.3 to 19.8 mm (0.5 to 0.8 in) in length (Eng *et al.* 1990).

Further discussion on the life history and habitat requirements of longhorn fairy shrimp can be found in the final rule to list this species (59 FR 48136).

Vernal Pool Fairy Shrimp

Vernal pool fairy shrimp were first described by Eng *et al.* in 1990 from a type specimen that was collected in 1982 at Souza Ranch, Contra Costa County, California. The species occurs in disjunct fragmented habitats distributed across the Central Valley of California from Shasta County to Tulare County and the central and southern coast ranges from northern Solano County to Ventura County, California. Additional disjunct populations have been identified in southern California and in Oregon. In Oregon, the species' distribution is limited to the vicinity of an approximately 82.9 square kilometer (sq km) (32 square mile (sq mi)) area known as the Agate Desert in Jackson County, north of Medford. In southern California the distribution is equally limited with populations occurring in three areas in Riverside County.

Vernal pool fairy shrimp are characterized by the presence and size of several bulges on the male's antenna, and by the female's short, pyriform or pear shaped, brood pouch. Vernal pool fairy shrimp vary in size, ranging from 11 to 25 mm (0.4 to 1.0 in) in length (Eng *et al.* 1990).

Vernal pool fairy shrimp are currently found in 27 counties across the Central Valley and coast ranges of California, inland valleys of southern California, and southern Oregon. Although vernal pool fairy shrimp are distributed more widely than most other fairy shrimp species, they are generally uncommon throughout their range, and rarely abundant where they do occur (Eng *et al.* 1990, Eriksen and Belk 1999).

Further discussion on the life history and habitat requirements of vernal pool fairy shrimp can be found in the final rule to list this species (59 FR 48136).

Vernal Pool Tadpole Shrimp

Vernal pool tadpole shrimp were initially described by Simon in 1886, and named *Lepidurus packardi*. After subsequent reclassification by Longhurst (1955), the species was given a subspecies status based primarily on the lack of apparent geographic boundaries between *L. apus* and *L. packardi* populations. Lynch (1972)

resurrected *L. packardi* to full species status based on further examination of specimens and this is the currently accepted taxonomic status of vernal pool tadpole shrimp. Vernal pool tadpole shrimp inhabit sites in California's Central Valley and San Francisco Bay area. The geographic range of this species includes disjunct populations found in the Central Valley from Shasta County to northern Tulare County and in the central coast range from Solano County to Alameda County.

Vernal pool tadpole shrimp are distinguished by a large, shield-like carapace, or shell, that covers the anterior half of their body. Vernal pool tadpole shrimp have 30 to 35 pairs of phyllopods, a segmented abdomen, paired cercopods or tail-like appendages, and fused eyes. Vernal pool tadpole shrimp will continue to grow as long as their vernal pool habitats remain inundated, in some cases for six months or longer. They periodically shed their shells, which can often be found along the edges of vernal pools where vernal pool tadpole shrimp occur. Mature vernal pool tadpole shrimp range in size from 15 to 86 mm (0.6 to 3.4 in) in length.

Vernal pool tadpole shrimp have relatively high reproductive rates. Ahl (1991) found that fecundity increases with body size. Large females, greater than 20 mm (0.8 in) carapace length, could deposit as many as 6 clutches, averaging 32 to 61 eggs per clutch, in a single wet season.

Further discussion on the life history and habitat requirements of vernal pool tadpole shrimp can be found in the final rule to list this species (59 FR 48136).

The habitat of the four vernal pool crustaceans is imperiled by a variety of activities, primarily by urban development, water supply and flood control activities, and conversion of land to agricultural use. Habitat loss occurs from direct destruction and modification of pools due to filling, grading, discing, leveling, and other activities, as well as modification of surrounding uplands. Vernal pool crustaceans and their habitat also are threatened by altered flood regimes, degraded water quality, siltation, erosion, grazing, improper burning, military operations, off-road vehicles, pollution, vandalism, road and trail maintenance, and introduction of non-native predators. Further discussion on threats to the vernal pool crustaceans can be found in the final rule to list these species (59 FR 48136).

Vernal Pool Plants Background

The vernal pool plants described in this proposed rule have developed a

suite of highly specialized adaptations which allow them to survive in vernal pool habitats. All eleven species are annuals, meaning they germinate, grow, and reproduce within a single year. This allows the vernal pool plants to complete their life cycles during the relatively short inundation and drying periods of their vernal pool habitat.

Another adaptation of vernal pool plants is production of dormant seeds. This adaptation allows vernal pool plants to survive the hot summer months in the soil. The seeds may remain viable in the soil for many years. The number of plants present above ground may fluctuate dramatically from year to year. However, much of the population of these species exists as seeds in the soil. Vernal pool plant seeds generally germinate after winter rains in response to a complex set of environmental cues that are not well understood, but that generally include temperature and soil moisture. Specific germination cues differ greatly among species and are discussed in more detail in the individual species descriptions below. Not all of the dormant seeds will germinate in any given year. This strategy reduces the probability of local extirpation if environmental conditions change, for example if a vernal pool dries up prematurely. This kind of "bet-hedging strategy" has been suggested as a mechanism by which rare species may persist in unpredictable environments (Chesson and Warner 1981, Chesson and Huntly 1989, Ellner and Hairston 1994).

Tolerance to inundation differs greatly among species (Zedler 1987). The zonation of vernal pool plants which forms the characteristic rings of flowers around vernal pools is a result of this differential tolerance to inundation. Species that are the least tolerant to inundation grow along the margins of the pool, while those that can tolerate extended periods of inundation grow in the center of the pools.

Information on the appearance and life history of each of the eleven individual vernal pool plant species described in this proposed rule is provided below.

Butte County Meadowfoam

Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*) was first collected in 1917 at a site 16 kilometers (km) (10 mi) north of Chico (Service 1991b), although it was recognized as a separate subspecies at that time. Kalin-Arroyo (1973) determined that Butte County meadowfoam was a distinct taxon and gave it the scientific name *Limnanthes*

floccosa ssp. *californica*. The type locality is in Butte County between Chico and Oroville, near the intersection of state Highway 99 and Shippee Road (Kalin-Arroyo 1973).

Butte County meadowfoam is a small annual of the meadowfoam or false mermaid family (Limnaceae). It has erect stems less than 25 cm (9.8 in) tall. The stem and leaves are densely pubescent (covered with short hairs). The alternate leaves are pinnately compound (divided into distinct segments which are arranged featherlike on either side of a rachis), up to 8 cm (3.1 in) long, and consist of five to eleven leaflets on a long petiole. A single flower arises in the axil (angle between the base of a leaf and the stem) of each upper leaf. The flowers are white with yellow veins, cup or bowl-shaped, and consist of five petals, five sepals, five pistils (female reproductive structures of a flower), and ten stamens (male reproductive structures of a flower) on a long flower stalk (Kalin-Arroyo 1973, McNeill and Brown 1979, Ornduff 1993b).

Butte County meadowfoam seedlings can tolerate short periods of submergence (Jokerst 1989, Dole and Sun 1992). The seedlings develop into rosettes (clusters of leaves near the ground), which do not begin producing flowering stems immediately (McNeill and Brown 1979, Ritland and Jain 1984). Butte County meadowfoam typically begins flowering in February, reaches peak flowering in March, and may continue into April if conditions are suitable. Nutlets are produced in March and April, and the plants die back by early May (Jokerst 1989, Dole and Sun 1992).

Butte County meadowfoam is predominantly self fertilized (Dole and Sun 1992). Nutlets of Butte County meadowfoam apparently are dispersed by water; they can remain afloat for up to 3 days (Hauptli *et al.* 1978). *Limnanthes* taxa that grow in wet sites have larger tubercles than those adapted to dry sites. Hauptli *et al.* (1978) speculated that the tuberculate surface of such nutlets may aid in flotation by trapping air. However, most meadowfoam nutlets are dispersed only short distances. Thus, Butte County meadowfoam nutlets would not be expected to disperse beyond their pool or swale of origin. Birds and livestock are potential sources of long-distance seed dispersal, but specific instances of dispersal have not been documented (Jain 1978).

Butte County meadowfoam has always been confined to the Butte County (Keeler-Wolf *et al.* 1998). In her original description, Kalin-Arroyo

(1973) mentioned six collections, including the type locality. Five of those ranged from the original collection site southeast to Oroville, and the sixth was from Table Mountain north of Oroville. However, Jokerst (1983) did not find Butte County meadowfoam on Table Mountain and later suggested that the specimen had been misidentified (Service 1992a).

All 13 of the occurrences described by the CNDDDB (2001) had been reported by 1988 (Kalin-Arroyo 1973, McNeill and Brown 1979, Dole 1988, Jokerst 1989). Five were in northern and northeastern Chico near the municipal airport, four (including the type locality) were from the area around Shippee (northwest of Oroville), and three from southeastern Chico. The other occurrence, northeast of the town of Nord, contained only one plant that was of questionable identity (CNDDDB 2001). However, the area indicated would be in the same vicinity as the 1917 collection.

Jokerst (1989) identified "north" and "south" races of Butte County meadowfoam in the Chico "sphere of influence" based on morphology. Later, in studies of enzyme systems, Dole and Sun (1992) confirmed that these races differed genetically. They also identified genetically distinct races that they called "northeast" and "southwest," with the latter referring to the type locality. They found that 96 percent of genetic diversity in Butte County meadowfoam existed among populations and that little variability was evident within populations. Dole and Sun (1992) used mathematical formulas to estimate an average generation time of 2 years for Butte County meadowfoam and to predict that a seed would be transferred between populations only once every 100 to 200 years. Although considerable morphological variability has been observed within populations, it apparently is attributable to differences in environmental response by plants of the same genetic makeup (Jain 1976, Jokerst 1989).

Two occurrences of Butte County meadowfoam have been extirpated, one each in northern and southeastern Chico (Jokerst 1989, Dole and Sun 1992, Service 1992a, CNDDDB 2001). Some of the other 11 occurrences have been reduced in extent (CNDDDB 2001). The most recent reports are from 1992 and additional losses could have occurred since then.

Sawyer and Keeler-Wolf (1995) mentioned Butte County meadowfoam as only associated with Northern Basalt Flow vernal pools; however, this pool type was likely based on the erroneous Table Mountain occurrence. Butte

County meadowfoam occurs primarily in vernal swales and to a lesser extent on the margins of vernal pools (Kalin-Arroyo 1973, Dole 1988, Jokerst 1989, BioSystems Analysis, Inc. 1993, CNDDDB 2001). Swales vary in width from narrow channels to broad, pool-like areas (LSA Associates, Inc. 1994). They may connect in branching, tree-like patterns or in net-like patterns around low mounds. Occupied swales are inundated periodically by water from the surrounding uplands, causing the soil to become saturated. However, Butte County meadowfoam does not persist in pools or swales that are inundated for prolonged periods or remain wet during the summer months, nor in drainages where water flows swiftly (Jokerst 1989, Kelley and Associates Environmental Sciences 1993). BioSystems Analysis Inc. (1993) only found it in the wettest swales in 1992 during the drought. Occupied swales are less than 10 cm (3.9 in) deep (LSA Associates, Inc. 1994) and pools are typically less than 30 m (100 ft) long (Jokerst 1989). In both swales and pools, Butte County meadowfoam may grow along the edges or in the bottom (Kalin-Arroyo 1973, Jokerst 1989). In a study of the Shippee area population (BioSystems Analysis, Inc. 1993) Butte County meadowfoam was found growing more often on pool margins than in the bottom of pools but the pattern was reversed in swales, with the plants more often growing in the center. It typically occurs in long, narrow bands in connected swales or on pool margins but can be found in irregular clusters in isolated drainages (Crompton 1993). Butte County meadowfoam has been found occasionally in disturbed areas such as drainage ditches, firebreaks, and graded sites (McNeill and Brown 1979, Jokerst 1989, Kelley and Associates Environmental Sciences 1992, BioSystems Analysis, Inc. 1993, Kelley and Associates Environmental Sciences 1993).

Further discussion on Butte County meadowfoam's life history and habitat characteristics can be found in the final rule to list the species (62 FR 54807).

Contra Costa Goldfields

Greene (1888) first described Contra Costa goldfields, as *Lasthenia conjugens*, from specimens collected near Antioch, California. Hall (1914) later lumped Contra Costa goldfields in with the common species Fremont's goldfields, which at that time was called *Baeria fremontii*. Ferris (1958) proposed the name *Baeria fremontii* var. *conjugens* to recognize the distinctiveness of *L. conjugens*. Finally, Ornduff (1966) restored Greene's

original name and rank, returning this species to the genus *Lasthenia*.

Contra Costa goldfields is a showy spring annual in the aster family (Asteraceae). Its stems are 10 to 30 cm (4 to 12 in) tall, somewhat fleshy, and usually are branched. The leaves are opposite and narrow; the lower leaves are entire, but stem leaves have one or two pairs of narrow lobes. The daisy-like flower heads are solitary (Greene 1888, Ornduff 1993a).

As a vernal pool annual, seeds of Contra Costa goldfields would be expected to germinate in response to autumn rains, with the plants maturing in a single growing season, setting seed, and dying back during the summer. However, detailed research on the life cycle has not been conducted. Contra Costa goldfields flower from March through June (Ornduff 1966, Ornduff 1979, Skinner and Pavlik 1994). The flowers are self-incompatible (Crawford and Ornduff 1989). Insect visitors to flowers of *Lasthenia* belong to five orders—Coleoptera, Diptera, Hemiptera (true bugs), Hymenoptera (ants, bees and wasps), and Lepidoptera (butterflies and moths) (Thorp and Leong 1998). Most of these insects are generalist pollinators. Some *Lasthenia* are pollinated by specialist solitary bees (family Andrenidae); including two bee species in the subgenus *Diandrena* (*Andrena submoesta* and *A. puthua*) and five or six species in the subgenus *Hesperandrena* (*Andrena baeriae*, *A. duboisi*, *A. lativentris*, and two or three undescribed species) (Thorp and Leong 1998). The extent to which pollination of Contra Costa goldfields depends on host-specific bees or more generalist pollinators is currently unknown.

Seed dispersal mechanisms in Contra Costa goldfields are unknown. However, the lack of a pappus or even hairs on the achenes makes wind dispersal unlikely (Ornduff 1976). Seed longevity, survival rates, fecundity, and other demographic parameters have not been investigated. However, as with other vernal pool annuals, population sizes have been observed to vary by up to four orders of magnitude from year to year (CNDDDB 2001).

By far the greatest concentration of this species is in Solano County where Contra Costa goldfields are found in the area east and south of the City of Fairfield. Other areas that support populations of this species include the central coast between Monterey and Alameda counties, including Fort Ord in Monterey County, San Francisco Bay National Wildlife Refuge, and near Fremont, in Alameda County. The Santa Barbara County occurrence has probably been lost due to habitat alteration

(CNDDDB 2001). Contra Costa goldfields also occurs near Manchester in Mendocino County, and at Suscol Ridge in Napa County. Another Napa County site, Milliken Canyon, contained only a single plant in 1987 and may or may not be still in existence (CNDDDB 2001). The other existing occurrence is near Rodeo in Contra Costa County (CNDDDB 2001).

Further discussion on Contra Costa goldfields' life history and habitat characteristics can be found in the final rule to list the species (62 FR 33037).

Hoover's spurge

Hoover's spurge (*Chamaesyce hooveri*) was originally named *Euphorbia hooveri* based on a specimen collected by Hoover in Yetttem, Tulare County (Wheeler 1940). Koutnik (1985) placed the species in the genus *Chamaesyce* as *Chamaesyce hooveri*.

Hoover's spurge is an annual herb of the spurge family (Euphorbiaceae). Hoover's spurge trails along the ground, forming gray-green mats 5 to 100 cm (2.0 to 39.4 in) in diameter (Broyles 1987, Stone *et al.* 1988). The stems are hairless and contain milky sap. The tiny (2 to 5 mm (0.08 to 0.20 in)) leaves are opposite, rounded to kidney-shaped, with an asymmetric base and a toothed margin. In the genus *Chamaesyce*, the structures that appear to be flowers actually are groups of flowers; each group is referred to as a cyathium (Koutnik 1993).

Few details of the life history of Hoover's spurge are known. Seeds of Hoover's spurge germinate after water evaporates from the pools; the plants cannot grow in standing water (Alexander and Schlising 1997). The indeterminate growth pattern allows the plants to continue growing as long as sufficient moisture is available. The proportion of seedlings surviving to reproduction has not been documented; in years of below normal rainfall, seedling survival was characterized as "low" (Stone *et al.* 1988). The phenology (timing of various stages in the life cycle of a plant) varies among years and among sites, even for those populations in close proximity (Stone *et al.* 1988). Populations in Merced and Tulare counties typically flower from late May through July, whereas those in Stanislaus County and the Sacramento Valley flower from mid-June into October (Alexander and Schlising 1997, CNDDDB 2001, J. Silveira USFWS pers. comm.). Seed set apparently begins soon after flowering. Seed production has not been quantified or studied in relation to environmental factors, but Stone *et al.* (1988) reported that large plants may produce several hundred seeds. Horned larks (*Eremophila alpestris*) have been

observed eating seeds of Hoover's spurge and thus may assist in seed dispersal (Alexander and Schlising 1997).

Demographic data suggest that seeds of Hoover's spurge can remain dormant until the appropriate temperature and moisture conditions occur. This is evident from the fact that plants can be absent from a given pool for up to four years and then reappear in substantial numbers. Although certain years appear to be more favorable for Hoover's spurge than others, population trends vary from pool to pool, even within the same year in the same area. Moreover, a particular year may be favorable for Hoover's spurge at one site and unfavorable at another. For example, Hoover's spurge was extremely abundant on the Vina Plains Preserve in 1995, but reached a 7-year low at Sacramento National Wildlife Refuge that year. Five occurrences of Hoover's spurge have numbered 5,000 or more plants at their maximum size. Four of those five occur on the Vina Plains, and the other occurs in Tulare County (Stone *et al.* 1988, CNDDDB 2001).

Hoover's spurge probably is pollinated by insects. Related species in the spurge family are pollinated by flies (Heywood 1978, Stone *et al.* 1988). Also, glands on the plant produce nectar (Wheeler 1941), which is attractive to insects. Beetles, flies, bees and wasps, and butterflies and moths (order Lepidoptera) have been observed visiting the flowers of Hoover's spurge and may potentially serve as pollinators (Stone *et al.* 1988, Alexander and Schlising 1997). Related species in the genus *Euphorbia* typically are cross-pollinated because the female flowers on each plant mature before the male (Heywood 1978, Stone *et al.* 1988), which may or may not be the case for Hoover's spurge.

For decades, Hoover's spurge was known from only three localities—near Yetttem and Visalia in Tulare County, and near Vina in Tehama County. Collections were made from these three areas in the late 1930's and early 1940's (Wheeler 1941, Munz and Keck 1959, Stone *et al.* 1988). From 1974 through 1987, 21 additional occurrences of Hoover's spurge were reported. The majority of these (15) were in Tehama County. One to three occurrences were discovered during this period in each of Butte, Merced, Stanislaus, and Tulare counties (Stone *et al.* 1988, CNDDDB 2001).

The CNDDDB (2001) now includes 30 occurrences of Hoover's spurge. In addition to those known historically, six occurrences were discovered in 1992 (three each in Glenn and Tulare

counties). Of the 30 occurrences, one each in Tehama and Tulare counties are classified as extirpated; two others, in Butte and Tehama counties, are "possibly extirpated" because this species was not observed for two consecutive years (Stone *et al.* 1988, CNDDDB 2001). Of the 26 occurrences presumed to be extant, only 12 have been observed within the past decade (CNDDDB 2001).

The main area of concentration for Hoover's spurge is within the northeastern Sacramento Valley. The Vina Plains of Tehama and Butte counties contains 14 (53.8 percent) of the 26 extant occurrences for Hoover's spurge (CNDDDB 2001) in an area approximately 91 sq km (35 sq mi) in extent (Stone *et al.* 1988). One other site in the same region is near Chico in Butte County. Seven of the extant occurrences are in Southern Sierra Foothills Vernal Pool Region, including five in the Visalia-Yetttem area of Tulare County and two in the Hickman-La Grange area of Stanislaus County. Three other occurrences are on the Sacramento National Wildlife Refuge in Glenn County, which is in the Solano-Colusa Vernal Pool Region. The one other extant occurrence is on the Bert Crane Ranch in Merced County, which is within the San Joaquin Valley Vernal Pool Region (Keeler-Wolf *et al.* 1998, CNDDDB 2001).

Further discussion on Hoover's spurge's life history and habitat characteristics can be found in the final rule to list the species (62 FR 14351).

Succulent Owl's-Clover

Succulent (or fleshy) owl's-clover was first described by Hoover (1936a) as *Orthocarpus campestris* var. *succulentus*. The type specimen had been collected at Ryer, in Merced County. Hoover (1968) subsequently raised succulent owl's-clover to the rank of species and assigned it the name *Orthocarpus succulentus*. Chuang and Heckard (1991) reconsidered the taxonomy of *Orthocarpus* and related genera. Based on floral morphology (external structure or form), seed morphology, and chromosome number, they transferred many species into the genus *Castilleja*. Furthermore, they determined that the appropriate rank for succulent owl's-clover was as a subspecies of *Castilleja campestris* (field owl's-clover). The scientific name currently assigned to the plant is *Castilleja campestris* ssp. *succulenta* (Chuang and Heckard 1991).

Succulent owl's-clover is a hemiparasitic (partly parasitic) annual herb belonging to the snapdragon family (Scrophulariaceae). It has erect or

decumbent stems up to 30 cm (11.8 in) long. The stems are usually unbranched and without hairs. The leaves at the base of the stem are small and scalelike, whereas those on the upper stem are lance-shaped, not lobed, thick, fleshy, brittle, and easily broken. The bracts (leaf-like structures in the flowering structure) are green, similar to but shorter than the upper leaves, and longer than the flowers. Overall, the inflorescence (entire flowering structure of a plant) may occupy as much as half of the plant's height (Hoover 1936a, Hoover 1937, Hoover 1968, Chuang and Heckard 1991, Chuang and Heckard 1993).

As with many related species, succulent owl's-clover is a hemiparasite, meaning that it obtains water and nutrients by forming root grafts with other host plants but manufactures its own food through photosynthesis (Chuang and Heckard 1991). Research on hemiparasitism has focused on related species of *Castilleja*, but not specifically on succulent owl's-clover. Many different plants can serve as hosts for a single species or even a single individual of *Castilleja*. Seeds do not require the presence of a host to germinate, and form root connections only after reaching the seedling stage. Some seedlings can survive to maturity without attaching to a host's roots, but in general reproduction is enhanced by root connections (Atsatt and Strong 1970).

The conditions necessary for germination of succulent owl's-clover seeds have not been studied, nor has the timing of seed germination been documented. Flowering occurs in April and May (Skinner and Pavlik 1994). Although many related taxa of *Castilleja* are pollinated by generalist bees (Superfamily Apoidea) (Chuang and Heckard 1991), succulent owl's-clover is thought to be self-pollinating. Among close relatives that do not require insect pollinators, flower structure and timing of stigma receptivity maximize the chances for self-fertilization and seed set. Even so, insects may transfer some pollen among individual plants and species occurring in the same area. Self-pollinating species of *Castilleja* typically occur as widely scattered individuals, rather than in dense colonies (Atsatt 1970). Succulent owl's-clover follows this pattern in part, often occurring in many pools within a complex but with fewer than 100 plants per pool. However, succulent owl's-clover also may occur in large populations within a single pool (California Natural Diversity Data Base (CNDDDB) 2001). Little is known about the demography of succulent owl's-

clover, although population size can fluctuate greatly from year to year. In the few populations where population size was reported for more than 1 year, fluctuations up to two orders of magnitude were noted (CNDDDB 2001).

Succulent owl's-clover is known from vernal pool habitats along the Southern Sierra Foothills ranging from Madera County to a disjunct occurrence in northern San Joaquin County. The highest density of occurrences of succulent owl's-clover occurs in Merced County, but the species is also known from Fresno, Madera, Stanislaus, and San Joaquin counties.

Further discussion on succulent owl's-clover life history and habitat characteristics can be found in the final rule to list the species (62 FR 14351).

Orcuttieae Tribe

Colusa grass, hairy Orcutt grass, Solano grass, Greene's tuctoria, Sacramento Valley Orcutt grass, San Joaquin Valley Orcutt grass, and slender Orcutt grass belong to the tribe Orcuttieae in the grass family, Poaceae (Reeder 1965). Many life history characteristics are common to all members of the Orcuttieae. All are wind pollinated, but pollen probably is not carried long distances between populations (Griggs 1980, Griggs 1981, Griggs and Jain 1983). Local seed dispersal is by water, which breaks up the inflorescence (Reeder 1965, Crampton 1976, Griggs 1980, Griggs 1981). Long distance dispersal is unlikely (Service 1985c) but seed may have been carried occasionally by waterfowl (family Anatidae), tule elk (*Cervus elaphus nannoides*), or pronghorn (*Antilocapra americana*) in historical times (Griggs 1980). The seeds can remain dormant for an undetermined length of time, but at least for 3 or 4 years, and germinate underwater after they have been immersed for prolonged periods (Crampton 1976, Griggs 1980, Keeley 1998a). Unlike typical terrestrial grasses that grow in the uplands surrounding vernal pools, members of the Orcuttieae flower during the summer months (Keeley 1998a).

All members of the Orcuttieae tribe have large soil seed banks that may often be 50 times or more larger in numbers than the above ground population in any given year. In general, years of above average rainfall promote larger populations of Orcuttieae, but population responses vary by pool and by species (Griggs 1980, Griggs and Jain 1983). Population sizes have been observed to vary by one to four orders of magnitude among successive years and to return to previous levels even

after 3 to 5 consecutive years when no mature plants were present (Griggs 1980, Griggs and Jain 1983, Holland 1987). Thus, many years of observation are necessary to determine whether a population is stable or declining.

All members of the Orcuttieae are endemic to vernal pools. Although the various species have been found in pools ranging widely in size, the vast majority occur in pools of 0.01 ha (0.03 ac) to 10 ha (24.7 ac) (Stone *et al.* 1988). Larger pools retain water until May or June, creating optimal conditions for Orcuttieae (Crampton 1959, Crampton 1976, Griggs 1981, Griggs and Jain 1983). Orcuttieae occur in patches within the pools that are essentially devoid of other plant species (Crampton 1959, Crampton 1976). Typically, plants near the center of a pool grow larger and produce more spikelets than those near the margins, but patterns vary depending on individual pool characteristics and seasonal weather conditions (Griggs 1980).

The specific life history requirements and distribution of each of the seven Orcuttieae species are provided below.

Colusa Grass

Colusa grass (*Neostapfia colusana*) was first described by Davy (1898), and given the Latin name *Stapfia colusana*. He had collected the type specimen near the town of Princeton in Colusa County. Davy soon realized that the name *Stapfia* had already been assigned to a genus of green algae and therefore changed the scientific name of Colusa grass to *Neostapfia colusana* (Davy 1899). Two other taxonomists proposed alternate Latin names for the genus in the same year, but neither is accepted today. No other species of *Neostapfia* are known (Reeder 1982, Reeder 1993).

Unlike terrestrial grasses, Colusa grass has pith filled stems, lacks distinct leaf sheaths and ligules, and produces exudate (aromatic, sticky fluid discharged from the plant surface). Colusa grass stems and inflorescence (flower cluster) differs from other members of the Orcuttieae. The plant is pale green when young (Davy 1898) but becomes brownish as the exudate darkens (Reeder 1982, Reeder 1993).

Existing populations of Colusa grass are concentrated northeast of the city of Merced in Merced County and east of Hickman in Stanislaus County. Colusa grass also occurs in central Merced County, in southeastern Yolo County, and in central Solano County (Stone *et al.* 1988, Keeler-Wolf *et al.* 1998, CNDDDB 2001). This species has been extirpated from Colusa County (CNDDDB 2001).

In the 50 years after its initial discovery (Davy 1898), Colusa grass was reported from only three sites other than the type locality; these were in Merced and Stanislaus counties. By the mid-1970's Colusa grass had been reported from a total of 11 sites in Colusa, Merced, Solano, and Stanislaus counties (Hoover 1936b, Hoover 1940, Crampton 1959, Medeiros 1976, Reeder 1982). During the 1980's, many new populations of Colusa grass were located during extensive surveys. As of 1989, 40 occurrences were extant and 11 already had been extirpated. Of the 51 occurrences known up to that point, 26 were in Merced County, 22 were in Stanislaus County, 2 were in Solano County, and one was in Colusa County (Stone *et al.* 1988, CNDDDB 2001). Currently, the CNDDDB (2001) considers 48 occurrences of Colusa grass to be "presumed extant" and 11 others as known or possibly extirpated.

Further discussion on Colusa grass's life history and habitat characteristics can be found in the final rule to list the species (62 FR 14338).

Greene's Tuctoria

Greene's tuctoria (*Tuctoria greenei*) was originally assigned its name by Vasey (1891) as *Orcuttia greenei*. Greene had collected the type specimen in 1890 "on moist plains of the upper Sacramento, near Chico, California" (Vasey 1891), presumably in Butte County (Hoover 1941, Crampton 1959). Citing differences in lemma morphology, arrangement of the spikelets, and other differences, Reeder (1982) segregated the genus *Tuctoria* from *Orcuttia* and created the new scientific name *Tuctoria greenei* for this species.

Greene's tuctoria is an erect to low growing annual with fragile stems that easily break apart at the nodes, which are often purplish. The leaves are flat and curve outward and the plants are sparsely hairy. The inflorescence is crowded near the tip with the lower spikelets more or less separated. Optimum germination of Greene's tuctoria seed occurs when the seed is exposed to light and anaerobic (lacking oxygen) conditions after stratification (Keeley 1988). Germination occurs several months after initial inundation (Keeley 1998a). *Tuctoria* seedlings do not develop floating juvenile leaves, as does *Orcuttia* (Griggs 1980, Keeley 1998a). The adult plants apparently do not tolerate inundation; all five Greene's tuctoria plants in a Glenn County pool died when the pool refilled during late spring rains in 1996 (Silveira *in litt.* 1997). Greene's tuctoria flowers from May to July (Skinner and Pavlik 1994),

with peak flowering in June and July (Griggs 1981, Broyles 1987).

As with other vernal pool annuals, population size in Greene's tuctoria can vary enormously from year to year, and populations that have no visible plants one year can reappear in large numbers in later years. Population fluctuations may be due to annual variations in weather, particularly rainfall, to changes in management, or to a combination of the two. Such fluctuations were observed at scattered sites in Butte and Tehama counties during the 1970's (Griggs 1980, Griggs and Jain 1983) and at Sacramento National Wildlife Refuge, where the population in the single occupied pool ranged from zero to 60 plants between 1994 and 1999 (Silveira *in litt.* 2000). Fluctuations of as much as three orders of magnitude were documented on the Vina Plains Preserve during the 1980's and 1990's (Alexander and Schlising 1997)

After its discovery in Butte County in 1890, Greene's tuctoria was not seen again for over 40 years. During extensive surveys in the late 1930's, Hoover (1937, 1941) found the species at sites in Fresno, Madera, Merced, San Joaquin, Stanislaus, Tehama, and Tulare counties. In fact, he described it as the most common of all *Orcuttia* species, with which it was classified at the time. By the end of the 1980's, Greene's tuctoria had been reported from a total of 36 occurrences in the same 8 counties (Stone *et al.* 1988, CNDDDB 2001).

Three additional occurrences of Greene's tuctoria have been discovered during the past decade, bringing the reported total to 39 occurrences (Oswald and Silveira 1995, CNDDDB 2001). However, 19 of the historical occurrences apparently have been extirpated. The other 20 occurrences are presumed to be still in existence, although 6 of those have not been verified for more than a decade (Alexander and Schlising 1997, CNDDDB 2001).

Sixty percent of the extant occurrences of Greene's tuctoria are in the Vina Plains area of Tehama and Butte counties. Eastern Merced County has about 30 percent of the known occurrences. Other occurrences are located in Glenn (Oswald and Silveira 1995) and Shasta counties (CNDDDB 2001). Greene's tuctoria has been extirpated from Fresno, Madera, San Joaquin, Stanislaus, and Tulare counties (Stone *et al.* 1988, Skinner and Pavlik 1994, CNDDDB 2001).

Further discussion on Greene's tuctoria's life history and habitat characteristics can be found in the final rule to list the species (62 FR 14338).

Hairy Orcutt Grass

Hoover (1941) described hairy Orcutt grass as (*Orcuttia pilosa*) from specimens he collected in Stanislaus County, "12 miles east of Waterford" in 1937. Hairy Orcutt grass grows in tufts consisting of numerous stems. The stems are decumbent (laying on the ground with the tip turned upward) or erect and branch from only the lower nodes. Almost the entire plant is pilose or hairy, giving it a grayish appearance. The spikelets near the tip of the inflorescence are crowded together, whereas those near the base are more widely spaced.

Griggs (1974 cited in Stone *et al.* 1988) found that stratification followed by temperatures of 15 to 32°C (59 to 90°F) was necessary for seed germination in hairy Orcutt grass. Flowering period for the plant is mid-April through July. Seed production has not been studied extensively in hairy Orcutt grass, but Griggs and Jain (1983) did note that one individual produced more than 10,000 seeds. Although the predominant pollination agent for all Orcutt grasses is wind, native bees (Halictidae) have been observed visiting the inflorescence of hairy Orcutt grass to gather pollen (Griggs 1974 cited in Stone *et al.* 1988).

Like other vernal pool annuals, the size of hairy Orcutt grass populations fluctuates dramatically from year to year. Population sizes have varied by as much as four orders of magnitude over time (Griggs 1980, Griggs and Jain 1983, Alexander and Schlising 1997). In fact, two populations that had no visible plants for three successive years exceeded 10,000 plants in the fourth year (Griggs 1980, Griggs and Jain 1983).

Hairy Orcutt grass is known from sites in the southern portion of the Sacramento Valley and the southern Sierra foothills (Keeler-Wolf *et al.* 1998). The species has been found in Tehama, Stanislaus, Madera, and Merced counties (Hoover 1941, Crampton 1959, Reeder 1982, Stone *et al.* 1988, CNDDDB 2001). Hairy Orcutt grass also was collected in Glenn County, in 1937 (CNDDDB 2001); the specimen has since been lost but may have been misidentified as California Orcutt grass (Silveira *in litt.* 2000). During the late 1980's, Stone *et al.* (1988) determined that 12 historical occurrences had been extirpated but they and others discovered three additional populations in Madera, Stanislaus, and Tehama counties. One other occurrence from Madera County was previously considered to be hairy Orcutt grass and is listed as such in the CNDDDB (2001); however, this population since has been

identified as San Joaquin Valley Orcutt grass (Stone *in litt.* 1992).

Within the past decade, hairy Orcutt grass has been discovered in additional areas in Glenn, Madera, and Tehama counties (CNDDDB 2001). Hairy Orcutt grass has also been discovered in another pool at the Vina Plains Preserve in Tehama County (Alexander and Schlising 1997). Of the 38 element occurrences listed by the CNDDDB (2001), not counting the misidentified population of San Joaquin Valley Orcutt grass, 24 natural occurrences are presumed to be still in existence. Nineteen of those occurrences have been confirmed as existing within the past decade (CNDDDB 2001).

Further discussion on hairy Orcutt grass's life history and habitat characteristics can be found in the final rule to list the species (62 FR 14338).

Sacramento Orcutt Grass

Hoover (1941) first described Sacramento Orcutt grass (*Orcuttia viscida*) as *Orcuttia californica* var. *viscida* based on the type specimen he collected from "7 miles south of Folsom" in Sacramento County. Reeder (1980) determined that the differences in morphology, seed size, and chromosome number were sufficient grounds to elevate Sacramento Orcutt grass to the species level as *Orcuttia viscida*.

In basic form, Sacramento Orcutt grass resembles other members of the tribe and genus. Although all members of the Orcuttieae produce exudate, Sacramento Orcutt grass is particularly viscid even when young. The plants are densely tufted, bluish green, and covered with hairs. The stems are erect or spreading, 3 to 10 cm (1 to 4 in) long, and do not branch. The inflorescence occupies the upper one third to one half of the stem and consists of between 5 and 15 spikelets. The spikelets are closely spaced, and although distichous (arranged in two opposing rows) are oriented towards one side of the stem.

Sacramento Orcutt grass flowers in May and June (Griggs 1977, Skinner and Pavlik 1994, Cochrane *in litt.* 1995a) and sets seed in June and July (Holland 1987). Seeds likely do not disperse far under natural conditions. In a 6-year period, an experimental population spread at most 3 m (10 ft) from the seed source, and 95 percent of plants were within 30 cm (12 in) of the source (Holland *in litt.* 1986). A demographic study conducted from 1974 to 1978 (Griggs 1980, Griggs and Jain 1983) indicated that Sacramento Orcutt grass produced an average of 500 seeds per plant. At one site in 1978, 88 percent of plants survived to maturity. The size of

the seed bank stored in the soil was approximately 44 times as great as the population of growing plants (Griggs 1980, Griggs and Jain 1983). The number of plants varies with rainfall. Large numbers of plants grow only in years when seasonal rainfall exceeds 40 cm (16 in), particularly when heavy rains begin in November and continue through the end of April (Holland 1987). This species is less likely to germinate in years of below normal precipitation than are other members of the tribe (Griggs 1980, Griggs and Jain 1983).

Sacramento Orcutt grass is endemic to the southeastern Sacramento Valley (Keeler-Wolf *et al.* 1998) and always has been restricted to Sacramento County. The earliest collection was from 1936 near Phoenix Field. Three other occurrences documented in 1941 and 1958 extended the range north to Orangevale and south to near Sloughhouse. Sacramento Orcutt grass was introduced to Phoenix Park, in Sacramento County, in 1978. Three additional natural occurrences were discovered in the late 1980's, including one in extreme southeastern Sacramento County near State Highway 104. Thus, by 1990 this species was known from a total of seven natural occurrences and one introduction (Stone *et al.* 1988, CNDDDB 2001).

Within the past decade, Sacramento Orcutt grass has been discovered at one new site in Sacramento County, within the previously known range. However, one entire occurrence and a portion of another have been extirpated. Thus, eight of the nine occurrences are still in existence. Five occurrences, comprising more than 70 percent of the occupied habitat, are concentrated into a single small area east of Mather Field. Two other occurrences are adjacent to each other-Phoenix Field Ecological Reserve and the introduced population at Phoenix Park. The eighth existing occurrence is near Rancho Seco Lake (Stone *et al.* 1988, Cochrane *in litt.* 1995a, CNDDDB 2001).

Further discussion on Sacramento Orcutt grass life history and habitat characteristics can be found in the final rule to list the species (62 FR 14338).

San Joaquin Valley Orcutt Grass

Hoover (1936b) described San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*) based on a collection from "Montpellier [sic], Stanislaus County." Hoover (1941) subsequently reduced this taxon to a variety of *Orcuttia californica*, using the combination *Orcuttia californica* var. *inaequalis*. Based on differences in morphology, seed size, and chromosome number, Reeder (1980) restored the taxon to species status.

Mature plants of San Joaquin Valley Orcutt grass grow in tufts of several erect stems. The plant is grayish-green due to the long hairs on the stem and leaves and produces exudate. *Orcuttia* plants grow underwater for 3 months or more and have evolved specific adaptations for aquatic growth (Keeley 1998a).

The earliest collection of San Joaquin Valley Orcutt grass was made in 1927 from the Fresno-Madera County border near Lanes Bridge (CNDDDB 2001). Hoover (1941) mentioned collections from eight sites in Fresno, Madera, Merced, Stanislaus, and Tulare counties. A total of 20 occurrences had been reported by the mid 1970's, all in the same five counties (Crampton 1959, CNDDDB 2001), but none remained as of the late 1970's (Griggs 1980, Griggs and Jain 1983). However, since that time San Joaquin Valley Orcutt grass has been discovered in Merced, Madera, and Fresno counties, and recently additional occurrences of San Joaquin Valley Orcutt grass have been found, including sites in Tulare County. Of the 47 occurrences of San Joaquin Valley Orcutt grass reported in CNDDDB (2001), 27 are presumed to be still in existence; 17 are certainly extirpated and 3 others are possibly extirpated because the habitat has been modified (CNDDDB 2001). However, only 12 of the occurrences presumed still in existence have been revisited within the past decade, so even the most recent information is outdated. This species has been completely extirpated from Stanislaus County but remains in Fresno, Madera, Merced, and Tulare counties (Stone *et al.* 1988, Skinner and Pavlik 1994, CNDDDB 2001).

Further discussion on San Joaquin Valley Orcutt grass's life history and habitat characteristics can be found in the final rule to list the species (62 FR 14338).

Slender Orcutt Grass

Slender Orcutt grass (*Orcuttia tenuis*) was first named by Hitchcock (1934). The type specimen of slender Orcutt grass was collected in Goose Valley, Shasta County, in 1912. Slender Orcutt grass grows as single stems or in small tufts consisting of a few stems. The plants are sparsely hairy and branch only from the upper half of the stem. Although the stems typically are erect, they may become decumbent if many branches form near the stem tip (Reeder 1982). The inflorescence comprises more than half of the plant's height, and the spikelets are more or less evenly spaced throughout the inflorescence.

Optimal germination of slender Orcutt grass is achieved through stratification

followed by warm days and mild nights (Griggs 1974 in Stone *et al.* 1988). Peak flowering of this species typically occurs in May in the Central Valley (Griggs 1981, Reeder 1982) but not until June or July on the Modoc Plateau (Schoolcraft *in litt.* 2000). Unlike hairy Orcutt grass and Greene's tuctoria, slender Orcutt grass is not likely to die when pools are flooded by late spring or summer rains (Griggs 1980, Griggs and Jain 1983). Conversely, drought has been known to cause 100 percent mortality (Griggs 1980, Griggs and Jain 1983).

Similar to other vernal pool annuals, slender Orcutt grass populations can vary greatly in size from year to year. Fluctuations of up to four orders of magnitude have been documented in Lake and Shasta counties (Griggs 1980, Griggs and Jain 1983). At the Vina Plains Preserve, the single population ranged in size from 1,000 to 147,700 individuals during the five times it was reported over a 13 year period (Stone *et al.* 1988, Alexander and Schlising 1997). However, slender Orcutt grass populations do not always fluctuate in size. Among five populations of slender Orcutt grass that Griggs tracked from 1973 to 1979, two in the Dales area remained at the same order of magnitude for the entire period. None of the other five species of Orcuttiae included in the study remained stable for the full 7 years (Griggs 1980, Griggs and Jain 1983).

By the mid 1980s, slender Orcutt grass was known from only 18 localities in Lake, Sacramento, Shasta, and Tehama counties (Reeder 1982, Stone *et al.* 1988). During the late 1980s, Stone *et al.* (1988) and others (CNDDDB 2001) discovered 34 additional occurrences of slender Orcutt grass. Slender Orcutt grass was found primarily in Tehama County, in the vicinity of Dales and on the Vina Plains. The species was also found in the Stillwater and Millville Plains of Shasta County, and at additional sites in Shasta, Siskiyou, Lake, and Sacramento counties (Griggs and Jain 1983, Stone *et al.* 1988, CNDDDB 2001). During the past decade, 27 new occurrences of slender Orcutt grass have been reported. In addition to the counties where it was reported historically, slender Orcutt grass is now known from Lassen and Plumas counties. The extirpated occurrences of slender Orcutt grass were near Reading Airport and Stillwater Plains in Shasta County and additional possibly extirpated occurrences were near Goose Valley and Battle Creek in Tehama and Shasta counties.

Further discussion on slender Orcutt grass's life history and habitat

characteristics can be found in the final rule to list the species (62 FR 14338).

Solano Grass

Solano grass (*Tuctoria mucronata*) was originally described under the name *Orcuttia mucronata* based on specimens collected "12 miles due south of Dixon, Solano County" (Crampton 1959, p. 108). Reeder (1982) transferred this species to a new genus, *Tuctoria*, resulting in the currently accepted name *Tuctoria mucronata*.

Solano grass is grayish-green, pilose, and sticky. The tufted stems are decumbent and do not branch. The long leaves are rolled inward and have pointed tips. The base of the inflorescence is partially hidden by the uppermost leaves. As is characteristic of the genus, the spikelets are arranged in a spiral; the spikelets in the inflorescence of Solano grass are crowded together.

Solano grass typically flowers in June and sets seed during July (Holland 1987). The demography of Solano grass has not been investigated in detail. Annual estimates or counts at Olcott Lake (Holland 1987, CNDDDB 2001) indicated that population sizes for this species fluctuate dramatically from year to year, as do other members of the Orcuttiae. Solano grass was not observed at Olcott Lake from 1976 through 1980, then reappeared in 1981 (Holland 1987), indicating that viable seeds can persist in the soil for a minimum of 5 years. Apparently both drought years and years of excessively high rainfall are unfavorable for Solano grass; the largest populations were observed after seasons of 45 to 60 cm (17.7 to 23.6 in) of precipitation (Holland 1987).

Prior to 1985, Solano grass was known only from Olcott Lake in Solano County, which is believed to be the type locality (Crampton 1959, CNDDDB 2001). A second occurrence was discovered in 1985 approximately 4 km (2.5 mi) southwest of Olcott Lake (CNDDDB 2001). Solano grass is presumed to remain at the type locality, although only four individual plants have been found within the last decade, all in 1993 (CNDDDB 2001). The other Solano County site is still in existence. A third occurrence, comprising the largest population known, was discovered in 1993 on a Department of Defense (DOD) communications facility in Yolo County (CNDDDB 2001).

Further discussion on Solano grass's life history and habitat characteristics can be found in the Delta Green Ground Beetle and Solano Grass Recovery Plan (Service 1985c).

The vernal pool plants are threatened by habitat loss and degradation due to urbanization, agricultural land conversion, off road vehicle use, flood control projects, highway projects, altered hydrology, landfill projects, and competition from weedy nonnative plants. The habitat of these species has been reduced and fragmented throughout their respective ranges as vernal pools continue to be eliminated. Further discussion on threats to the vernal pool plants can be found in the final rules to list these species (62 FR 34029, 62 FR 14338, 57 FR 24192, 43 FR 44810) and in the criteria section of this proposed rule.

Previous Federal Action (Vernal Pool Crustaceans)

Ms. Roxanne Bittman petitioned us to list Conservancy fairy shrimp, longhorn fairy shrimp, vernal pool fairy shrimp, and California linderiella (*Linderiella occidentalis*) as endangered species on November 19, 1990. Ms. Dee Warneycia petitioned us to list vernal pool tadpole shrimp as an endangered species on April 28, 1991. On May 8, 1992, we published a proposed rule in the **Federal Register** (57 FR 19856) to list the four fairy shrimp and vernal pool tadpole shrimp as endangered. On September 19, 1994, we published a final rule in the **Federal Register** (59 FR 48136) determining endangered status for Conservancy fairy shrimp, longhorn fairy shrimp and vernal pool tadpole shrimp and threatened status for vernal pool fairy shrimp. We withdrew the California linderiella as a species proposed for listing based on additional information received during the public review and comment period indicating that during the review period this species was more abundant than previously known.

On April 17, 1995, the Building Industry Association of Superior California (BIAC) and Marvin L. Oates (Plaintiffs) filed a lawsuit in Federal District Court for the District of Columbia against Bruce Babbitt (Secretary, Department of the Interior) *et al.* (Defendants) and Environmental Defense Center and Butte Environmental Council (Defendant-Intervenors) arguing that the listing of four vernal pool crustaceans (Conservancy fairy shrimp, longhorn fairy shrimp, vernal pool fairy shrimp, and vernal pool tadpole shrimp) violated the Act, the Administrative Procedures Act, the Fifth Amendment, the Tenth Amendment, and the Commerce Clause of the United States Constitution (*Building Industry Association of Superior California, et al. v. Babbitt et al.*, CIV 95-0726 PLF). On

July 25, 1997, the district court granted the defendant's motion for summary judgment on all aspects except the decision not to designate critical habitat. The plaintiffs later amended their complaint to drop the claim relating to the designation of critical habitat and the district court vacated its ruling regarding this matter. On April 12, 2000, the Butte Environmental Council filed suit, alleging that our failure to establish critical habitat for the four vernal pool crustaceans violated the Endangered Species Act and the Administrative Procedures Act (*Butte Environmental Council v. White* CIV S-00-797 WES GGH). On February 9, 2001, the U.S. District Court for the Eastern District of California granted the plaintiff's motion for summary judgment and required the defendants, to the maximum extent prudent and determinable, to designate critical habitat for the four vernal pool crustaceans within six months.

On July 23, 2001, the district court approved a settlement agreement between the parties which extended the deadline for designation of critical habitat to August 15, 2002. As a condition of the settlement, we agreed to also designate critical habitat, to the maximum extent prudent and determinable, for the eleven vernal pool plants addressed in this proposed rule by the same date.

Previous Federal Action (Vernal Pool Plants)

Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report on plant species which were or might become endangered or threatened. The resulting report, dated January 9, 1975, reviewed the status of 3,100 vascular plants. The report categorized as endangered six of the eleven vernal pool plants under consideration here, and categorized two others as threatened. The six plants considered endangered were hairy Orcutt grass, Sacramento Orcutt grass, slender Orcutt grass, Colusa grass, San Joaquin Valley Orcutt grass, and succulent owl's clover. The two threatened plants were Contra Costa goldfields and Hoover's spurge. On July 1, 1975, the Director of the Department of the Interior published a notice (40 FR 27823) accepting the Smithsonian Institution's report as a listing petition within the context of section 4(c)(2) of the Act (petition provisions are now found in section 4(b)(3)), and of his intention to review the status of the plants covered by the report. On June 16, 1976, based on both the Smithsonian report and on public comments and data pertaining to it, we published a proposed rule (41 FR 24523) to

determine approximately 1,700 vascular plants as endangered pursuant to section 4 of the Act. The 1,700 plants included all eleven vernal pool plants considered here.

We published a final rule to list Solano grass (along with four other plants) as endangered on September 28, 1978 (43 FR 44810). A recovery plan for Solano grass and the delta green ground beetle (*Elaphrus viridis*) was subsequently approved on September 11, 1985 (Service 1985c). We failed to complete final listing rules for the other ten vernal pool plants within three years of the proposed listing, however, despite amendments to the Act in 1978 requiring us to withdraw proposed rules which were more than two years old (with a one-year grace period). Accordingly, on December 10, 1979, we withdrew the proposal to list the ten remaining vernal pool plants (44 FR 70796).

We established the remaining vernal pool plants as category 1 candidate species in a Notice of Review (NOR) for plants published December 15, 1980 (45 FR 82480). Category 1 candidates were those species for which data in our possession was sufficient to support proposals to list. In a subsequent NOR published November 28, 1983 (48 FR 53640), we downgraded the status of Contra Costa goldfields, slender Orcutt grass and Colusa grass to category 2. Category 2 candidates were defined as species for which data in our possession indicated listing was possibly appropriate, but for which we lacked substantial data on biological vulnerability and threats to support listing proposals. Another NOR on September 27, 1985, left the status of the remaining vernal pool plants unchanged (50 FR 39526).

On February 2, 1988, we received a petition from the California Native Plant Society (CNPS) to emergency list Butte County meadowfoam as endangered. We published a 90-day administrative finding that the requested action might be warranted on December 30, 1988 (53 FR 53030). On February 15, 1991, we published a proposal to list Butte County meadowfoam as an endangered species (56 FR 6345), and on June 8, 1992, we published a final determination that Butte County meadowfoam was endangered (57 FR 24192).

On February 22, 1990, we published a new NOR which re-established Colusa grass and Contra Costa goldfields as category 1 candidate species (55 FR 6184). In 1991 and 1992, we received additional information regarding threats to succulent owl's-clover, and so returned this species to category 1 status

on August 5, 1993 (58 FR 41700), in the same notice proposing to list succulent owl's clover and seven other vernal pool plants under the Act.

On August 5, 1993, we published a proposal to list San Joaquin Valley Orcutt grass, hairy Orcutt grass, Sacramento Orcutt grass, and Greene's tuctoria as endangered; and to list succulent owl's-clover, Hoover's spurge, Colusa grass, and slender Orcutt grass as threatened was published on August 5, 1993 (58 FR 41700). This proposal was primarily based on information supplied by reports to the CNDDDB, the Status Survey of the Grass Tribe Orcuttiae and Hoover's Spurge in the Central Valley of California (Stone *et al.* 1988), and observations by numerous botanists. Prior to publishing the final rule on these eight plants, we published another NOR on September 30, 1993 (58 FR 51144), indicating that the current status of the vernal pool plants as category 1 candidates remained unchanged. We subsequently published a proposal to list Contra Costa goldfields as endangered on December 19, 1994 (59 FR 65311). Then on March 26, 1997, we published the final rule (62 FR 14338) for the eight plants proposed for listing in 1993. The final rule listed San Joaquin Valley Orcutt grass as threatened, rather than endangered as had originally been proposed, because we determined the threats to its existence to be smaller and less immediate than had previously been thought. All seven other plants were listed as proposed, resulting in a listing of hairy Orcutt grass, Sacramento Orcutt grass and Greene's tuctoria as endangered; and San Joaquin Valley Orcutt grass, succulent owl's clover, Hoover's spurge, Colusa grass and slender Orcutt grass as threatened. Later that same year (June 18, 1997) we published the final rule to list Contra Costa goldfields, the last of the vernal pool plants considered here, as endangered (62 FR 34029).

We did not identify critical habitat in the final listing rules for any of the vernal pool plants or crustaceans considered here because we determined that the threats of increased vandalism and collection of listed species in the areas thus identified would make it imprudent to do so. Based on the interpretation of section 4 of the Act in a number of judicial decisions issued after the not prudent findings for these species were made, however, we have reconsidered those determinations and now consider the designation of critical habitat for the fifteen vernal pool species to be prudent. We are therefore proposing to designate critical habitat here, for the four vernal pool

crustaceans and eleven vernal pool plants covered by the July 23, 2001, court approved settlement agreement in that case.

On August 14, 2002, we filed a motion in *Butte Environmental Council* seeking to modify the deadline of August 15, 2002, for issuance of final critical habitat determinations. We were unable to meet that deadline, and have asked the court to approve a new deadline of September 30, 2003.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) The specific areas within the geographic area occupied by a species at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

“Conservation” means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, permitted, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of that species, and can alert the public as well

as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified, by helping people avoid causing accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must first be “essential to the conservation of the species.” Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, “The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.”

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and surveys and studies, and biological assessments or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings. 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, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

The action of designating critical habitat does not automatically lead to recovery of a listed species, but it may contribute to species recovery. Critical habitat units are not target preserve areas: designation does not target and establish specific preserves and their boundaries. Critical habitat is designated to make Federal agencies aware that these areas are critical to the species. Although the designation of critical habitat can identify areas where a variety of conservation strategies may be developed to ensure the survival and recovery of target species, the development of these strategies are most appropriately taken through local planning efforts, such as the development of HCPs. The action of designating critical habitat does not result in the creation of management plans, establish numerical population goals, and/or prescribe specific management actions, whether inside or outside of such designated critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through consultations and permits under section 7 and section 10 of the Act.

Prudency Redetermination

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, we designate critical habitat at the time the species is determined to be endangered or threatened. At the time of the final listing determination (62 FR 34029, 62 FR 14338, 59 FR 48136, 57 FR 24192), we found that designation of critical habitat was not prudent for the vernal pool crustaceans and plants (excluding Solano grass). At the time of final listing of Solano grass (43 FR 44810), we did not make any determination about whether or not designation of critical habitat was prudent. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. In our final listing rules for the vernal pool crustaceans and plants (excluding Solano grass), we believed that publication of precise maps and descriptions of critical habitat for the vernal pool crustaceans and plants could make these species more vulnerable to incidents of vandalism or other human activities such as discing, grading, or filling (62 FR 34029, 62 FR 14338, 59 FR 48136, 57 FR 24192). In addition, we determined that publication of precise maps and descriptions of critical habitat for the vernal pool plants would increase the vulnerability of these species to incidents of collection (62 FR 34029, 62 FR 14338, 57 FR 24192). Therefore, we determined that the designation of critical habitat would increase the degree of threat to the vernal pool crustaceans and plants. We also determined that designation of critical habitat was not beneficial for the vernal pool plant species (excluding Solano grass) because many populations of these species were found on private lands (62 FR 34029, 62 FR 14338, 57 FR 24192). For Butte County meadowfoam and Contra Costa goldfields, we believed that Federal involvement in the areas where these plant species occurred could be identified without designation of critical habitat (62 FR 34029, 57 FR 24192). For eight of the vernal pool plant species (succulent owl's-clover, Hoover's spurge, Colusa grass, San Joaquin Valley Orcutt grass, hairy Orcutt grass, slender Orcutt grass,

Sacramento Orcutt grass, and Greene's tuctoria), we believed that Federal agencies were aware of the species' presence and were already addressing conservation efforts where the species were found on Federal lands (62 FR 14338).

In 1995, the CDFG received a grant from the U.S. Environmental Protection Agency (EPA) to map vernal pools in particular areas for conservation purposes (Vendlinski 2000). As a result of this effort, the CDFG published a report which delineated 17 vernal pool regions throughout California (Keeler-Wolf *et al.* 1998). In 1997, Robert Holland's original 1973–1974 map of vernal pools in the Central Valley was updated and the results were documented Holland (1998). In 1998, we published the Recovery Plan for Vernal Pools of Southern California (Service 1998) which outlined recovery strategies for seven vernal pool species (two vernal pool crustaceans and five vernal pool plants) including the San Diego fairy shrimp (*Branchinecta sandiegonensis*). The release of these data resulted in the widespread distribution of information about vernal pool habitat and its location to the public and to local jurisdictions for planning purposes. Since the release of these data, we have not documented an increase in the threats to the species addressed in this rule through vandalism, collection, habitat destruction, or other means. In contrast, we have witnessed an increase in public interest in the species and their conservation through survey efforts by species experts, scientific research, regional and local planning, and educational outreach. Since listing of the vernal pool crustaceans and plants, several vernal pool conservation planning efforts have been initiated by public agencies and non-government organizations. For example, in 1997 the Framework Agreement for the Interagency Vernal Pool Stewardship Initiative was signed by a number of Federal and State agencies; this agreement encourages coordination of vernal pool conservation efforts on a regional scale between the signatory agencies.

Based on the lack of an increase in vandalism threats, we have reconsidered our evaluation of our original prudency determination. We have determined that the threats to the vernal pool crustaceans and plants and their habitat from the specific instances of habitat destruction we identified in the final listing rules do not outweigh the broader educational, regulatory, and other possible benefits that a designation of critical habitat would

provide for these species. The instances of likely vandalism, though real, have been relatively isolated. Consequently, we conclude that designating critical habitat will not increase incidences of habitat vandalism above current levels for these species. In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering consultations under section 7 of the Act in new areas 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 areas; (3) providing educational benefits to State or county governments or private entities; and, (4) preventing people from causing inadvertent harm to the species. Therefore, we conclude that the benefits of designating critical habitat on lands essential for the conservation of the vernal pool crustaceans and plants outweigh the risks of increased vandalism resulting from such designation. Critical habitat for the 4 vernal pool crustaceans and 11 vernal pool plants addressed herein is prudent and we are subsequently proposing critical habitat for them in this proposed rule.

All of the proposed critical habitat units contain one or more of the primary constituent elements for the vernal pool crustaceans or plants addressed in this proposed rule. However, as stated earlier, vernal pool crustaceans and plants occur in ephemeral pools that may not be present throughout a given year or from year to year.

In summary, in determining areas that are essential to conserve the species addressed in this proposed rule, we used the best scientific information available to us. The critical habitat areas described below constitute our best assessment of areas needed for the species' conservation.

Methods

In determining critical habitat for vernal pool crustaceans and vernal pool plants we used the best scientific and commercial data available. This included data and information contained in the final rules listing the 15 species addressed herein, research and survey observations published in peer reviewed articles, the Vernal Pools of Southern California Final Recovery Plan (Service 1998), data collected for the development of HCPs, reports submitted by biologists holding section 10(a)(1)(A) recovery permits, data collected for the development of a

Wetland Conservation Plan in Oregon, reports and documents that are on file in the Service's field offices, and personal discussions with experts outside of the Service with extensive knowledge of vernal pool species and habitats.

We utilized Geographic Information System (GIS) data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals. To identify where vernal pool species and habitats occur we evaluated GIS data of vernal pool habitats by Holland (1998 and 2002), and species occurrences information from the CNDDDB (2001). We presumed occurrences identified in CNDDDB to be extant until we received documentation that the occurrences have been extirpated. We also relied on unpublished species occurrence data contained within our files. We produced preliminary maps using GIS information that plotted species occurrences and vernal pool habitats superimposed on SPOT imagery (CNES/SPOT Image Corporation 1993–2000). The use of SPOT imagery allowed us to identify landmarks such as roads, cities, rivers, and urban areas.

Because the minimum mapping unit of the Holland (1998 and 2002) vernal pool habitat data was 16 ha (40 ac) and the resolution of the SPOT imagery did not allow us to identify all vernal pool habitat areas, we then refined unit boundaries based on additional GIS data layers when necessary and available, including soils information from the Soil Survey Geographic (SSURGO) data bases (U.S. Department of Agriculture (USDA) 1998–2001), and the California State Soil Geographic (STATSGO) data bases (USDA 1994). We used geologic information developed by the California Department of Mines and Geology (CDMG) (2000) and Liss (2001). To identify the extent of flat or gently sloping topography where vernal pools are found we evaluated Digital Elevation Models from the U.S. Geologic Survey (2000).

We also used a number of local GIS data sets for specific areas, including information developed through the Riverside Multiple Species HCP and the Vernal Pools of Southern California Final Recovery Plan (Service 1998), habitat mapping for Butte County (EPA 1994), Tehama County (2001), Shasta County (2001) Placer County (Glazner 2001), Solano County (2000), Yolo County (1995), Sacramento County (1999) and San Joaquin County (2000) in California, and by the Rogue Valley Council of Governments in Oregon (Evans 2000). Other smaller scale mapping efforts were reviewed from

Solano County Farmlands and Open Space (2000) and East Bay Regional Parks District (2001). The specific layers used and the methodology employed for each unit is described within the unit descriptions. To determine land ownership within each unit we used data from the State of California (Davis *et al.* 1998) and the U.S. Bureau of Indian Affairs in Sacramento, California (2001).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering the designation of critical habitat for vernal pool crustaceans, we focused on the principal biological and physical features that support vernal pool crustacean feeding, growth, breeding, reproduction, and dispersal. Vernal pool crustaceans are found only in ephemeral wetland habitats that contain water during the winter, when temperatures are suitable for cyst hatching and juvenile development. Individuals have never been found in riverine, marine, or other permanent bodies of water.

Generally, we identified two primary constituent elements for all four vernal pool crustacean species addressed in this proposed rule. Each species has primary constituent elements that differ slightly from these general elements discussed in later sections of this rule. We determined that these proposed primary constituent elements of critical habitat provide for the physiological, behavioral, and ecological requirements of the vernal pool crustaceans.

The first primary constituent element provides the aquatic environment required for cyst incubation and hatching, growth and maturation, reproduction, feeding, sheltering, and dispersal, and the appropriate periods of dessication for cyst dormancy and to eliminate predators such as bullfrogs, fish, and other aquatic predators that

depend on year round inundation of wetland habitats to survive. We conclude this element is essential to the conservation of vernal pool crustaceans because these species are ecologically dependent on seasonal fluctuations, such as absence or presence of water during specific times of the year, and duration of inundation (59 FR 48136). They cannot persist in perennial wetlands or wetlands that are inundated for the majority of the year, nor can they persist without periodic seasonal inundation.

The second primary constituent element is essential to maintain the aquatic phase of the vernal pool habitat. The entire vernal pool complex, including the pools, swales, and associated uplands, is essential to support the aquatic functions of the vernal pool habitat. Although the uplands are not actually occupied by vernal pool crustaceans, they nevertheless are essential to the conservation of vernal pool habitat and crustaceans because they maintain the aquatic phase of vernal pools and swales. Associated uplands are also essential to provide nutrients that form the basis of the vernal pool food chain, including a primary food source for the vernal pool crustaceans.

We have used vernal pool complexes as the basis for determining populations of vernal pool crustaceans since the species were first proposed for listing. The final rule to list the four vernal pool crustaceans states that “[t]he genetic characteristics of the three fairy shrimp and vernal pool tadpole shrimp, as well as ecological conditions, such as watershed contiguity, indicate that populations of these animals are defined by pool complexes rather than by individual vernal pools” (Fugate 1992, Fugate 1998, King 1996). Therefore, the most accurate indication of the distribution and abundance of the four vernal pool crustaceans is the number of inhabited vernal pool complexes. Individual vernal pools occupied by the four species listed herein are most appropriately referred to as “subpopulations” (59 FR 48137). Our use of vernal pool complexes to define populations of the four listed crustaceans was upheld by the U.S. District Court in post-listing challenge to the listing (*Building Industry Association of Superior California*). The July 25, 1997, decision stated: “The Court finds that the plaintiffs were on notice that the FWS would consider vernal pool complexes as a basis for determining fairy shrimp populations. The Court also concludes that the use of this methodology was neither arbitrary nor capricious.” The Court of Appeals

for the D.C. Circuit upheld the district court's decision, and the Supreme Court has declined to hear the case.

In identifying specific primary constituent elements for each of the four vernal pool crustaceans, we expanded upon the general primary constituent elements described above and focused on the specific habitat requirements of each individual vernal pool crustacean species. These habitat requirements and the specific primary constituent elements for each vernal pool crustacean are described below.

Conservancy Fairy Shrimp Primary Constituent Elements

The Conservancy fairy shrimp is uniquely adapted to the ephemeral conditions of its vernal pool habitat. Helm (1998) found that the life span and maturation rate of Conservancy fairy shrimp did not differ significantly from other fairy shrimp species under the conditions he observed. Helm (1998) found that Conservancy fairy shrimp reached maturity in an average of 46 days, and lived for as long as 154 days. However, aquatic invertebrate growth rates are largely controlled by water temperature and can vary greatly (Eriksen and Brown 1980, Helm 1998). Eriksen and Belk (1999) observe that Conservancy fairy shrimp produce large cohorts of offspring, and is an "especially hyperactive swimmer and filter feeder." Conservancy fairy shrimp have only been observed to produce one cohort of offspring each wet season (Eriksen and Belk 1999).

Observations suggest this species is generally found in pools that are relatively large and turbid (King *et al.* 1996, Helm 1998, Eriksen and Belk 1999). Helm (1998) found that most Conservancy fairy shrimp occurrences were generally within vernal pools formed on fertile, basin rim soils. These pool types may be over several acres in size, and are often alkaline. Soil types where the species is known to occur include Anita, Pescadero, Riz, Solano, Edminster, San Joaquin, and Peters soil series.

Conservancy fairy shrimp occur with several other vernal pool crustaceans, including vernal pool fairy shrimp, California linderiella, and vernal pool tadpole shrimp (King *et al.* 1996, Eriksen and Belk 1999, Helm 1998). In general, Conservancy fairy shrimp have very large populations within a given pool, and is usually the most abundant fairy shrimp when more than one fairy shrimp species is present (Helm 1998, Eriksen and Belk 1999). Conservancy fairy shrimp are eaten by vernal pool tadpole shrimp (Alexander and

Schlisling 1997), as well as a variety of insect and vertebrate predator species.

When considering the designation of critical habitat for Conservancy fairy shrimp, we focused on the principal biological and physical features that support Conservancy fairy shrimp feeding and growth, breeding and reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions, and their associated uplands. The primary constituent elements for Conservancy fairy shrimp include—

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for Conservancy fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to large, playa vernal pools often on basin rim landforms and alkaline soils, but which are dry during the summer and do not necessarily fill with water every year; and

(2) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for Conservancy fairy shrimp. We determined the primary constituent elements of critical habitat for Conservancy fairy shrimp based on studies on their habitat and population biology including but not limited to— Eng *et al.* 1990, Gallagher 1996, Alexander and Schlisling 1997, Helm 1998, Eriksen and Belk 1999.

Longhorn Fairy Shrimp Primary Constituent Elements

Longhorn fairy shrimp are known only from three general locations, and each of these sites contain very different types of vernal pool habitats. Longhorn fairy shrimp in Contra Costa and Alameda counties live in small, clear, sandstone outcrop pools. These

sandstone pools have a pH near neutral, and very low alkalinity and conductivity (Eriksen and Belk 1999). Water temperatures in these pools have been measured between 10 and 18°C (50 and 64°F). In the other two locations in Merced and San Luis Obispo counties where longhorn fairy shrimp occur, they are found in turbid, alkaline, grassland vernal pools (Helm 1998, Eriksen and Belk 1999). Water temperatures in these grassland vernal pools tend to be warmer, between 10 and 28°C (50.0 to 82.0°F). However, no experimental studies have been conducted to determine the specific habitat requirements of longhorn fairy shrimp, and until research addressing the tolerance of longhorn fairy shrimp to a range of temperatures and water chemistries, its potential to occur in other types of vernal pool habitats cannot be ruled out.

Like other fairy shrimp, longhorn fairy shrimp are highly adapted to the variable conditions of vernal pool habitats. Longhorn fairy shrimp require a minimum of 23 days, but averaged 43 days, to reach maturity in artificial pools described by Helm (1998). However, Helm (1998) found no significant differences between the life span or reproductive rate of longhorn fairy shrimp and other species of fairy shrimp he studied.

When considering the designation of critical habitat for longhorn fairy shrimp, we focused on the principal biological and physical features that support longhorn fairy shrimp feeding and growth, breeding and reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for the longhorn fairy shrimp include—

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for longhorn fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to sandstone outcrop pools and turbid alkaline pools, but which are dry during the summer and do not necessarily fill with water every year; and

(2) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically

functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for longhorn fairy shrimp. We determined the primary constituent elements of critical habitat for longhorn fairy shrimp based on studies on their habitat and population biology including but not limited to—Eng *et al.* 1990, Fugate 1992, Gallagher 1996, Fugate 1998, Helm 1998, and Eriksen and Belk 1999.

Vernal Pool Fairy Shrimp Primary Constituent Elements

Vernal pool fairy shrimp generally will not hatch until water temperatures drop to below 10°C (50°F) (Gallagher 1996, Helm 1998). Vernal pool fairy shrimp are capable of hatching multiple times within a single wet season if conditions are appropriate. Helm (1998) observed 6 separate hatches of vernal pool fairy shrimp within a single wet season, and Gallagher (1996) observed 3 separate hatches of vernal pool fairy shrimp in vernal pools in Butte County.

Vernal pool fairy shrimp have been documented to live for as long as 147 days Helm (1998), but their life cycle and longevity is dependant upon water temperature as well as other environmental factors. Vernal pool fairy shrimp can reproduce in as few as 18 days at optimal conditions of 20°C (68°F) and can complete their life cycle in as little as 63 days (Gallagher 1996, Helm 1998). However, maturation and reproduction rates of vernal pool crustaceans are controlled by water temperature and can vary greatly (Eriksen and Brown 1980, Helm 1998). Helm (1998) observed that vernal pool fairy shrimp did not reach maturity until 41 days at water temperatures of 15°C (59°F). Vernal pool fairy shrimp have been collected at water temperatures as low as 4.5°C (40°F) (Eriksen and Belk 1999), however, the species has not been found in water temperatures above about 23°C (73°F) (Helm 1998, Eriksen and Belk 1999).

Vernal pool fairy shrimp occupy a variety of different vernal pool habitats, from small, clear, sandstone rock pools to large, turbid, alkaline, grassland valley floor pools (Eng *et al.* 1990, Helm 1998, CNDDDB 2001). The pool types where the species has been found include Northern Hardpan, Northern Claypan, Northern Volcanic Mud Flow,

and Northern Basalt Flow vernal pools which formed on a variety of geologic formations and soil types (CNDDDB 2001). Although vernal pool fairy shrimp have been collected from large vernal pools, including one exceeding 10 ha (25 ac) in area (Eriksen and Belk 1999), they are most frequently found in pools measuring less than 0.02 ha (0.05 ac) in area (Helm 1998, Gallagher 1996). The species occurs at elevations from 10 m (33 ft) to 1,220 m (4,003 ft) (Eng *et al.* 1990), and is typically found in pools with low to moderate amounts of salinity or total dissolved solids (Keeley 1984, Syrdahl 1993). Vernal pools are mostly rain fed, resulting in low nutrient levels and dramatic daily fluctuations in pH, dissolved oxygen, and carbon dioxide (Keeley and Zedler 1998). Although there are many observations of the environmental conditions where vernal pool fairy shrimp have been found, there have been no experimental studies investigating the specific habitat requirements of this species.

When considering the designation of critical habitat for vernal pool fairy shrimp, we focused on the principal biological and physical features that support vernal pool fairy shrimp feeding and growth, breeding and reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for vernal pool fairy shrimp include—

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for vernal pool fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to Northern Hardpan, Northern Claypan, Northern Volcanic Mud Flow, and Northern Basalt Flow vernal pools formed on a variety of geologic formations and soil types, but which are dry during the summer and do not necessarily fill with water every year; and

(2) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool

inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for one of these species. We determined the primary constituent elements of critical habitat for vernal pool fairy shrimp based on studies on their habitat and population biology including but not limited to—Eng *et al.* 1990, Fugate 1992, Gallagher 1996, Fugate 1998, Helm 1998, and Eriksen and Belk 1999.

Vernal Pool Tadpole Shrimp Primary Constituent Elements

Although the vernal pool tadpole shrimp is adapted to survive in ephemeral vernal pool habitat, the species has a relatively long life span compared to other vernal pool crustaceans. Helm (1998) found that vernal pool tadpole shrimp lived significantly longer than any other species observed under the same conditions except California linderiella (*Linderiella occidentalis*). Vernal pool tadpole shrimp continue growing throughout their lives, periodically molting their shells. These shells can often be found in vernal pools where the species occurs. Helm (1998) found that vernal pool tadpole shrimp took a minimum of 25 days to mature and the mean age at first reproduction was 54 days. Other researchers have observed that vernal pool tadpole shrimp generally take between 21 to 28 days to mature (Ahl 1991, King 1996). Ahl (1991) found that reproduction did not begin until individuals were larger than 10 mm (0.39 in) carapace length. Variation in growth and maturation rates may be a result of differences in water temperature, which strongly influences the growth rates of aquatic invertebrates.

Vernal pool tadpole shrimp occur in a wide variety of vernal pool habitats (Helm 1998). They have been found in pools with water temperatures ranging from 10°C (50°F) to 29°C (84°F) and pH ranging from 6.2 to 8.5 (Syrdahl 1993, King 1996). However, vernal pools exhibit daily and seasonal fluctuations in pH, temperature, dissolved oxygen, and other water chemistry characteristics (Syrdahl 1993, Scholnick 1995, Keeley 1998a). Determining vernal pool tadpole shrimp habitat requirements is not possible based on anecdotal evidence, and the tolerances of this species to specific environmental conditions have yet to be determined. Although vernal pool tadpole shrimp are found on a variety of geologic

formations and soil types, Helm (1998) found that over 50 percent of vernal pool tadpole shrimp occurrences were on high terrace landforms and Redding and Corning soils. Platenkamp (1998) found that vernal pool tadpole shrimp presence differed significantly between geomorphic surfaces at Beale Air Force Base and the species was most likely to be found on Riverbank formation.

When considering the designation of critical habitat for vernal pool tadpole shrimp, we focused on the principal biological and physical features that support vernal pool tadpole shrimp feeding and growth, breeding and reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for vernal pool fairy shrimp include:

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for vernal pool tadpole shrimp incubation, reproduction, dispersal, feeding, and sheltering, but which are dry during the summer and do not necessarily fill with water every year; including but not limited to vernal pools on Redding and Corning soils on high terrace landforms, and

(2) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for vernal pool tadpole shrimp. We determined the primary constituent elements of critical habitat for vernal pool tadpole shrimp based on studies on their habitat and population biology including but not limited to—Longhurst 1955, Lynch 1966, Ahl 1991, King 1996, and Helm 1998.

General Primary Constituent Elements for Vernal Pool Plants

The primary constituent elements of critical habitat for vernal pool plants are those habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal. All of the vernal pool plants addressed in this proposed rule are found only in ephemeral wetlands including vernal pools and swales. None of these species are known to occur in permanent wetlands, and none are found in strictly upland areas that are never inundated.

Generally, we identified two primary constituent elements for all eleven vernal pool plants addressed in this proposed rule. Each species has primary constituent elements that differ slightly from these general elements discussed in later sections of this rule. We determined that these proposed primary constituent elements of critical habitat provide for the physiological and ecological requirements of the vernal pool plants.

The first primary constituent element provides the necessary soil moisture and aquatic environment required for seed germination, growth and maturation, reproduction, and dispersal, and the appropriate periods of dry-down for seed dormancy. Both the wet and dry phases of the vernal pool help to reduce competition with strictly terrestrial or strictly aquatic plant species. The wet phase provides the necessary cues for germination and growth, while the drying phase allows the vernal pool plants to flower and produce seeds. We conclude this element is essential to the conservation of the vernal pool plants because these species are ecologically dependent on seasonal fluctuations, such as absence or presence of water during specific times of the year, and duration of inundation and the rate of drying of their habitats. They cannot persist in perennial wetlands or wetlands that are inundated for the majority of the year, nor can they persist without periodic seasonal inundation.

The second primary constituent element is essential to maintain both the aquatic phase and the drying phase of the vernal pool habitat. Although the vernal pool plants addressed in this proposed rule do not occur in the strictly upland areas surrounding vernal pools, they are dependent on these upland areas to maintain the aquatic and drying phases of the vernal pool. The germination of vernal pool plants is dependant on the timing and length of inundation of the vernal pool. The rate of vernal pool drying, during which

vernal pool plants must flower and produce seeds, is also largely controlled by interactions between the vernal pool and the surrounding uplands (Hanes *et al.* 1990, Hanes and Stromberg 1998).

In identifying specific primary constituent elements for each of the eleven vernal pool plant species addressed in this proposed rule, we expanded upon the general primary constituent elements described above to focus on the specific habitat requirements of each of the eleven individual species. These habitat requirements and the specific primary constituent elements for each species are described below.

Butte County Meadowfoam Primary Constituent Elements

The swales and vernal pools where Butte County meadowfoam grows are on intermediate fan terraces (Kelley and Associates Environmental Sciences 1992) in annual grasslands with a mima mound topography. Large cobbles are present throughout the pools and swales (Jokerst 1989). These pools are associated with Tuscan, Redbluff, Riverbank, and Modesto geologic formations, and most of them occur on soils of the Tuscan-Anita and the Redding-Igo complexes. Anita and Igo soils are confined to the pools and swales. Tuscan and Redding soils are restricted to the mounds. Anita soils can be up to 50 cm (19.7 in) deep, whereas Igo soils are no more than 18 cm (7.1 in) deep; the two soils are underlain by iron-silica cemented and indurated hardpan, respectively (Kelley and Associates Environmental Sciences 1993). Butte County meadowfoam has been observed on Anita clay soils annually regardless of rainfall but appears on Igo soils only in years of above average rainfall (Kelley and Associates Environmental Sciences 1992a, Crompton 1993, Schonholtz *in litt.* 1995), presumably because the former can hold approximately twice as much moisture (Kelley and Associates Environmental Sciences 1993). Confirmed occurrences have been found at 50 to 90 m (165 to 300 ft) in elevation (McNeill and Brown 1979, CNDDDB 2001).

The primary constituent elements of critical habitat for Butte County meadowfoam are those habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent

elements for Butte County meadowfoam include:

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain Butte County meadowfoam germination, growth and reproduction, including but not limited to vernal pool swales and the margins of vernal pools on the Tuscan, Redbluff, Riverbank, and Modesto geologic formations underlain by Tuscan-Anita and Igo-Redding complex soils among others. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(2) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for Butte County meadowfoam germination, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for Butte County meadowfoam. We determined the primary constituent elements of critical habitat for Butte County meadowfoam based on studies of their habitat and population biology including but not limited to—Kalin-Arroyo 1973, Dole 1988, Jokerst 1989, Kelley and Associates Environmental Sciences 1992a, and Crompton 1993.

Contra Costa Goldfields Primary Constituent Elements

Contra Costa goldfields typically grows in vernal pools, swales, moist flats, and depressions within a grassland matrix (CNDDDB 2001). However, several historical collections were from populations growing in the saline-alkaline transition zone between vernal pools and tidal marshes on the eastern margin of the San Francisco Bay (Baye USFWS *in litt.* 2000a). The herbarium sheet for one of the San Francisco Bay specimens notes that the species also grew in evaporating ponds used to concentrate salt (Baye *in litt.* 2000b). The vernal pool types from which this species has been reported are Northern Basalt Flow, Northern Claypan, and Northern Volcanic Ashflow (Sawyer and Keeler-Wolf 1995). The landforms and

geologic formations for sites where Contra Costa goldfields occurs have not yet been determined. Most occurrences of Contra Costa goldfields are at elevations of 2 to 61 m (6 to 200 ft), but the recently discovered Monterey County occurrences are at 122 m (400 ft) and one Napa County occurrence is at 445 m (1,460 ft) elevation (CNDDDB 2001).

The soil types that maintain these vernal pool habitats for Contra Costa goldfields have not yet been identified for most localities. The soil series from which it is known are Aiken, Antioch, Concepcion, Conejo, Crispin, Haire, Linne, Los Robles, Rincon, Solano, and San Ysidro, plus the Arnold-Santa Ynez, Hambright-rock outcrop, and Los Osos complexes. Soil textures, where known, are clays or loams. At least in Solano County and on the shores of San Francisco Bay, Contra Costa goldfields grows in alkaline or saline-alkaline sites (Baye *in litt.* 2000a, Baye *in litt.* 2000b, CNDDDB 2001).

The primary constituent elements of critical habitat for Contra Costa goldfields are those habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for Contra Costa goldfields include—

(1) Vernal pools, swales, moist flats, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain Contra Costa goldfields germination, growth and reproduction, including, but not limited to, vernal pools on clay soils from a variety of soils series, rock outcrop pools on basalt flows, and vernal pools in saline alkaline transition zones with tidal marsh habitats. All of these habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(2) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for Contra Costa goldfields germination, growth and reproduction,

and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for Contra Costa goldfields. We determined the primary constituent elements of critical habitat for Contra Costa goldfields based on studies on their habitat and population biology including but not limited to—Ornduff 1966, Ornduff 1979, Crawford and Ornduff 1989, Skinner and Pavlik 1994.

Hoover's Spurge Primary Constituent Elements

Vernal pools from which Hoover's spurge has been reported are classified as Northern Hardpan and Northern Claypan vernal pools (Sawyer and Keeler-Wolf 1995). The pools supporting this species vary in size from 0.19 to 243 ha (0.47 to 600 ac), with a median area of 0.58 ha (1.43 ac) (Stone *et al.* 1988). Many occurrences consist of multiple pools that vary in area and in depth, yet not all pools at a site support Hoover's spurge. Deeper pools apparently provide better habitat for this species because the duration of inundation is longer. This species may occur along the margins or in the deepest portions of the dried pool bed (Stone *et al.* 1988, Alexander and Schlising 1997). A particularly important feature of Hoover's spurge microhabitat, at least in the deeper pools, is that it is nearly devoid of other vegetation, and thus competition from other plants is reduced (Stone *et al.* 1988).

Vernal pools supporting Hoover's spurge occur mostly on alluvial fans or terraces of ancient rivers or streams, with a few on the rim of the Central Valley basin. Hoover's spurge is found on a wide variety of soils, which range in texture from clay to sandy loam. Soil series from which it has been reported include Anita, Laniger, Lewis, Madera, Meikle, Riz, Tuscan, Whitney, Willows. All of these soils may not be equally suitable for this species, however. For example, in one Vina Plains pool, Hoover's spurge grew primarily in the portion that was underlain by Tuscan loam and was nearly absent from the portion underlain by Anita clay (Alexander and Schlising 1997).

In the Sacramento Valley occupied pools are on acidic soils over iron-silica cemented hardpan. Most pools supporting Hoover's spurge in the San Joaquin Valley are on neutral to saline-alkaline soils over lime-silica cemented hardpan or claypan (Broyles 1987, Stone *et al.* 1988, Sawyer and Keeler-Wolf 1995, CNDDDB 2001). Occurrences of

Hoover's spurge have been reported from elevations ranging from 26 m (85 ft) in Glenn County to 128 m (420 ft) in Tehama County (CNDDDB 2002).

The primary constituent elements of critical habitat for Hoover's spurge are those habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for Hoover's spurge include—

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain Hoover's spurge germination, growth and reproduction, including but not limited to vernal pools formed on neutral to saline-alkaline soils over lime-silica cemented hardpan or claypan, or on acidic soils over iron-silica cemented hardpan, that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(2) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for Hoover's spurge germination, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for Hoover's spurge. We determined the primary constituent elements of critical habitat for Hoover's spurge based on studies on their habitat and population biology including but not limited to—Broyles 1987, Stone *et al.* 1988, and Alexander and Schlising 1997.

Succulent Owl's-Clover Primary Constituent Elements

Succulent owl's-clover is known mostly from vernal pools occurring on alluvial terrace landforms. These pool types have been described as both Northern Claypan and Northern Hardpan vernal pools (Sawyer and Keeler-Wolf 1995) within annual grassland communities (CNDDDB 2001).

However, it is found on Northern Basalt Flow vernal pools on Hideaway soils series at one location in the San Joaquin Valley. It is known from both small and large pools (EIP Associates 1999). Although not all pools occupied by this taxon have been studied in detail, Stebbins *et al.* (1995) collected data on six occupied pools in Fresno and Madera counties. Some were typical "bowl-like" pools, whereas others were more similar to swales. This subspecies has been reported from pools with both long and short inundation periods (EIP Associates 1999) and from both shallow and "abnormally deep vernal pools," but approximate depth of these pools was not given (CNDDDB 2001).

Soil series supporting succulent owl's-clover include Amador, Anderson, Corning, Fallbrook, Keyes, Pentz, Ramona, Redding, San Joaquin, Vista, and Yokohl, as well as the Pollasky-Montpellier complex. Soil textures at those sites range from extremely stony loam to loamy clay. In the proposed UC Merced campus and community area, the species is found primarily on Redding gravelly loam; however, Corning, Keyes, and Pentz soils also contain occurrences of the species (EIP Associates 1999). Populations of succulent owl's-clover have been reported from elevations of 24 m (80 ft) at the San Joaquin County site to 700 m (2,300 ft) at Kennedy Table in Madera County (CNDDDB 2001).

The primary constituent elements of critical habitat for succulent owl's-clover are those habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for succulent owl's-clover include—

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain succulent owl's-clover germination, growth and reproduction, including but not limited to hardpan vernal pools on alluvial terraces and San Joaquin, Redding, Corning, Keyes, and Pentz soils series, among others, and northern basalt flow vernal pools on Hideaway soils series, that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(2) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands

(which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for succulent owl's-clover germination, growth, reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for succulent owl's-clover. We determined the primary constituent elements of critical habitat for succulent owl's-clover based on studies of their habitat and population biology including but not limited to—Hoover 1968, Chuang and Heckard 1991, Chuang and Heckard 1993, and EIP Associates 1999.

Colusa Grass Primary Constituent Elements

Colusa grass has the broadest ecological range among the Orcuttieae. It occurs on the rim of alkaline basins in the Sacramento and San Joaquin valleys, as well as on acidic soils of alluvial fans and stream terraces along the eastern margin of the San Joaquin Valley and into the adjacent foothills (Stone *et al.* 1988). Colusa grass has been found in Northern Claypan and Northern Hardpan vernal pool types (Sawyer and Keeler-Wolf 1995) within rolling grasslands (Crampton 1959). This species typically grows in the deepest portion of the pool (Crampton 1959) but also may occur on the margins (Hoover 1937, Stone *et al.* 1988). Deeper pools are most likely to provide the long inundation period required for germination (EIP Associates 1999).

Several soil series maintain the vernal pool habitats where Colusa grass is found. Solano and Yolo county sites where Colusa grass grows contain vernal pools formed by soils in the Pescadero series, whereas those in central Merced County are formed by soils in the Landlow and Lewis series (Silveira *in litt.* 2000). The eastern Merced County and Stanislaus County sites include vernal pool habitats formed by the Bear Creek, Corning, Greenfield, Keyes, Meikle, Pentz, Peters, Raynor, Redding, and Whitney series (Stone *et al.* 1988, EIP Associates 1999, CNDDDB 2002). The type and composition of impermeable layers underlying occupied vernal pools also vary, ranging from claypan in the Sacramento Valley to lime-silica cemented hardpan in the San Joaquin Valley basins, to iron-silica cemented hardpan in the eastern margin of the San Joaquin Valley. Tuffaceous

alluvium underlies some eastern San Joaquin Valley pools and intermittent streams where Colusa grass grows (Stone *et al.* 1988).

The primary constituent elements of critical habitat for Colusa grass are those habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for Colusa grass include—

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain Colusa grass germination, growth and reproduction, and that typically become inundated during winter rains, including but not limited to vernal pools formed on the rim of alkaline basins in the Sacramento and San Joaquin valleys, as well as on acidic soils of alluvial fans and stream terraces along the eastern margin of the San Joaquin Valley and into the adjacent foothills. All of these pool types are dry during the summer and do not necessarily fill with water every year; and

(2) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for Colusa grass germination, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for Colusa grass. We determined the primary constituent elements of critical habitat for Colusa grass based on studies on their habitat and population biology including but not limited to—Crampton 1976, Griggs 1980, Reeder 1982, Griggs and Jain 1983, Keeley 1998a, and Stone *et al.* 1988.

Greene's Tuctoria Primary Constituent Elements

Greene's tuctoria has been found in three types of vernal pools: Northern Basalt Flow, Northern Claypan, and Northern Hardpan (Sawyer and Keeler-Wolf 1995, Stone *et al.* 1988). Occupied pools are or were underlain by iron-

silica cemented hardpan, tuffaceous alluvium, or claypan (Stone *et al.* 1988). Of pools where the species was known to be extant in 1987, the median size was 0.6 ha (1.5 ac), with a range of 50 m² (0.01 ac) to 3.4 ha (8.4 ac) (Stone *et al.* 1988). Stone *et al.* (1988) noted that Greene's tuctoria grew in shallower pools than other members of the tribe or on the shallow margins of deeper pools, but they did not quantify pool depth. At the Vina Plains, Greene's tuctoria grew in pools of "intermediate" size, which dried in April or early May of 1995 (Alexander and Schlising 1997). The Central Valley pools containing Greene's tuctoria are (or were) in grasslands; the Shasta County occurrence is surrounded by pine forest (CNDDDB 2001). Occupied pools in the Central Valley are (or were) at elevations of 33.5 to 134 m (110 to 440 ft) (Stone *et al.* 1988), whereas the Shasta County occurrence is at 1,067 m (3,500 ft) (CNDDDB 2001).

In Tehama and Butte counties, Greene's tuctoria grows mostly on Anita clay and Tuscan loam soils, with one occurrence on Tuscan stony clay loam. Soil types are not certain for several other occurrences in this region; one is on either the Rocklin or the San Joaquin series, and the others are unknown. The single occurrence in the central portion of the Central Valley, near the Glenn and Colusa county line, is on strongly saline-alkaline Willows clay (Silveira *in litt.* 2000). On the eastern margin of the San Joaquin Valley, Greene's tuctoria is known to grow on a number of different soil series including Archerdale, Bear Creek, Exeter, Meikle, Ramona, Raynor, Redding, and San Joaquin.

The primary constituent elements of critical habitat for Greene's tuctoria are those habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for Greene's tuctoria include—

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain Greene's tuctoria germination, growth and reproduction, including but not limited to Northern Claypan, Northern Hardpan and Northern Basalt flow vernal pools, that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(2) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for Greene's tuctoria germination, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for Greene's tuctoria. We determined the primary constituent elements of critical habitat for Greene's tuctoria based on studies on its habitat and population biology including but not limited to—Griggs 1980, Griggs and Jain 1983, Stone *et al.* 1988, Keeley 1988, and Alexander and Schlising 1997.

Hairy Orcutt Grass Primary Constituent Elements

This species is found within vernal pools formed on high or low stream terraces and alluvial fans (Stone *et al.* 1988). The median size of occupied pools measured in the late 1980's was 1.7 ha (4.2 ac), with a range of 0.34 to 250 ha (0.8 to 617.5 ac) (Stone *et al.* 1988). At the Vina Plains, hairy Orcutt grass was found growing only in pools that held water until May, June, or July in 1995, not in those that dried in April (Alexander and Schlising 1997). This species is known from elevations of 26 m (85 ft) in Glenn County to 123 m (405 ft) in Madera County (CNDDDB 2001).

Hairy Orcutt grass is found on both acidic and saline-alkaline soils, in pools with an iron-silica cemented hardpan or claypan. In Tehama and Butte counties, pools supporting hairy Orcutt grass occur on the Anita and Tuscan soil series (Stone *et al.* 1988, CNDDDB 2001). At one pool in the Vina Plains that spans both Anita clay and Tuscan loam soils, hairy Orcutt grass was found growing primarily on the Anita clay (Alexander and Schlising 1997). At the Sacramento National Wildlife Refuge, hairy Orcutt grass occurs on the Willows and Riz soil series (Silveira *in litt.* 2000), whereas in the Southern Sierra Foothills Vernal Pool Region it occurs on the Cometa, Greenfield, Hanford, Meikle, and Whitney soil series (Stone *et al.* 1988).

The primary constituent elements of critical habitat for hairy Orcutt grass are those habitat components that are essential for the primary biological

needs of germination, growth, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for hairy Orcutt grass include—

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain hairy Orcutt grass germination, growth and reproduction, including but not limited to features occurring on both acidic and saline-alkaline soils, with an iron-silica cemented hardpan or claypan, and that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(2) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool plant germination, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for hairy Orcutt grass. We determined the primary constituent elements of critical habitat for hairy Orcutt grass based on studies on their habitat and population biology including but not limited to—Crampton 1959, Medeiros, 1976, Griggs 1980, Griggs and Jain 1983, Stone *et al.* 1988, Durgarian 1995, and Alexander and Schlising 1997.

Sacramento Orcutt Grass Primary Constituent Elements

Sacramento Orcutt grass has been found in Northern Hardpan and Northern Volcanic Mudflow vernal pools (Sawyer and Keeler-Wolf 1995). It occurs on high terrace sites (Stone *et al.* 1988) at elevations of 46 to 82 m (150 to 270 ft) (CNDDDB 2001). Occupied pools occur in blue oak woodland and annual grassland (Crampton 1959, Griggs 1977, CNDDDB 2002). Among occupied pools discovered prior to 1988, the median area was 0.28 ha (0.69 ac) and ranged from 0.1 ha (0.25 ac) to 0.82 ha (2.03 ac). Soils underlying pools where Sacramento Orcutt grass grows

are acidic with an iron-silica hardpan (Stone *et al.* 1988), and the pools contain numerous cobbles (Crampton 1959, Stone *et al.* 1988). Four of the known occurrences are on soils in the Redding series, two are on Red Bluff-Redding complex soils, two are (or were) on Xerarents-urban land-San Joaquin complex, and one is on Corning complex soils.

The primary constituent elements of critical habitat for Sacramento Orcutt grass are those habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for Sacramento Orcutt grass include—

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain Sacramento Orcutt grass germination, growth and reproduction, including but not limited to vernal pools on high terrace landforms on acidic soils such as Red Bluff, Redding, and Corning soil series. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(2) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for Sacramento Orcutt grass germination, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for Sacramento Orcutt grass. We determined the primary constituent elements of critical habitat for Sacramento Orcutt grass based on studies on their habitat and population biology including but not limited to—Crampton 1959, Griggs 1980, Griggs and Jain 1983, Holland 1987, and Stone *et al.* 1988.

San Joaquin Valley Orcutt Grass Primary Constituent Elements

San Joaquin Valley Orcutt grass occurs on alluvial fans, high and low stream terraces (Stone *et al.* 1988), and tabletop lava flows (Stebbins *et al.* 1995, CNDDDB 2001). This species has been reported in Northern Claypan, Northern Hardpan, and Northern Basalt Flow vernal pools (Sawyer and Keeler-Wolf 1995) within rolling grassland (Crampton 1959). Occupied pools range in surface area from 0.014 to 4.9 ha (0.05 to 12.1 ac), with a median area of 0.62 ha (1.54 ac) (Stone *et al.* 1988). San Joaquin Valley Orcutt grass has been reported from elevations of 30 to 755 m (100 to 2,475 ft); the highest elevation sites are those on the volcanic tabletops of Fresno and Madera counties (Stebbins *et al.* 1995, CNDDDB 2001).

The pools where San Joaquin Valley Orcutt grass is known to occur form on acidic soils that vary in texture from clay to sandy loam. Soil series represented include the Hideaway series on Fresno-Madera County volcanic tabletops, and Amador, Cometa, Corning, Greenfield, Los Robles, Madera, Peters, Pollasky-Montpellier complex, Raynor, Redding, and San Joaquin soil series elsewhere in the range. The impermeable layer at historical or extant occurrences included iron-silica cemented hardpan, tuffaceous alluvium, and basaltic rock from ancient volcanic flows (Stone *et al.* 1988, Stebbins *et al.* 1995, EIP Associates 1999, CNDDDB 2001).

The primary constituent elements of critical habitat for San Joaquin Valley Orcutt grass are those habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for San Joaquin Valley Orcutt grass include—

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain San Joaquin Orcutt grass germination, growth and reproduction, including but not limited to vernal pools on alluvial fans, high and low stream terraces, and tabletop lava flows. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(2) The associated watershed(s) and hydrologic features, including the pool

basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for San Joaquin Valley Orcutt grass germination, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for San Joaquin Valley Orcutt grass. We determined the primary constituent elements of critical habitat for San Joaquin Valley Orcutt grass pools based on studies on their habitat and population biology including but not limited to—Crampton 1959, Griggs 1980, Griggs and Jain 1983, Stone *et al.* 1988, Stebbins *et al.* 1995, Keeley 1998a, and EIP Associates 1999.

Slender Orcutt Grass Primary Constituent Elements

Slender Orcutt grass is found primarily on substrates of volcanic origin (Crampton 1959, Corbin and Schoolcraft 1989). Vernal pools in which slender Orcutt grass grows are classified as Northern Volcanic Ashflow and Northern Volcanic Mudflow vernal pools (Sawyer and Keeler-Wolf 1995). Impervious layers range from iron-silica hardpan to bedrock (Stone *et al.* 1988, Corbin and Schoolcraft 1989, CNDDDB 2001). Among the populations studied by Stone and others (1988), the median area of pools occupied by slender Orcutt grass was 0.65 ha (1.6 ac) and ranged from 0.08 to 45 ha (0.2 to 111 ac). On the Modoc Plateau, occupied pools known as of 1989 ranged in size from 2 to 40 ha (5 to 100 ac) and were typically at least 30 cm (11.8 in) deep; this species was restricted to the deepest areas of these pools (Corbin and Schoolcraft 1989). Slender Orcutt grass occurs through a wide range of elevations corresponding to its broad geographical range. The lowest reported elevation was 27 m (90 ft) in Sacramento County (Stone *et al.* 1988) and the highest was 1,756 m (5,761 ft) in Plumas County (Corbin *in litt.* 1999).

Soil types supporting vernal pools where slender Orcutt grass is known to occur are diverse, ranging from slightly to strongly acidic (Stone *et al.* 1988) and from clay to sandy, silty, or cobbly loam (Corbin and Schoolcraft 1989, CNDDDB 2001). The soil series has not been reported for all slender Orcutt grass sites but the species has been reported on

Collayomi-Aiken-Whispering complex and the Konocti-Hambright complex soils. Modoc Plateau occurrences occur on the Gooval, Lasvar, Lasvar-Pitvar complex, and Nosoni soil series, whereas occurrences in northeastern Sacramento Valley are on the Anita, Guenon, Inks, Inskip, Laniger, Moda, Redding, Toomes, and Tuscan soil series. The Redding soil series also supports slender Orcutt grass in Sacramento County (Stone *et al.* 1988, CNDDDB 2001).

Vegetation types in which the occupied pools occur are diverse, ranging from grassland and oak woodland to mixed conifer forest, silver sagebrush (*Artemisia cana*) flats, and sedge meadows (Crampton 1959, CNDDDB 2001). Associated species vary throughout the range of slender Orcutt grass. Although slender Orcutt grass grows in the same vernal pool complexes as hairy Orcutt grass in Tehama County (including the Vina Plains Preserve) and Sacramento Orcutt grass in Sacramento County, it has not been found to share any pools with either species (Stone *et al.* 1988, Cochrane *in litt.* 1995a, Alexander and Schlising 1997, CNDDDB 2001).

The primary constituent elements of critical habitat for slender Orcutt grass are those habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for slender Orcutt grass include—

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain slender Orcutt grass germination, growth and reproduction, including but not limited to Northern Volcanic Ashflow and Northern Volcanic Mudflow vernal pools (Sawyer and Keeler-Wolf 1995) with iron-silica and bedrock hardpan impervious layers, and that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(2) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland,

and that maintain suitable periods of pool inundation, water quality, and soil moisture for slender Orcutt grass germination, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for slender Orcutt grass. We determined the primary constituent elements of critical habitat for slender Orcutt grass based on studies on their habitat and population biology including but not limited to—Griggs 1980, Griggs 1981, Reeder 1982, Griggs and Jain 1983, Stone *et al.* 1988, Corbin and Schoolcraft 1989, and Alexander and Schlising 1997.

Solano Grass Primary Constituent Elements

Solano grass has been found only in the Northern Claypan type of vernal pool (Sawyer and Keeler-Wolf 1995) within annual grassland (CNDDDB 2001). Pools where Solano grass occurs tend to be milky from suspended sediments (Holland 1987). The occupied pools in Solano County are more properly described as alkaline playas or intermittent lakes due to their large surface area (Crampton 1959), whereas those at the Yolo County site are “relatively small” (Witham *in litt.* 2000a). Soils underlying known Solano grass sites are saline-alkaline clay or silty clay in the Pescadero series (Crampton 1959, CNDDDB 2001). Known occurrences are at elevations of approximately 5 to 11 m (15 to 35 ft) (CNDDDB 2001).

The primary constituent elements of critical habitat for Solano grass are those habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. The primary constituent elements for Solano grass include:

(1) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain Solano grass germination, growth and reproduction, including but not limited to Northern Claypan vernal pools (Sawyer and Keeler-Wolf 1995) on saline-alkaline clay or silty clay in the Pescadero soil series that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(2) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for Solano grass germination, growth and reproduction, and dispersal, but not necessarily every year.

All of the above described primary constituent elements do not have to occur simultaneously within a unit for the unit to constitute critical habitat for Solano grass. We determined the primary constituent elements of critical habitat for Solano grass based on studies on their habitat and population biology including but not limited to—Griggs 1980, Holland 1987, and Stone *et al.* 1988.

Criteria Used To Identify Critical Habitat

In accordance with section 3(5)(A)(I) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. Our implementing regulations at 50 CFR 424.12(e) indicate that the Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

The primary objective in designating critical habitat is to identify areas that are considered essential for the conservation of the species, and to highlight specific areas where special management considerations or protections are necessary. The Act defines the term “conservation” to mean “the use of all methods and procedures which are necessary to bring any

endangered species or threatened species to the point at which the measures provided pursuant to this 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 * * *” Section 4(f)(1) of the Act provides for the development and implementation of recovery plans “for the conservation and survival of endangered species and threatened species,” and directs that such plans incorporate “a description of such site-specific management actions as may be necessary to achieve the plan’s goal for the conservation and survival of the species;” and “objective, measurable criteria which, when met, would result in a determination * * * that the species be removed from the list.”

General Criteria

The Service currently is preparing a draft recovery plan that will describe measures and actions necessary for the conservation and survival of the vernal pool species addressed in this proposed rule. In determining the size, number, and location of areas to propose as critical habitat we have considered the features necessary for conservation of each species as recommended by the vernal pool recovery team, other vernal pool experts, peer reviewed literature, scientific reports, and other information in our files. We do not, however, anticipate that these areas include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species addressed herein. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

The conservation of species addressed in this rule depends on removing and alleviating the factors that threaten them, including factors that led to their population decline and subsequent Federal listing. Most species addressed in this proposed rule are threatened by common factors because they occupy the same vernal pool ecosystems.

Holland (1998) estimated that almost three-quarters of vernal pool habitats in the Central Valley of California had been lost by 1997. Loss of habitat has been even more complete in areas outside of the Central Valley. In the central coast area, at least 90 percent of historic vernal pools have been destroyed, and most remaining pools have been degraded (Ferren and Pritchett 1988). In southern California estimated loss of vernal pool habitat

ranges from 95 percent to nearly total (Bauder 1986, 1987, Bauder and McMillan 1998). In Oregon, 60 percent of vernal pool habitats have been destroyed, and only 18 percent of the remaining habitats are considered intact (Oregon Natural Heritage Program 1997, Borgias and Patterson 1999). As a result of widespread habitat loss, most of the species addressed in this rule are now limited to a fraction of their former ranges.

Beginning around the mid-1800s, vernal pool habitats were destroyed as a result of conversion to agriculture and water diversion and impoundment projects (Frayer *et al.* 1989, Holland 1998, Kreissman 1991). In more recent years, vernal pool habitats have been lost primarily as a result of widespread urbanization (Bauder 1986, Bauder and McMillan 1998). Much of the loss of habitat was the result of residential, commercial, and industrial development projects. The construction of infrastructures associated with urbanization has also contributed greatly to loss of vernal pool habitats, including the construction of highways, wastewater treatment plants, sewer lines, water supply projects, and other utility projects associated with urbanization in California.

In some areas, conversion of vernal pool habitats to intensive agricultural uses continues to contribute to the decline of vernal pool habitats and the species that inhabit them. From 1992 to 1998, 50,825 ha (125,591 ac) of grazing land were converted to other agricultural uses in the Central Valley of California (California Department of Conservation 2001). It is likely that much of this land supported vernal pools. Holland estimated that more than 12,950 ha (32,000 ac) of vernal pool habitats had been lost in the San Joaquin valley vernal pool region from the late 1980s until 1997, mostly as a result of agricultural conversion (Holland 1998). Through consultation under section 7 of the Act, we reviewed projects converting more than 6,070 ha (15,000 ac) of vernal pool habitats to intensive agricultural uses.

Vernal pool species are also threatened by other activities that indirectly destroy vernal pool ecosystems and render them unsuitable for vernal pool species, including activities that alter hydrology, introduce contaminants, cause erosion or sedimentation, and introduce non-native species into vernal pool ecosystems. Maintaining habitat integrity was identified by the vernal pool recovery team as an important consideration in planning recovery strategies for the species addressed in

this proposed rule (Vernal Pool Recovery Team *in litt.* 1996). The recovery of the species addressed in this proposed rule will depend on the development of recovery strategies that eliminate or minimize these threats so that populations can stabilize, and future declines will be minimized.

Alteration of vernal pool hydrology can dramatically degrade vernal pool habitats. Vernal pool hydrology can be altered by a variety of activities, including the construction of roads, trails, ditches, or canals that can block the flow of water into, or drain water away from, vernal pools and vernal pool complexes (CNDDDB 2001). Runoff from irrigated agricultural lands, storm water drains, or developed areas covered with concrete, asphalt, or irrigated lawns can dramatically alter the hydrology of adjacent vernal pools (Bauder 1987, Clark *et al.* 1998). As described in the primary constituent element section of this rule, all of the species addressed herein depend on specific timing and duration of inundation to complete their life cycles. Altered vernal pool hydrology can harm vernal pool species by preventing germination or hatching, preventing growth and maturation, and by preventing reproduction and disrupting gene flow and dispersal. Altered hydrology can also allow invasion of habitats and extirpation of vernal pool species by dominant upland or aquatic species.

Vernal pool species have also declined as a result of water contamination. Vernal pool crustaceans, in particular are highly sensitive to the water chemistry of their vernal pool habitats, and contamination of vernal pools may injure or kill them (Belk 1977, Eng *et al.* 1990, Gonzalez *et al.* 1996). Toxic chemicals, such as petroleum products, pesticides, herbicides, adjuvants, fertilizers, and soap may wash into vernal pools during development of adjacent areas. Vernal pools adjacent to existing developments may also be contaminated from roadway contaminants in surface runoff (*e.g.*, grease, oil, and heavy metals). Contamination may result from discharge of fertilizers and pesticides into surface waters from golf courses, irrigated agricultural lands, or landscaped residential areas (Petrovic 1990). In addition to altered hydrology and contamination, vernal pool species have declined as a result of a variety of other incompatible land uses including off road vehicle use, dumping, vandalism, erosion and sedimentation (Service 1994c, CNDDDB 2001).

Additional threats to vernal pool species include the negative effects of fragmentation and isolation on

populations that were once part of larger interconnected habitats, and the effects of small population sizes and loss of genetic diversity that result from habitat fragmentation. Fragmentation threatens the elimination of some populations with unforeseen natural and anthropogenic catastrophic events. Vernal pool species in these small habitat patches are also vulnerable to random fluctuations in habitat availability due to annual weather patterns and other environmental factors. They are also more vulnerable to extirpation from random fluctuations in demographic factors, such as birth rates and death rates (Lesica and Allendorf 1995).

Fragmentation of vernal pool complexes could contribute significantly to the loss of genetic diversity among vernal pool species and reduce the likelihood of recolonization events following population extinction by limiting opportunities for dispersal (King 1996, Fugate 1998). The fragmentation of vernal pool habitats may decrease the ability of avian species to move between remaining patches of vernal pool habitats (Silveira 1998), which would contribute to the isolation of vernal pool crustacean populations by reducing cyst dispersal between remaining vernal pool habitat patches (Proctor 1964, Krapu 1974, Swanson 1974, Driver 1981, Ahl 1991). Fragmentation of vernal pool areas could reduce the availability of habitat for pollinator species, and decrease or eliminate seed production of many vernal pool plants (Thorp and Leong 1998).

As described in the Primary Constituent Element section of this proposed rule, the conservation of the wetted area of the vernal pool alone is not sufficient to provide the hydrologic conditions necessary for the reproduction, feeding, sheltering, and dispersal of the vernal pool species addressed in this proposed rule. To maintain the integrity of the vernal pool habitat and prevent extirpation of vernal pool species resulting from altered hydrology, contamination, sedimentation, and other factors which originate in the uplands surrounding the vernal pools it is equally necessary to conserve the surrounding micro-watershed and associated uplands that directly surround and feed the wetted area of the vernal pool or pool complex.

The boundaries of vernal pool complexes, including vernal pools, swales, and the associated uplands, where vernal pool species are known to occur in California have been mapped by Holland (1998, 2002) and by a number of local and state organizations

throughout California and in Oregon. The soil types and geologic formations which support vernal pools have also been mapped, and the associated landforms have been identified. We utilized these boundaries to identify areas that support vernal pools, swales, and the associated uplands that comprise the hydrological unit of the vernal pool complex necessary for vernal pool crustacean growth, reproduction, feeding, and dispersal and vernal pool plant germination, growth, and reproduction. We relied on these mapped boundaries to identify vernal pool complexes as intact, hydrologically functioning units. We did not dissect or fragment existing complexes within this designation. However, we do not believe the entire watershed of vernal pool habitats, as depicted by CALWATER or other watershed mapping efforts, is essential to the conservation of the species, and we are not proposing to designate entire watersheds as critical habitat.

Maintaining the range of habitat types in which a species is known to occur has been identified as an important element in species recovery (Vernal Pool Recovery Team *in litt.* 1996). Protecting environmental variability will reduce the chance of losing populations that are important for their genetic uniqueness and adaptation to local environmental conditions (Fugate 1992, King 1996, Linhart and Grant 1996, Fugate 1998). Environmental factors such as hydrology, soil composition and chemistry, pool size, and water chemistry, play a major role in determining species presence and composition in vernal pool plants (Holland and Griggs 1976, Holland and Dains 1990, Jokerst 1990, Stallings and Warren 1996). The presence and species composition of vernal pool crustaceans is also largely determined by physical factors such as pool size, depth, area, and water chemistry (Eng *et al.* 1990, Gonzales *et al.* 1996, Hathaway and Simovich 1996, Simovich and Hathaway 1997, Platenkamp 1998, Simovich 1998, Helm 1998). Variation in these factors contributes to the wide range of life history strategies observed in vernal pool crustaceans and plants, and to the high levels of species diversity observed in vernal pool ecosystems in general. Various efforts to classify vernal pools, including Sawyer and Keeler-Wolf 1995, Keeler-Wolf *et al.* 1998, Smith and Verrill 1998, have identified the locations and distributions of these different pool types. We consulted these sources of information to ensure we have accurately identified the range of

habitats in which each of the 15 species addressed in this proposed rule are known to occur.

Special Management Considerations

In proposing critical habitat, we also have considered how this designation highlights habitat that needs special management considerations or protection. For example, we have many regional HCPs under development, and this designation will be useful in helping applicants determine what vernal pool habitat areas should be highest priority for special management or protection, and where there may be more flexibility in conservation options. This designation will guide them and us in ensuring that all local habitat conservation planning efforts are consistent with conservation objectives for these species.

Once a vernal pool habitat has been protected from direct filling, it is still necessary to ensure that the habitat is not rendered unsuitable for vernal pool species because of factors such as altered hydrology, contamination, non-native species invasions, or other incompatible land uses. Even the best designed vernal pool preserve may still be susceptible to alterations that render it unsuitable for vernal pool species. Many of the factors that cause the decline and extirpation of vernal pool species can be controlled through special management actions. Examples of special management actions that may be necessary to prevent further declines and loss of populations of species addressed in this rule include—

(1) Actions to prevent or reduce competition of vernal pool plants with invasive species. Many of the species addressed in this rule are threatened by invasion of non-native species (CNDDDB 2001). Special management actions can

be taken to reduce the negative effects of such invasions. For example, grazing can be effectively used to control a variety of upland exotic plants. However, the timing and intensity of grazing is critical to its success as a management tool, and these factors should be closely monitored. Alternatively, inappropriate grazing can also pose a threat to many of the vernal pool plant species (CNDDDB 2001). Prescribed burning is another management tool that may be effective in controlling non-native plant species (Pollack and Kan 1998). Fire must also be appropriately timed and fire frequency is important. The potential for alteration of nutrient cycling must be also considered. Other management techniques for control of invasive species include mowing, hand removal, and selective herbicide applications. Any technique employed must be carefully controlled and monitored to ensure that it does not negatively affect the vernal pool species.

(2) Actions to restore vernal pool hydrology. Alteration of natural hydrology threatens many of the species addressed in this proposed rule (CNDDDB 2001). In many cases other threats, such as the invasion of non-native species or contamination, are facilitated by alterations of natural vernal pool hydrology. Special management actions, such as the removal of dams or other structures which artificially increase the length of vernal pool inundation, the removal of ditches that artificially drain vernal pools, or the construction of berms or reconstruction of culverts to prevent water from flowing artificially into vernal pools from adjacent areas, can be taken to restore natural vernal pool hydrology. Modification of grazing regimes may also restore natural vernal pool hydrology (Barry 1998). Monitoring

of vernal pool hydrology is important to ensure that restoration actions are successful.

(3) Actions to reduce human degradation of vernal pools. Special management actions such as fencing, trail building, and posting signs can help to reduce human activities that threaten vernal pool species. These actions may reduce the damage resulting from off-road vehicle use, dumping, and vandalism that threatens many of the species addressed in this proposed rule.

(4) Actions to restore severely degraded habitats. Active restoration of highly degraded vernal habitats may be necessary in some areas. Such restoration may involve earth moving activities designed to restore historic pool and swale topography and to reestablish natural vernal pool hydrology (e.g., Ferren and Hubbard 1998, Black and Zedler 1998). These types of actions are extremely complex, and require diligent planning and monitoring to ensure their success. Active restoration is only recommended for seriously degraded habitats that otherwise would not maintain natural vernal pool ecosystem processes.

Summary of Proposed Designation

Table 1 shows approximate areas of proposed critical habitat, by unit and species. Because of overlap between units established for different species, the total of all critical habitat proposed is much less than the sum of critical habitat areas proposed for each species. Lands proposed are under private, State, and Federal ownership and divided into 128 Critical Habitat Units. The table provides separate columns for privately owned land subject to conservation easements or agreements and other privately owned lands.

TABLE 1.—APPROXIMATE AREAS OF PROPOSED CRITICAL HABITAT FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON

Critical habitat units	Federal		State and local		Private (conservation)		Private (other)		Total	
	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres
Conservancy Fairy Shrimp										
1	0	0	0	0	6,747	16,672	13,799	34,097	20,546	50,769
2	5,187	12,816	0	0	0	0	531	1,313	5,718	14,129
3	241	596	329	814	1,072	2,648	8,285	20,471	9,927	24,529
4	0	0	0	0	0	0	603	1,490	603	1,490
5	299	739	0	0	0	0	3	7	302	746
6	427	1,056	11	26	4,566	11,283	58,746	145,160	63,750	157,525
7	12,765	31,542	3,096	7,649	1,119	2,765	29,163	72,060	46,142	114,016
8	18,042	44,581	0	0	0	0	789	1,950	18,831	46,531
Species Total ..	36,961	91,330	3,435	8,489	13,504	33,368	111,919	276,548	165,820	409,735
Longhorn Fairy Shrimp										
1 A-B	0	0	0	0	0	0	321	794	321	794

TABLE 1.—APPROXIMATE AREAS OF PROPOSED CRITICAL HABITAT FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON—Continued

Critical habitat units	Federal		State and local		Private (conservation)		Private (other)		Total	
	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres
2	9,413	23,258	3,096	7,651	1,119	2,765	16,189	40,003	29,817	73,677
3	6,293	15,549	94	233	0	0	4,079	10,080	10,466	25,862
Species Total ..	15,705	38,807	3,191	7,884	1,119	2,765	20,590	50,877	40,605	100,333
Vernal Pool Fairy Shrimp										
1 A–G	0	0	0	0	0	0	862	2,130	862	2,130
2 A–E	0	0	0	0	0	0	911	2,251	911	2,251
3 A–C	0	0	0	0	0	0	931	2,301	931	2,301
4 A–B	175	432	0	0	0	0	186	460	361	892
5	17	42	0	0	53	130	1,779	4,397	1,849	4,569
6	0	0	175	433	0	0	18,386	45,432	18,562	45,865
7	0	0	0	0	6,747	16,672	17,136	42,343	23,883	59,015
8	0	0	0	0	0	0	5,760	14,233	5,760	14,233
9	76	187	0	0	7	17	1,374	3,394	1,456	3,598
10	5,187	12,816	0	0	0	0	531	1,313	5,718	14,129
11	2,035	5,028	0	0	0	0	818	2,021	2,853	7,049
12	0	0	0	0	64	157	19,324	47,748	19,387	47,905
13	6	16	0	0	0	0	14,859	36,717	14,866	36,733
14	0	0	630	1,557	4,014	9,918	21,956	54,253	26,600	65,728
15	0	0	60	149	0	0	1,563	3,863	1,624	4,012
16	1,015	2,507	1,038	2,564	1,137	2,809	31,721	78,381	34,910	86,261
17	0	0	170	420	0	0	486	1,201	656	1,621
18	0	0	0	0	0	0	7,105	17,55	77,105	17,557
19 A–C	0	0	64	157	288	711	3,004	7,424	3,356	8,292
20	299	739	0	0	0	0	3	7	302	746
21	7	17	25	61	0	0	25,285	62,479	25,317	62,557
22	3	8	11	26	3,464	8,559	40,628	100,391	44,106	108,984
23	13,943	34,452	3,096	7,649	1,119	2,765	37,753	93,287	55,911	138,153
24 A–B	0	0	0	1	0	0	17,231	42,578	17,232	42,579
25	65	161	0	0	0	0	929	2,295	994	2,456
26 A–C	0	0	348	861	0	0	2,845	7,030	3,193	7,891
27 A–B	2,742	6,776	490	1,210	1,325	3,274	3,285	8,117	7,842	19,377
28	1,581	3,906	2	5	0	0	46,542	115,004	48,125	118,915
29 A–C	20,586	50,868	0	0	0	0	20,468	50,576	41,054	101,444
30	6,293	15,549	94	233	0	0	4,079	10,080	10,466	25,862
31	2,236	5,526	0	0	0	0	6,163	15,228	8,399	20,754
32	18,042	44,580	0	0	0	0	790	1,951	18,831	46,531
33 A–C	0	0	0	0	0	0	2,319	5,730	2,319	5,730
34	0	0	761	1,880	830	2,052	127	314	1,718	4,246
35	0	0	0	0	0	0	97	239	97	239
Species Total ..	74,307	183,610	6,963	17,206	19,047	47,064	357,239	882,725	457,556	1,130,605
Vernal Pool Tadpole Shrimp										
1	17	42	0	0	53	130	1,779	4,397	1,849	4,569
2	6,226	15,383	437	1,081	6,320	15,617	7,463	18,441	20,446	50,522
3	0	0	0	0	6,747	16,672	17,136	42,343	23,883	359,015
4	127	313	0	0	84	208	15,764	38,953	15,975	39,474
5	5,187	12,816	0	0	0	0	531	1,313	5,718	14,129
6	0	0	0	0	0	0	526	1,299	526	1,299
7	2,035	5,028	0	0	0	0	818	2,021	2,853	7,049
8	6	16	0	0	0	0	14,859	36,717	14,866	36,733
9	0	0	630	1,557	4,039	9,981	24,393	60,275	29,063	71,813
10	130	321	0	0	0	0	62	153	192	474
11	760	1,879	1,038	2,565	1,136	2,808	31,675	78,269	34,610	85,521
12	0	0	0	0	0	0	603	1,490	603	1,490
13	0	0	0	0	0	0	9,408	23,246	9,408	23,246
14	10	24	0	0	0	0	448	1,108	458	1,132
15	3	8	11	26	4,566	11,283	66,496	164,309	71,076	175,626
16	13,943	34,452	3,096	7,649	1,119	2,765	37,753	93,287	55,911	138,153
17	85	209	174	430	259	639	223	551	740	1,829
18	0	0	348	861	0	0	2,845	7,030	3,193	7,891
Species Total ..	28,528	70,491	5,734	14,169	24,324	60,103	232,784	575,202	291,370	719,965

TABLE 1.—APPROXIMATE AREAS OF PROPOSED CRITICAL HABITAT FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON—Continued

Critical habitat units	Federal		State and local		Private (conservation)		Private (other)		Total	
	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres
Butte County Meadowfoam										
1	0	0	0	0	0	0	6,105	15,086	6,105	15,086
2	0	0	0	0	0	0	3,508	8,667	3,508	8,667
3	9	22	0	0	0	0	1,687	4,169	1,696	4,191
4	0	0	0	0	0	0	5,011	12,382	5,011	12,382
Species Total ..	9	22	0	0	0	0	16,311	40,304	16,320	40,326
Colusa Grass										
1	130	322	0	0	0	0	62	152	192	474
2	94	233	258	637	1,137	2,809	5,664	13,996	7,153	17,675
3	0	0	0	0	0	0	16,475	40,709	16,475	40,709
4	0	0	0	0	1	2	35,133	86,812	35,134	86,814
5	0	0	25	61	0	0	19,825	48,988	19,850	49,049
6	427	1,055	11	26	0	0	45,204	111,698	45,642	112,779
7 A-B	1,422	3,514	0	0	0	0	6,741	16,656	8,163	20,170
Species Total ..	2,074	5,124	293	724	1,138	2,811	129,104	319,011	132,608	327,670
Contra Costa Goldfields										
1	0	0	0	0	0	0	1,067	2,637	1,067	2,637
2	0	0	0	0	0	0	411	1,016	411	1,016
3	0	0	0	0	0	0	274	678	274	678
4	1,954	4,828	122	301	0	0	5,809	14,355	7,885	19,484
5 A-B	0	0	0	0	0	0	410	1,014	410	1,014
6	0	0	0	0	0	0	242	599	242	599
7	0	0	291	718	0	0	1,088	2,688	1,378	3,406
8	448	1,108	0	0	0	0	10	24	458	1,132
9	3,370	8,326	2	4	0	0	0	1	3,372	8,331
Species Total ..	5,772	14,262	414	1,023	0	0	9,313	23,012	15,499	38,297
Greene's Tuctoria										
1	903	2,231	0	0	0	0	70	172	972	2,403
2	0	0	0	1	7,096	17,534	4,577	11,310	11,674	28,845
3	0	0	0	0	0	0	979	2,418	979	2,418
4	0	0	0	0	4	9	295	729	299	738
5	5,187	12,816	0	0	0	0	531	1,313	5,718	14,129
6	0	0	0	0	1	2	36,413	89,976	36,414	89,978
7	427	1,056	11	26	4,566	11,283	68,703	169,762	73,707	182,127
8	0	0	0	0	0	0	13,222	32,670	13,222	32,670
Species Total ..	6,517	16,103	11	27	11,667	28,828	124,789	308,350	142,984	353,308
Hairy Orcutt Grass										
1	0	0	0	0	6,219	15,366	2,530	6,251	8,748	21,617
2	0	0	0	0	0	0	979	2,418	979	2,418
3	5,187	12,816	0	0	0	0	531	1,313	5,718	14,129
4	7	17	25	61	0	0	25,286	62,482	25,318	62,560
5	0	0	0	0	0	0	9,085	22,448	9,085	22,448
6	0	0	4	10	0	0	15,820	39,090	15,824	39,100
Species Total ..	5,194	12,833	29	71	6,219	15,366	54,231	134,002	65,671	162,272
Hoover's Spurge										
1	0	0	0	1	7,096	17,534	4,577	11,310	11,674	28,845
2	0	0	0	0	0	0	979	2,418	979	2,418
3	5,187	12,816	0	0	0	0	531	1,313	5,718	14,129
4	0	0	0	0	1	2	16,838	41,607	16,839	41,609
5	0	0	24	60	0	0	19,826	48,989	19,850	49,049
6	3,232	7,985	0	0	0	0	11,078	27,374	14,310	35,359
7 A-D	13	33	355	877	0	0	12,007	29,668	12,375	30,578

TABLE 1.—APPROXIMATE AREAS OF PROPOSED CRITICAL HABITAT FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON—Continued

Critical habitat units	Federal		State and local		Private (conservation)		Private (other)		Total	
	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres
Species Total ..	8,432	20,834	380	938	7,097	17,536	65,836	162,679	81,744	201,987
Sacramento Orcutt Grass										
1	0	0	3	7	0	0	26	65	29	72
2	0	0	0	0	0	0	8,853	21,875	8,853	21,875
3	0	0	247	610	3,135	7,747	12,368	30,561	15,750	38,918
Species Total ..	0	0	250	617	3,135	7,747	21,247	52,501	24,632	60,865
San Joaquin Valley Orcutt Grass										
1	427	1,056	11	26	3,464	8,559	41,742	103,142	45,643	112,783
2	0	0	0	0	433	1,070	21,062	52,044	21,495	53,114
3	0	0	0	0	0	0	20,936	51,733	20,936	51,733
4	0	0	0	1	0	0	3,233	7,989	3,234	7,990
5 A-B	150	370	0	0	263	650	1,310	3,238	1,723	4,258
6 A-B	0	0	199	491	0	0	7,829	19,345	8,028	19,836
Species Total ..	577	1,426	210	518	4,160	10,279	96,113	237,491	101,059	249,714
Slender Orcutt Grass										
1 A-I	18,527	45,780	37	92	0	0	4,702	11,618	23,266	57,490
2 A-C	33	81	0	0	53	130	5,014	12,390	5,100	12,601
3	6,226	15,384	437	1,080	6,320	15,617	7,463	18,441	20,446	50,522
4	0	0	0	1	7,096	17,534	4,577	11,310	11,674	28,845
5 A-B	0	0	5	13	78	192	1,613	3,986	1,696	4,191
6	0	0	0	0	0	0	8,853	21,875	8,853	21,875
Species Total ..	24,786	61,245	480	1,186	13,547	33,473	32,222	79,620	71,035	175,524
Solano Grass										
1	130	321	0	0	0	0	62	153	192	474
2	94	233	257	636	1,137	2,809	5,665	13,997	7,153	17,675
Species Total ..	224	554	257	636	1,137	2,809	5,727	14,150	7,345	18,149
Succulent Owl's Clover										
1	0	0	0	0	0	0	1,051	2,598	1,051	2,598
2	0	0	0	0	0	0	14,131	34,917	14,131	34,917
3 A-B	427	1,056	11	26	4,566	11,283	58,348	144,177	63,353	156,542
4	5	13	56	139	0	0	33,009	81,565	33,071	81,717
5	0	0	0	1	0	0	11,888	29,374	11,888	29,375
6 A-B	150	371	174	429	259	639	1,141	2,819	1,723	4,258
Species Total ..	583	1,440	241	595	4,825	11,922	119,569	295,450	125,217	309,407

Species Specific Criteria

After developing the general criteria described previously, we conducted a species by species review based on the specific habitat requirements, primary constituent elements, and individual threats to each species addressed in this proposed rule. The specific unit description for each species is described below.

Conservancy Fairy Shrimp Criteria

In proposing critical habitat units for Conservancy fairy shrimp, we evaluated the life history and current distribution of the species described in the

background section of this rule, the primary constituent elements described in the primary constituent element section of this rule, and the threats to the species described above, in addition to those described below. This information allowed us to determine which areas are likely to contribute to the conservation of Conservancy fairy shrimp and to delineate units so that threats to these species might be minimized.

Conservancy fairy shrimp are known only from eight disjunct areas: the Vina Plains area and vicinity in southern Tehama and northern Butte County;

Jepson Prairie and Suisun Slough in southern Solano County; Sacramento National Wildlife Refuge in Glenn and Colusa counties; near Caswell Memorial State Park in Stanislaus County; near Haystack Mountain in Merced County; at the San Luis National Wildlife Refuge Complex in western Merced County, and at the Mutau Flat area in the Los Padres National Forest area of northern Ventura County.

Conservancy fairy shrimp continues to be threatened by all of the factors which lead to the original listing of this species, primarily habitat loss through agricultural conversion and

urbanization. Helm (1998) found that most Conservancy fairy shrimp occurrences were on Anita, Pescadero or Peters Clay soils. These fertile, basin rim soils were among the first areas converted to agriculture in the 19th century, suggesting that a disproportionate amount of Conservancy fairy shrimp habitat may have been lost early in California's history (Helm 1998).

In addition to direct habitat loss, almost one third of the known occurrences of Conservancy fairy shrimp are threatened by alterations of hydrology, including the construction of drainage channels, diking, and inappropriate water diversion within managed wetland areas in Merced and Solano counties (CNDDB 2002). Other threats include possible introduction of predators (*e.g.*, bullfrogs, crayfish, fish) either directly or through alteration of drainage patterns (CNDDB 2002). Off-road vehicles also represent a threat to the continued survival of Conservancy fairy shrimp populations (Hathaway *et al.* 1996). In some cases, special management actions may be necessary to prevent these threats from extirpating occurrences of Conservancy fairy shrimp.

Conservancy Fairy Shrimp Review

We conducted a regional review across the range of Conservancy fairy shrimp to evaluate and select areas that are essential to the conservation of the species and that may require special management actions. Important factors we considered were the known presence of the species and the presence of the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Vina Plains Unit, Butte and Tehama Counties (20,546 ha (50,769 ac))

This unit is proposed as critical habitat for Conservancy fairy shrimp because it contains occurrences of the species (CNDDB 2002) within vernal pools found on Anita clay and Tuscan loam soils (EPA 1994, Holland 1998, Tehama County 1999, USDA 2001). These soils support pool types that remain inundated for sufficient periods of time to allow Conservancy fairy shrimp to hatch, mature, and reproduce, but do not contain water during the summer preventing the invasion of predator species such as bullfrogs and fish. This unit represents the northern extent of Conservancy fairy shrimp range.

Conservancy fairy shrimp in this area occupy vernal pools that are classified

as Northern Hardpan by Sawyer and Keeler-Wolf (1995) and occur on the Tuscan, Red Bluff, and Riverbank geologic formations. Within this unit vernal pools occur in complexes with a range of pool sizes, from over several acres to less than a tenth of an acre, in areas of hummocky ground on old terraces above recent river flood plains below the foothills (Alexander and Schlising 1997, Keeler-Wolf *et al.* 1998). The boundaries of this unit were delineated to include the interconnected pools, swales, and interconnected uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where Conservancy fairy shrimp occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Conservancy fairy shrimp hatching, growth and reproduction, and dispersal, but not necessarily every year.

This unit includes relatively undisturbed, hydrologically intact vernal pool habitats, that will likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for Conservancy fairy shrimp. This area also provides seasonal habitat for waterfowl and other migratory bird species which aid in the dispersal of Conservancy fairy shrimp among vernal pools within the unit, and between other habitats across the species range.

The majority of the lands included within this unit are privately owned. This unit contains TNC's Vina Plains preserve as well as other TNC lands 2,264 ha (5,660 ac) and conservation easements 4,348 ha (10,870 ac). The NRCS also holds WRP conservation easements or agreements on 57 ha (142 ac). The preserve contains over 300 species of plants, and diverse communities of aquatic invertebrates. Since the 1960's, the Vina Plains area has been the focus of a number of research projects, including long-term adaptive management and monitoring efforts evaluating the effects of grazing and fire on vernal pool plants, animals, and ecosystems (Griggs 2000). Much of the basic life history information known about vernal pool crustaceans was collected at Vina Plains (*e.g.* Lanway 1974, Ahl 1991, Syrdahl 1993, Gallagher 1996). The results of this research have provided crucial information to guide management and monitoring of vernal pool ecosystems and to identify factors which influence population dynamics of a number of endangered species, including Conservancy fairy shrimp. The Vina Plains is open to the public and provides excellent outreach and educational opportunities. In addition

to TNC, the importance of vernal pool habitats in this area has been recognized by the CDFG, the Service, the EPA, the CNPS, the NRCS's WRP, and by researchers at the CSU at Chico, who have all supported research and conservation efforts for Conservancy fairy shrimp and other vernal pool species within this unit. Urban development north of Chico and the conversion of grazed lands to more intensive agricultural uses threaten vernal pool habitat within this unit.

The Vina Plains Unit extends from south of Deer Creek to north of Rock Creek and the Chico Airport near the City of Chico. State Highway 99 bisects this unit. The western boundary generally parallels the Southern Pacific Railway line. The eastern boundary of this unit extends to the boundary of the East Red Bluff watershed. This unit overlaps Unit 7 for vernal pool fairy shrimp and Unit 3 for vernal pool tadpole shrimp and contains part of Unit 1 for hairy Orcutt grass, Unit 2 for Greene's tuctoria, Unit 1 for Hoover's spurge, and Unit 4 for slender Orcutt grass. Additional sensitive species occurring in this unit include California linderiella and Bogg's Lake hedge-hyssop.

Unit 2, Colusa Unit, Sacramento Valley, Glenn and Colusa Counties (5,718 ha (14,129 ac))

This unit is proposed as critical habitat for Conservancy fairy shrimp because it contains occurrences of the species within large, alkaline vernal pools formed on the Modesto geologic formation on Willows and Riz soils that provide the primary constituent elements essential to the conservation of the Conservancy fairy shrimp (Holland 1998, Silveira 2000, CNDDB 2002). Conservancy fairy shrimp in this area occupy pools that are often large, shallow and alkaline. They may display white salt deposits following pool drying. These pool types remain inundated for sufficient periods of time to allow Conservancy fairy shrimp to hatch, mature, and reproduce, but do not contain water during the summer, preventing the invasion of predator species such as bullfrogs and fish. This area is important to maintain the diversity of habitats in which Conservancy fairy shrimp occur.

This unit is primarily located on the Sacramento National Wildlife Refuge (5,126 ha (12,816 ac)). Any additional lands within this unit are privately owned. The refuge supports over 355 native plant taxa, including a number of rare alkaline species (Oswald and Silveira 1995). Vernal pool habitats on the refuge are specifically managed for

the conservation of listed species, and to promote habitat for migratory birds and waterfowl. As a result this unit also provides essential habitat for avian species that aid in the dispersal of Conservancy fairy shrimp and other vernal pool crustacean cysts. The Sacramento National Wildlife Refuge contains the only remnants of the widespread Colusa Plains vegetation that once covered the entire Colusa Basin (Silveira 2000). Vernal pool habitats within the area have become greatly fragmented and isolated from other habitats in the region.

The boundaries of this unit were delineated to include the interconnected pools, swales, and interconnected uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where Conservancy fairy shrimp occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Conservancy fairy shrimp hatching, growth and reproduction, and dispersal, but not necessarily every year.

This unit occupies vernal pool habitat east of Interstate 5 to the Colusa Trough from Riz Road on the north and Delevan Road on the south. This unit coincides with vernal pool fairy shrimp Unit 10, vernal pool tadpole shrimp Unit 5, Unit 3 for hairy Orcutt grass, and Unit 3 for Hoover's spurge. Other rare vernal pool species found in this unit include pappose spikeweed, Fremont's goldfields, alkali goldfields, Scribe's popcorn flower, Hoover's downingia, folded downingia, Heckard's peppergrass, heartscale, brittlescale, San Joaquin spearscale, Ferris' milk-vetch, spike-primrose, sessile mouse-tail, and the federally listed as endangered palmate-bracted bird's beak.

Unit 3, Jepson Prairie Unit, Solano County (9,927 ha (24,529 ac))

This unit is proposed as critical habitat for Conservancy fairy shrimp because it includes numerous occurrences of the species within one of the most pristine, intact vernal pool ecosystems remaining in California (Holland 1998, Solano County 1999, Solano County Farmland and Open Space 2001, CNDDDB 2002). The unit boundary was drawn to include the vernal pools where Conservancy fairy shrimp occur, including the 32 ha (80 ac) Olcott Lake and other large playa pools associated with Solano Loam and Pescadero soil series. Conservancy fairy shrimp in this unit occupy vernal pool complexes extending from Jepson Prairie west towards the City of Fairfield. Within these complexes larger pools often occur with smaller pools and hogwallow depressions. Together

the pools, swales, and associated uplands maintain the necessary timing and frequency of inundation for Conservancy fairy shrimp hatching, growth, and reproduction, but are dry during the summer. The relatively undisturbed, hydrologically intact condition of the Jepson Prairie increases the likelihood that it will continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for Conservancy fairy shrimp. This unit also provides habitat for avian species that aid in the dispersal of Conservancy fairy shrimp and other vernal pool crustacean cysts.

In addition to Conservancy fairy shrimp, the greater Jepson Prairie grassland area supports a diverse community of native plants and animals, including the only known occurrence of Delta green ground beetle, and occurrences of Solano grass, Colusa grass, California tiger salamander, vernal pool tadpole shrimp, vernal pool fairy shrimp, alkali milk-vetch, Bogg's Lake hedge-hyssop, legenera, California linderiella, and midvalley fairy shrimp. The southwestern portion of this unit contains vernal pool habitats near the Potrero Hills south of Travis Air Force Base. These vernal pool habitats occur in close proximity to tidal marshes and contain habitat for Contra Costa goldfields.

This unit includes the Jepson Prairie Preserve, jointly managed by the Solano County Farmlands and Open Space Foundation and the UC Reserve System. Jepson Prairie has long been recognized as an outstanding example of vernal pool ecosystems. In 1987 NPS named Jepson Prairie a National Natural Landmark, a designation given to sites that provide high quality habitat for threatened or endangered species. Jepson Prairie is the target of ongoing conservation planning efforts and active management. As part of the UC Reserve System, this area provides critical research opportunities for scientists to study Conservancy fairy shrimp, and to determine their response to different management regimes. Conducting this research is essential to ensure the conservation of Conservancy fairy shrimp and other vernal pool species. This unit also contains land owned by the CDFG (319 ha (797 ac)), and State Land Commission (7 ha (17 ac)), as well as conservation easements held by TNC (623 ha (1,090)) and by NRCS under the WRP program (436 ha (1,090 ac)). The unit also includes portions of Travis Air Force Base (DOD lands totaling 238 ha (596 ac)). Within the greater Jepson Prairie grassland area, existing vernal pools are threatened by agricultural conversion, landfill expansion, power

plant construction, and utility maintenance. Urbanization in the vicinity of Fairfield and Suisun, and landfill expansion projects in the vicinity of the Protero Hills, threaten vernal pool habitats in the area.

This unit occurs in the southern portion of Solano County, east and south of the City of Fairfield, south and southwest of the City of Dixon, and north of Nurse Slough and the confluence of the Sacramento and San Joaquin rivers. This unit contains Unit 3 for Colusa grass, Unit 2 for Solano grass, and overlaps with Unit 4 for Contra Costa goldfields. This unit is encompassed by Unit 11 for vernal pool tadpole shrimp and Unit 16 for vernal pool fairy shrimp.

Unit 4, Montezuma Unit, Solano County (603 ha (1,490 ac))

This unit is proposed as critical habitat for Conservancy fairy shrimp because it contains vernal pools that support the necessary timing, frequency, and duration of inundation essential for Conservancy fairy shrimp feeding, sheltering, reproducing, and dispersing (Lipton in litt. 2002, Levine Fricke Restoration Corp 2000). This is the most recently discovered occurrence of Conservancy fairy shrimp, and one of the only areas where this species occurs in the saline-alkaline transition zone between vernal pools and tidal marshes.

Most of the habitats within this unit are on private land, although portions of the Hill Slough Wildlife Area managed by the CDFG are also included within this unit. The primary threats to vernal pool habitats within this unit are alterations to hydrology from filling, diking, and dredging activities which may occur in the tidal marsh. This unit is also proposed so that special management actions may be taken to prevent the degradation of Conservancy fairy shrimp occurrences through alteration of the hydrology of their vernal pool habitats.

This unit is located near the Suisun Marsh in southern Solano County, east of Montezuma Slough and west of Collinsville Road; the northernmost portion of this unit is bisected by Birds Landings Road. Portions of this unit coincide with Unit 12 for vernal pool tadpole shrimp. In addition to Conservancy fairy shrimp, this unit contains occurrences of other rare vernal pool species including vernal pool fairy shrimp, alkali milk-vetch and dwarf downingia.

Unit 5, Northern San Joaquin Valley Unit, Stanislaus County (302 ha (746 ac))

This unit is proposed as critical habitat for Conservancy fairy shrimp because it contains the species within alkali sink vernal pools formed on Fresno series soils (CNDDDB 2002). The unit boundary was designated to include the vernal pool complex mapped by Holland (1998) that maintains the necessary timing and frequency of inundation for Conservancy fairy shrimp hatching, growth, and reproduction, but is dry in the summer. The minimum mapping unit of Holland (1998) of 16 ha (40 ac) did not allow us to exclude all non-vernal pool areas from within the unit boundary. However, the entire unit is located within the San Joaquin River National Wildlife Refuge and restoration is currently the focus of conservation planning efforts by the Service. Additional restoration designed to enhance habitat for riparian species, as well as migratory birds and waterfowl, is also currently underway. This unit is proposed so that special management actions, including appropriate wetland management, can be taken to maintain the natural hydrology of the vernal pools where Conservancy fairy shrimp are known to occur. This unit is over 70 km (43 mi) from the nearest unit to the south and over 40 km (25 mi) from the nearest unit to the north. Such isolated populations may have genetic characteristics essential to overall long-term conservation of the species (*i.e.* they may be genetically different than more central populations) (Lesica and Allendorf 1995, Fugate 1998).

Lands within this unit form a mosaic of riparian habitat, wetlands, and grasslands. The San Joaquin River National Wildlife Refuge is the primary wintering site of 98 percent of the Aleutian Canada geese that winter in the Valley (October—April), and it is a major wintering and migration area for lesser and greater sandhill cranes, cackling Canada geese, and white-fronted geese. These migratory birds act as dispersal agents for Conservancy fairy shrimp and other vernal pool crustacean species.

This unit is situated west of the City of Modesto and east of the confluence of the San Joaquin and Stanislaus rivers. Caswell Memorial State Park lies just north of this unit. This unit is bisected by the Hetch Hetchy Aqueduct and State Highway 132. This unit overlaps vernal pool fairy shrimp Unit 20. It is also contains California linderella and California tiger salamander occurrences, in addition to a number of rare non-

vernal pool species including the federally listed endangered riparian wood rat and riparian brush rabbit.

Unit 6, Merced Unit, Merced and Mariposa Counties (63,750 ha (157,525 ac))

This unit is proposed as critical habitat for Conservancy fairy shrimp because it contains occurrences of the species within large, playa vernal pools found on Raynor Cobbly clay soils on the Mehrten Formation (CNDDDB 2001, EIP Associates 1999). These pool types provide the necessary length and timing of inundation essential for the conservation of Conservancy fairy shrimp. The Merced Unit encompasses the largest block of pristine, high density vernal pool grasslands remaining in California (Vollmar 1999). The relatively undisturbed, hydrologically intact condition of the unit increases the likelihood that it will continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for Conservancy fairy shrimp. Genetic analyses of vernal pool tadpole shrimp revealed that occurrences in this unit were genetically different from other occurrences in California, and that this area was isolated from other vernal pool habitats (King 1996). Given that Conservation fairy shrimp and vernal pool tadpole shrimp are dispersed in similar ways, it is reasonable to assume that Conservancy fairy shrimp occurrences in this area are also isolated from other occurrences throughout its range, and may also have unique genetic characteristics.

Vernal pool habitats in eastern Merced County are seriously threatened by irrigated agriculture, upland housing development, and the proposed UC Merced campus and associated development. Effects associated with the UC campus and associated community could result in loss and degradation of vernal pool habitats within this unit. However, the recent draft biological opinion for the UC Merced campus and community developed environmental parameters which should reduce impacts to vernal pool habitats. Merced County and the CDFG are currently gathering data on presence, distribution, and microhabitat preferences of vernal pool crustaceans to aid in developing long-term conservation planning strategies for eastern Merced County. There is interest among ranch owners to establish conservation easements that will support rangeland and vernal pool conservation. The Conservancy fairy shrimp occurrence at the Flying M Ranch is already being managed through

a conservation easement with TNC that conserves over 2,023 ha (5,000 ac) of vernal pool and upland habitat. Land ownership within the unit includes approximately 419 ha (1,048 ac) of DOD, (3 ha (8 ac) of BLM, and 10 ha (26 ac) of California State Parks. TNC has a total of 4,513 ha (11,283 ac) of conservation easements within this unit.

A majority of the vernal pool habitat in the Merced Unit is in eastern Merced County. The eastern edge of the unit overlaps into western Mariposa County and in the south it extends to Deadman Creek. The northern boundary parallels the Merced River. The unit is located east of Highway 99 and the City of Merced, Planada, and Le Grand. The eastern boundary extends into the low elevation foothills of the Sierra Nevada. The boundaries of this unit overlap with San Joaquin Valley Orcutt grass Units 2 and 3, Colusa grass Units 7, Greene's tuctoria Unit 6, succulent owl's-clover Units 3B, vernal pool fairy shrimp Unit 22, and vernal pool tadpole shrimp Unit 15. Other sensitive vernal pool species found within this unit include California tiger salamander, shining navaretia, dwarf downingia, Bogg's Lake hedge-hyssop, western spadefoot toad, and California linderella.

Unit 7, Grassland Ecological Unit, Madera, Merced and Stanislaus Counties (46,142 ha (114,016 ac))

We propose this area as critical habitat for Conservancy fairy shrimp because it supports multiple occurrences of the species within large, playa vernal pools of the Edminstor and Kesterson soil series (Holland 1998, USDA 2001, CNDDDB 2002). The unit boundary was drawn to include Conservancy fairy shrimp and the vernal pool complexes mapped by Holland (1998) where the species is known to occur. These features maintain the necessary length and timing of inundation for Conservancy fairy shrimp hatching, maturation, and reproduction, but are dry in the summer and do not support aquatic species such as fish or bullfrogs. Conservancy fairy shrimp are found in large numbers throughout this unit, making this area a potential source for propagules dispersing to Conservancy fairy shrimp habitats to the south in Ventura County, to the east in eastern Merced County, and to the north in Stanislaus County. This unit is also proposed as critical to ensure that special management actions are taken to prevent or reverse changes in hydrology, contamination from adjacent land use, and invasion by aquatic species that threaten Conservancy fairy shrimp occurrences within this unit.

This area contains the largest intact vernal pool habitat for Conservancy fairy shrimp in the San Joaquin Valley (Holland 1998). This unit also provides essential habitat for migratory waterfowl that aid in the dispersal of Conservancy fairy shrimp and other vernal pool crustacean cysts. The Grassland Ecological Unit includes Kesterson, San Luis, and Merced National Wildlife Refuges (12,765 ha (31,542 ac)), CDFG lands (1,703 ha (4,257 ac)), CDFG administration lands (1,052 ha (2,631 ac)), California State Parks (1,358 ha (3,394 ac)), and private lands protected by WRP easements or agreements (54 ha (134 ac)). Combined, these lands are known as the Grasslands Ecological Area, a 66,773 ha (160,000 ac) area which supports the largest remaining areas of several rare valley floor habitats within the San Joaquin valley, including examples of alkali grasslands, alkali scrublands, wild rye grasslands, cotton wood riparian forests, vernal marshes, relict dune lands, and high quality vernal pool habitats.

The unit lies north of the City of Los Banos, southwest of the City of Merced, and is bisected by the San Joaquin River. This unit represents Unit 23 for vernal pool fairy shrimp and Unit 16 for vernal pool tadpole shrimp. The western half of this unit represents Unit 2 for longhorn fairy shrimp and the eastern half represents Unit 8 for Colusa grass, and Unit 6 for Hoover's spurge. In addition to the species mentioned above, vernal pool smallscale, alkali milk-vetch, western spadefoot toad, and California linderiella are present within this unit as well.

Unit 8, Ventura County Unit, Ventura, Santa Barbara, and Los Angeles Counties (18,831 ha (46,531 ac))

The Ventura County unit consists of one area in the north-central portion of Ventura County. Vernal pool fairy shrimp and Conservancy fairy shrimp are known to co-occur at relatively high elevation (~1,700 m (5,500 ft)) forested sites within the Los Padres National Forest. All of this unit is owned by the USFS. Almost all of the known localities that possess these two species within the state of California exist at much lower elevations in grassland habitats. The map polygon perimeter consists of an area that is known to contain vernal pool and Conservancy fairy shrimp occurrences and isolated pools that provide habitat for the two species. The Ventura County unit is essential for the conservation of Conservancy fairy shrimp because it contains high elevation (~1,700 m (5,500 ft)) ephemeral aquatic environments that are rarely associated

with fairy shrimp. The Ventura County sites that are occupied by Conservancy fairy shrimp are 124 km (200 m) from other species occurrences in the Great Central Valley, thereby suggesting that the Ventura County population(s) is geographically isolated from the population(s) that occur farther east and north. Such isolated and peripheral populations may have genetic characteristics that are different than more central populations, and may be important for conservation (Lesica and Allendorf 1995, Fugate 1998).

Longhorn Fairy Shrimp Criteria

In proposing critical habitat units for longhorn fairy shrimp we evaluated the life history and current distribution of the species described in the background section of this rule, the primary constituent elements described in the primary constituent element section of this rule, and the threats to the species described under vernal pool crustaceans above and additional threats described below. This information allowed us to determine which areas are likely to be essential to the conservation of these species.

Longhorn fairy shrimp are currently known from three locations, Altamont Pass area at the Contra Costa and Alameda county line, San Luis National Wildlife Refuge Complex in western Merced County, and the Soda Lake area in San Luis Obispo County. Longhorn fairy shrimp near Soda Lake occur both on protected land within the Carrizo National Monument, and on private land. The occurrences on private land are threatened by proposed development of ranchettes, production of animals used in biotechnology industries, and road construction. Longhorn fairy shrimp occurrences in the Altamont Pass area in Contra Costa and Alameda counties have been heavily impacted by wind energy development, although some of these occurrences are currently protected from development on land owned by the East Bay Regional Parks District (EBRPD) (Eng *et al.* 1990, EBRPD 2001). Longhorn fairy shrimp are protected from development on the Kesterson National Wildlife Refuge in Merced County, however, these occurrences are threatened by wetland management practices that have led to prolonged inundation of longhorn fairy shrimp habitats and inadvertent introduction of fish and bullfrogs (CNDDDB 2001).

In areas where longhorn fairy shrimp habitats have been protected, the species may be still be threatened if adequate monitoring and management is not conducted. Management and monitoring are necessary to recognize

and protect populations from indirect effects, such as changes in hydrology, contamination, siltation, erosion, competition with non-native species, and human-related disturbance, such as off road vehicle use.

Longhorn Fairy Shrimp Unit Review

We conducted a review of the currently known range of longhorn fairy shrimp to evaluate and select areas that are essential to the conservation of the species and that may require special management. Important factors we considered were the presence of the species and the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Altamont Hills Unit A and B, Contra Costa and Alameda Counties (322 ha (795 ac))

This unit is proposed as critical habitat for longhorn fairy shrimp because it supports occurrences of the species within clear depression pools in sandstone outcrops (Eriksen and Belk 1999, EBRPD 2001, CNDDDB 2002). These pool types become inundated during winter rains and hold water for sufficient lengths of time necessary for longhorn fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, but are dry during the summer and do not necessarily fill with water every year; This is an unique habitat for longhorn fairy shrimp, and helps to maintain a diversity of habitats for the species. The Altamont Hills Unit is an important area for longhorn fairy shrimp because it represents the northern limit of the species range, and is one of only 3 locations where the species is known to occur throughout their entire range. Longhorn fairy shrimp in the Altamont Hills Unit are located about 100 km (60 mi) northwest of the next known occurrence at Kesterson National Wildlife Refuge in Merced County (Eriksen and Belk 1999). It is likely these occurrences have genetic characteristics that differ from other occurrences in other portions of the species range, and these characteristics may be important for the conservation of longhorn fairy shrimp (Fugate 1992, 1998). Each of these locations reduces the probability that a chance event would result in the extinction of the species.

This unit is located primarily on EBRPD and Contra Costa Water District land. This unit is located in Altamont Hills north and northeast of the City of Livermore, and consists of two subunits, both near the Contra Costa and Alameda county line. Subunit A is located in Contra Costa County directly north of

the Alameda County line near the Vasco Caves. Subunit B is located directly in Alameda County just south of the Contra Costa County line in the vicinity of Brushy Peak. A large number of federally listed and sensitive species are found within this area, including the California red legged frog, San Joaquin kit fox, California tiger salamander and California linderiella.

Unit 2, Grassland Ecological Unit, Madera, Merced and Stanislaus Counties (29,817 ha (73,677 ac))

This unit is proposed as critical habitat for longhorn fairy shrimp because it contains turbid alkaline vernal pools on Edminster loam and Turlock sandy loam that support occurrences of the species (USDA 2001, Holland 1998, CNDDDB 2002). This is the only location where longhorn fairy shrimp occur in the Central Valley of California. Longhorn fairy shrimp within this unit are threatened by altered hydrology and invasion of aquatic predators. This unit is also designated so that special management actions can be taken to maintain the appropriate timing, frequency, and duration of inundation of longhorn fairy shrimp habitat essential to the conservation of longhorn fairy shrimp within managed wetland areas.

This unit is over 209 km (130 mi) from the longhorn fairy shrimp occurrence to the south, and over 80 km (50 mi) from longhorn fairy shrimp occurrences to the north. This occurrence is likely genetically different from the two other occurrences (Fugate 1992, 1998). Longhorn fairy shrimp are known from only 3 locations, and each of these locations is important to the conservation of this species by providing a buffer against catastrophic or stochastic events which could extirpate any one occurrence and seriously reduce the likelihood of survival and recovery of the species as a whole.

This unit includes natural habitats within the San Joaquin River watershed. The Grassland Ecological Unit includes Kesterson, San Luis, and Merced National Wildlife Refuges (9,303 ha (23,258 ac)), CDFG lands (1,703 ha (4,257 ac)), CDFG administration lands (1,052 ha (2,631 ac)), California State Parks (1,358 ha (3,394 ac)), private lands protected by WRP easements or agreements (54 ha (134 ac)), and numerous other Federal and private conservation easements. Combined, these lands are known as the Grasslands Ecological Area, a 66,773 ha (160,000 ac) area which supports the largest remaining areas of several rare valley floor habitats within the San Joaquin

valley, including examples of alkali grasslands, alkali scrub lands, wild rye grasslands, cotton wood riparian forests, vernal marshes, relict dune lands, and high quality vernal pool habitats.

Threats to vernal pool habitats in this unit include agricultural conversion, changes in hydrology, contamination from adjacent land use, and invasion by aggressive plants.

The unit lies north of the City of Los Banos, southwest of the City of Merced, and is bisected by the San Joaquin River. This unit overlaps Unit 23 for vernal pool fairy shrimp, Unit 16 for vernal pool tadpole shrimp, and Unit 7 for Conservancy fairy shrimp. In addition to the species mentioned above, vernal pool smallscale, Alkali milk-vetch, western spadefoot toad, and California linderiella are present within this unit as well.

Unit 3, Carrizo Plain Unit, San Luis Obispo, Kern, and Monterey Counties (10,466 ha (25,862 ac))

This unit is proposed as critical habitat for longhorn fairy shrimp because it contains occurrences of the species living within Northern Claypan type vernal pools as described by Sawyer and Keeler-Wolf (1995) (CNDDDB 2001). Longhorn fairy shrimp in the Carrizo Unit are found in shallow alkaline vernal pools within a Valley Saltbush Scrub matrix adjacent to the 1214 ha (3,000 ac) Soda Lake, the largest alkali wetland in central and southern California, which provides a winter haven for thousands of migratory birds.

The Carrizo Plain Unit represents the southern extent of the range of longhorn fairy shrimp. Longhorn fairy shrimp in the Carrizo Plain Unit are located 235 km (146 mi) southeast of the closest known occurrences at Kesterson National Wildlife Refuge in Merced County (Eriksen and Belk 1999). Such isolated populations may have genetic characteristics essential to overall long-term conservation of the species (Fugate 1998). The Carrizo Plain contains examples of native bunch grass, needle grass, and blue grass grasslands, as well as populations of federally listed San Joaquin kit fox, blunt nosed leopard lizard, giant kangaroo rat, California jewel flower, Lost Hills salt brush, Kern mallow and San Joaquin woolly threads (The Nature Conservancy 2001). North of the Carrizo Plain, vernal pools that occur along the San Andreas fault are small sag pond types surrounded by annual grassland or Interior Coast Range Saltbush Scrub (Keeler-Wolf *et al.* 1998). The Carrizo Plain Unit contains portions of the Carrizo Plain National Monument administered by the BLM, TNC, and the CDFG. The BLM lands

within the unit total approximately 6,220 ha (15,549 ac) and the CDFG lands total approximately 93 ha (233 ac). Other vernal pool habitats in the unit are located on private land.

This unit is located in the vicinity of California Valley and Soda Lake. State Highway 58 is located north of the unit. Most of the habitat is east of Soda Lake Road, however, Soda Lake Road crosses through the western edge of the unit in several areas. To the east, the unit is bordered by the San Andreas Rift Zone. This unit coincides with vernal pool fairy shrimp Unit 25.

Vernal Pool Fairy Shrimp Criteria

In proposing critical habitat units for vernal pool fairy shrimp we evaluated the life history and current distribution of the species, the primary constituent elements, and the current threats to the species. This information allowed us to determine which areas are likely to contribute to the conservation of vernal pool fairy shrimp and to delineate units so that threats to these species might be minimized.

The historic range of vernal pool fairy shrimp extended throughout the low and mid-elevation regions of the Central Valley into southern and coastal California and southern Oregon Agate Desert. Vernal pool fairy shrimp have been extirpated from a number of their historic occurrences as a result of urban development and conversion to agriculture. Rapid urbanization in Placer, Sacramento, and Tehama counties, California, has accounted for the majority of recent vernal pool fairy shrimp extirpations, although conversion to agriculture in San Joaquin, Merced, and other counties also has contributed to the continued decline of this species.

Remaining vernal pool fairy shrimp occurrences continue to be threatened by all of the factors that historically led to the decline of this species. CNDDDB (2001) estimates that 34 percent of the remaining occurrences of this species are threatened by development and agricultural conversion. Another 15 percent are threatened by military activities (CNDDDB 2001). An additional 15 percent are threatened by operations and maintenance activities within utility and transportation right-of-ways, including grading, discing, and trenching activities which destroy the topographical features necessary for vernal pool habitats to support occurrences of vernal pool fairy shrimp (CNDDDB 2001). Pesticide and herbicide use within utility easements also threaten many occurrences of vernal pool fairy shrimp (CNDDDB 2001). Other vernal pool fairy shrimp occurrences are

threatened by off road vehicle use, logging, mining, vandalism, dumping, and expansion of landfills (CNDDDB 2001).

Numerous occurrences of vernal pool fairy shrimp are threatened by altered hydrology. In some cases vernal pools have been altered so that they contain water year round, allowing predators such as bullfrogs and fish to colonize vernal pool habitats (CNDDDB 2001). In other cases artificial run off has resulted in the delivery of materials that destroy vernal pool water quality, including sediment from cement plants, pesticides from vineyards and other irrigated agricultural lands, pesticides from golf courses, and sediment from surrounding developments (CNDDDB 2001).

Vernal Pool Fairy Shrimp Unit Review

We conducted a regional review across the range of vernal pool fairy shrimp to evaluate and select vernal pool habitats that are essential to the conservation of the species and that require special management. Important factors we considered were the known presence of vernal pool fairy shrimp and the presence of vernal pools and vernal pool complexes supporting the hydrological characteristics necessary to provide the primary constituent elements essential to the conservation of the species.

We identified areas that support high numbers of vernal pool fairy shrimp occurrences identified by CNDDDB (2002) within vernal pool complexes containing the primary constituent elements for the species mapped by Holland (1998) and a number of other sources throughout the range of the species. We have identified areas necessary to conserve the species by maintaining a portion of the species current range and distribution and including some of the different kinds of habitats in which the species is known to occur. However, as is the case with all critical habitat designations, areas outside of this designation may still prove to be necessary to the recovery of this species. A description of each area is outlined below.

Oregon

Vernal pool fairy shrimp are the only species addressed in this proposed rule that occur in Oregon. Four units in Oregon are proposed as essential to the conservation of vernal pool fairy shrimp. The Oregon units occur approximately 200 km (125 mi) north of the nearest unit proposed for this species in California.

Unit 1A, B, C, D, E, F, and G, North Agate Desert Unit, Jackson County (862 ha (2,130 ac))

This unit consists of seven subunits, all located to the north of Little Butte Creek. Three of the subunits are west of the Rogue River, and the remaining four are to the east. All but one of these subunits are located to the south of U.S. Route 234 (Sam's Valley Highway). The one remaining unit is located to the east of the Rogue River, about 2.4 km (1.5 mi) north of the confluence with Reese Creek. This unit represents the northern limit of the species' distribution and therefore may contribute significantly to the species' genetic diversity (Lesica and Allendorf 1995). It is of sufficient size to sustain the natural ecosystem processes (e.g., fires) that have historically influenced vernal pool habitat and is disjunct from the nearest other unit proposed for Oregon, Unit 4, by over 3.2 km (2 mi).

Unit 2A, B, C, D, and E, White City East Unit, Jackson County (911 ha (2,251 ac))

This unit consists of five subunits, located east of U.S. Route 62 (Crater Lake Highway) and south and southeast of Dutton Road. The largest and easternmost of the subunits occurs just to the east and north of Agate Lake. This unit provides the easternmost extent of the species' range in Oregon. It represents a significant component of the species' original range in the state and is of a sufficient size to sustain the natural ecosystem processes (e.g., fires) that have historically influenced vernal pool habitat. It is disjunct by more than 1.6 km (1 mi) from Unit 3, White City West, and by approximately 5.6 km (3.5 mi) from the North Agate Desert Unit.

Unit 3A, B, and C, White City West Unit, Jackson County (931 ha (2,301 ac))

This unit consists of three subunits, located west of Agate Road, south of the Rogue River, and east of Bear Creek. This unit contains the best remaining examples of the original Agate Desert mounded prairie habitat. It is of sufficient size to sustain the natural ecosystem processes (e.g., fires) that have historically influenced vernal pool habitat; it is disjunct from the White City East Unit by more than 1.6 km (1 mi) and from the Table Rocks Unit by over 2.4 km (1.5 mi).

We believe that, taken together, the proposed Agate Desert units (Units 1–3) comprise a functional vernal pool complex consisting of vernal pools, mounded prairie and associated uplands, where natural processes, including connectivity, function within or near the natural range of variability.

Each of the three proposed Agate Desert units is essential to the conservation of vernal pool fairy shrimp populations in the Agate Desert.

Unit 4A and B, Table Rocks Unit, Jackson County (361 ha (892 ac))

This unit consists of two subunits, located on two flat-topped mesas known as Upper and Lower Table Rocks, situated north and west of the Rogue River. These rimrock features are remnants of ancient lava flows that filled portions of the Rogue River nearly 10 million years ago (Bureau of Land Management (BLM) 1998). Subsequent erosion of softer geologic layers has left these harder, andesite (volcanic rock) formations rising some 245 m (800 ft) above the present Rogue Valley. Vernal pools on the Table Rocks differ from those of the Agate Desert, in that they are formed over an impervious layer of bedrock. This unit represents a unique habitat for vernal pool fairy shrimp in Oregon; Table Rocks fairy shrimp populations differ ecologically from fairy shrimp populations in the Agate Desert. The Table Rocks Unit is disjunct from the North Agate Desert Unit by over 3.2 km (2 mi), and from the White City West Unit by approximately 2.4 km (1.5 mi).

California

Unit 5, Redding Unit, Shasta County (1,849 ha (4,569 ac))

This unit is proposed as critical habitat for vernal pool fairy shrimp because it contains the largest intact vernal pool habitat in the northern portion of vernal pool fairy shrimp's range in California. Occurrences of the species (CNDDDB 2002) within vernal pools mapped by Holland (1998) are found on old alluvial terraces above the Sacramento River and often on Redding and Corning soil complexes (Shasta County 2001). Generally these pools are small in size, although the Stillwater Plains area supports unique pools which are several acres in size. These vernal pools provide feeding and sheltering habitat for the species and remain inundated for sufficient lengths of time to allow vernal pool fairy shrimp to hatch, mature, and reproduce.

The boundaries of the unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where vernal pool fairy shrimp occur, and which maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool fairy shrimp hatching, growth, reproduction, and dispersal.

This unit supports systems of hydrologically interconnected pools and swales within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustaceans to complete their life-cycle.

This unit represents contains all of the primary constituent elements for the species and comprises the northern extent of the species range in California. Because occurrences within this unit are at the limit of the species range in California they may have genetic characteristics essential to overall long-term conservation of the species (*i.e.*, they may be genetically different than more central populations) (Fugate 1992, 1998, Lesica and Allendorf 1995).

Most of the land included within this unit is privately owned. The BLM owns 17 ha (42 ac) within this unit and a further 52 ha (130 ac) is private land protected under conservation easement or agreement as part of the Wetlands Reserve Program (WRP). The Stillwater Plains Conservation Bank, specifically established to contribute to the recovery of vernal pool fairy shrimp, is located within this unit. The City of Redding and other local and state planning organizations are currently developing a HCP to provide for the conservation of vernal pool fairy shrimp. This unit would provide an area where conservation efforts for vernal pool fairy shrimp could take place.

This unit is located in the area east of the Redding Municipal Airport between Airport Road to the west and Deschutes Road to the east. The unit extends to Dersch Road in the south and towards Lassen Park Highway in the north. This unit comprises a portion of the Stillwater Plains. This unit overlaps slender Orcutt grass Unit 2B and vernal pool tadpole shrimp Unit 1. Other sensitive species occurring within this unit include Red Bluff dwarf rush (*Juncus leiospermus* var. *leiospermus*), California linderiella (*Linderiella occidentalis*), Henderson's bent grass (*Agrostis hendersonii*), and four angled spike rush (*Eleocharis quadrangulata*).

Unit 6, Red Bluff Unit, Tehama County (18,562 ha (45,865 ac))

This unit is proposed as critical habitat for vernal pool fairy shrimp because it contains the species (CNDDDB 2002) within vernal pools mapped by Holland (1998) and the pools contain water for sufficient periods of time necessary for vernal pool fairy shrimp

incubation, reproduction, dispersal, feeding, and sheltering. Vernal pool fairy shrimp within this unit occur within vernal pools formed on alluvial terraces west of the Sacramento River and associated with Newville/Corning and Redding/Corning soil complexes (USDA 2001) exhibiting well developed mima mound topography. The vernal pools within this unit are generally small and may not be inundated long enough to support other longer-lived vernal pool species.

The boundaries of the unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where vernal pool fairy shrimp occur, and which maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool fairy shrimp hatching, growth, reproduction, and dispersal. This unit contains several large (*i.e.*, over (4,068 ha) 10,000 ac) vernal pool habitat complexes. These areas are relatively undisturbed, hydrologically intact vernal pool habitats that will likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool fairy shrimp. This unit also provides essential habitat for migratory waterfowl that aid in the dispersal of vernal fairy shrimp and other vernal pool crustacean cysts.

The majority of the lands included within this unit are privately owned. The CDFG owns 175 ha (433 ac) within this unit. Urban expansion from the city of Red Bluff, and agricultural conversion in other portions of the unit, threaten existing vernal pool fairy shrimp habitats throughout this unit. However, this unit also contains large private conservation areas established specifically to contribute to the recovery of vernal pool fairy shrimp and compensate for the loss of vernal pool habitat, including the 2,023 ha (5,000 ac) Tehama Fiber Farm mitigation area. CDFG's Thomes Creek Ecological Reserve is also located within this unit.

This unit extends from southwest of Red Bluff at Red Bank Creek south to Thomes Creek. The eastern boundary includes the vernal pool habitat from the Southern Pacific Railroad near Coyote Creek south paralleling Interstate 5 to Thomes Creek. Other vernal pool species occurring within this unit include Boggs Lake hedge-hyssop (*Gratiola heterosepela*), Baker's navaretia (*Navaretia leucocephala* ssp. *bakeri*), Red Bluff dwarf rush, Douglas' pogogyne (*Pogogyne douglasii*), western spadefoot toad (*Scaphiopus hammondi*), legenere (*Legenere limosa*),

California linderiella, Ahart's paronychia (*Pyronychia ahartii*), Henderson's bent grass, and dwarf downingia (*Downingia pusilla*).

Unit 7, Vina Plains Unit, Tehama, and Butte Counties (23,883 ha (59,015 ac))

This unit is proposed as critical habitat because it contains vernal pool fairy shrimp (CNDDDB 2001) living within large vernal pool grassland areas that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units (EPA 1994, Holland 1998, Tehama County 1999). The boundaries of this unit were delineated to include the interconnected pools, swales, and uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where vernal pool fairy shrimp occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool fairy shrimp to complete their life-cycles.

The vernal pools within this unit contain water during the winter, and provide the necessary length and timing of inundation, water quality, and freedom from predation that allow vernal pool fairy shrimp to hatch, feed, reproduce, and shelter. Vernal pool fairy shrimp in this unit occur within Northern Volcanic Mudflow vernal pools, these pools are generally small and tend to be inundated for relatively short periods of time. Vernal pool fairy shrimp are also found within larger vernal pools forming on hardpans within this unit. These pools tend to be larger and longer lasting than Northern Volcanic Mudflow pools, and may also support occurrences of other, longer lived species such as Conservancy fairy shrimp.

The pool types within this unit maintain the diversity of habitats in which vernal pool fairy shrimp are known to occur and provide relatively undisturbed, hydrologically intact vernal pool habitats that will likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool fairy shrimp. This unit also provides habitat for migratory waterfowl that aid in the dispersal of vernal pool fairy shrimp and other vernal pool crustacean cysts.

The majority of the lands included within this unit are privately owned. This unit contains The Nature Conservancy's (TNC) Vina Plains preserve as well as other TNC lands 2,264 ha (5,660 ac) and conservation

easements 4,348 ha (10,870 ac). Other ownership within this unit includes 57 ha (142 ac) of private land protected under conservation easement or agreement under the Natural Resource Conservation Services's (NRCS) Wetland Reserve Program (WRP). The Vina Plains area has been the focus of a number of research projects, including long-term adaptive management and monitoring efforts evaluating the effects of grazing and fire on vernal pool plants, animals, and ecosystems (Griggs 2000). Much of the basic life history information known about vernal pool crustaceans was collected at Vina Plains (e.g., Lanway 1974, Ahl 1991, Syrdahl 1993, Gallagher 1996). The importance of the Vina Plains area has been recognized by a number of state, local, and Federal agencies, and they have been the focus of several conservation planning efforts. TNC, CDFG, the Service, the EPA, the CNPS, the NRCS WRP, and researchers from California State University (CSU) at Chico have all supported research and conservation efforts for vernal pool species within this unit.

This unit is located in the northeastern portion of the Sacramento Valley from Deer Creek in Tehama County to Chico in Butte County. The unit extends south and east of the Sacramento River paralleling the low elevation foothill region of the Sierra Nevada and represents the northeastern extent of vernal pool fairy shrimp's range in California. This unit coincides with Unit 3 for vernal pool tadpole shrimp, and incorporates Unit 1 for Conservancy fairy shrimp, Unit 4 for slender Orcutt grass, Unit 2 for Greene's tuctoria, Unit 1 for hairy Orcutt grass, Unit 1 for Hoover's spurge, and Units 1 and 2 for Butte County meadowfoam. Other vernal pool species occurring within this unit include Boggs Lake hedge-hyssop, Red Bluff dwarf rush, Douglas' pogogyne, western spadefoot toad, legenere, California linderiella, California tiger salamander (*Ambystoma californiense*), Ahart's paronychia, Henderson's bent grass, Sanford's arrowhead (*Sagittaria sanfordii*), and dwarf downingia.

Unit 8, Orland Unit, Tehama County (5,760 ha (14,233 ac))

This unit is proposed as critical habitat for vernal pool fairy shrimp because it contains occurrences of the species and vernal pools, swales, and associated uplands that support vernal pool fairy shrimp (Holland 1998, Tehama County 2001, CNDDDB 2002). Vernal pool fairy shrimp in this unit are found in vernal pools formed on alluvial terraces west of the Sacramento River

and associated with Anita clay and Tuscan loam soils (USDA 1994). These vernal pools are generally small, and exhibit well developed mima mound topography. They contain water for sufficient periods of time necessary for vernal pool fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where vernal pool fairy shrimp occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool fairy shrimp hatching, growth and reproduction, and dispersal, but not necessarily every year. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal.

This unit contains large vernal pool habitat areas in the northwestern portion of the range of vernal pool fairy shrimp. These areas provide relatively undisturbed, hydrologically intact vernal pool habitats that will likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool fairy shrimp. These vernal pool habitats support systems of hydrologically interconnected pools and swales within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes.

This unit extends from the Tehama/Glenn county border in the south, west of Ingrahm Road and east of the Black Butte Reservoir, to the vicinity of Rice Creek in the north. This unit also contains a Pacific Gas and Electric (PG&E) pipeline mitigation area established specifically for the conservation of vernal pool fairy shrimp. Other vernal pool species occurring within this unit include Baker's navarretia, western spadefoot toad, Ahart's paronychia, and dwarf downingia. All the lands within this unit are privately owned.

Unit 9, Oroville Unit, Butte County (1,456 ha (3,598 ac))

This unit is proposed as critical habitat for vernal pool fairy shrimp because it supports vernal pools, swales, and associated uplands mapped by Holland (1998) and by the EPA (1994) and contains vernal pool fairy shrimp (CNDDDB 2001). Vernal pool fairy shrimp

within this unit live within pools occurring primarily on the Tuscan geologic formation (Liss 2001, Keeler-Wolf *et al.* 1998), which are some of the few remaining examples of Northern Volcanic Mudflow vernal pools described by Sawyer and Keeler-Wolf (1995). Northern Volcanic Mudflow vernal pools are generally small and tend to be inundated for relatively short periods of time. These pool types are essential to maintain the diversity of habitats in which vernal pool fairy shrimp are known to occur. Vernal pool fairy shrimp are also found living in Northern Hardpan vernal pools within this unit. These pools tend to be larger and longer lasting than the Northern Volcanic Mudflow pools.

The boundaries of the unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where vernal pool fairy shrimp occur, and which maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool fairy shrimp hatching, growth, reproduction, and dispersal. The majority of the lands included within this unit are privately owned. This unit contains Service lands (76 ha (187 ac)) and 7 ha (17 ac) of CDFG administered land. This unit contains a few areas that have been preserved within the City of Chico. However, the amount of vernal pool habitat currently protected within the unit is very small. Urban expansion, particularly in the vicinity of Chico, is the greatest threat to existing vernal pool habitats throughout this unit.

This unit occupies an area from near Chico south to near the intersection of Highway 99 and State Route 149 in Butte County. The unit extends southeast of the Sacramento River paralleling the low elevation foothill region of the Sierra Nevada. This unit is part of Unit 4 for vernal pool tadpole shrimp, and incorporates Unit 3 for Greene's tuctoria, Unit 2 for hairy Orcutt grass, Unit 2 for Hoover's spurge, and Unit 3 for Butte County meadowfoam. Other vernal pool species occurring within this unit include Boggs Lake hedge-hyssop, Red Bluff dwarf rush, Douglas' pogogyne, western spadefoot toad, legenere, California linderiella, California tiger salamander, Ahart's paronychia, Henderson's bent grass, Sanford's arrowhead, and dwarf downingia.

Unit 10, Sacramento National Wildlife Refuge Unit, Glenn and Colusa Counties (5,718 ha (14,129 ac))

This unit is proposed as critical habitat for vernal pool fairy shrimp because it contains occurrences of the species (CNDDDB 2002) within the vernal pools and swales mapped by Holland (1998). Vernal pool fairy shrimp in this unit live within Northern Claypan vernal pools, as defined by Sawyer and Keeler-Wolf (1995). These vernal pools are associated with alkaline soils, such as Willows and Riz soils series, and typically form alkali playas which are larger and contain a more diverse species composition than the hardpan pools further south (Keeler-Wolf *et al.* 1998). These pools are inundated for a sufficient period of time to support all of the life history requirements of vernal pool fairy shrimp. Vernal pools on the Sacramento National Wildlife Refuge Complex, are often large, shallow and alkaline (Silveira 2000). Vernal pool habitats on the refuge are specifically managed for the conservation of listed species, and to promote habitat for migratory birds and waterfowl.

The Sacramento National Wildlife Refuge contains the last remnants of the widespread Colusa Plains vegetation that once covered the entire Colusa Basin (Silveira 2000). Vernal pool habitats within the area have become greatly fragmented and isolated from other habitats in the region due to land conversion to agriculture. This unit is important to maintain opportunities for vernal pool fairy shrimp dispersal between units to the north, over 50 km (31 mi) distant, and those to the south, over 110 km (68 mi) distant. Without this unit, vernal pool fairy shrimp occurrences to the north and south would be more than 160 km (100 mi) distant from one another, a distance at which genetic evidence indicates they are effectively isolated (Fugate 1992, 1998).

The boundaries of the unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) and identified by the Service (Silveira 2000) that contribute to the filling and drying of the vernal pools where vernal pool fairy shrimp occur, and which maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool fairy shrimp hatching, growth, reproduction, and dispersal.

This unit is primarily located on the Sacramento National Wildlife Refuge (5,126 ha (12,816 ac)). Any additional lands within this unit are privately owned. This unit overlaps with Unit 6 for Greene's tuctoria, Unit 3 for hairy

Orcutt grass, Unit 3 for Hoover's spurge, and Unit 2 for Conservancy fairy shrimp. Other important vernal pool and associated upland species found in the unit include puppose spikeweed (*Hemizonia parryi* ssp. *rudis*), Fremont's goldfields (*Lasthenia fremontii*), alkali goldfields (*Lasthenia platycarpa*), Scribe's popcorn flower (*Plagiobothrys scriptus*), Hoover's downingia (*Downingia bella*), folded downingia (*Downingia ornatissima* var. *ornatissima*), Heckard's peppergrass (*Lepidium latipes* var. *heckardii*), heartscale (*Atriplex cordulata*), brittlescale (*Atriplex depressa*), San Joaquin spearscale (*Atriplex joaquiniana*), Ferris' milkvetch (*Astragalus tender* var. *farrisiae*), spike-primrose (*Boisduvalia stricta*), sessile mousetail (*Myosurus sessilis*), and palmate-bracted bird's beak (*Cordylanthus palmatus*).

Unit 11, Beale Unit, Yuba and Placer Counties (2,853 ha (7,049 ac))

We propose the Beale Unit as essential for the conservation of vernal pool fairy shrimp because it contains large, relatively undisturbed vernal pool grassland habitats and a diversity of vernal pool habitat types supporting vernal pool fairy shrimp (CNDDDB 2001, Jones and Stokes 1997b, Jones and Stokes 2002, Platenkamp 1998). Vernal pool fairy shrimp within this unit are found throughout several large vernal pool complexes. These complexes occur on four major geologic formations: the Modesto Formation; the Riverbank Formation; the Laguna Formation; and the Mehrten Formation (Platenkamp 1998). These habitats provide the hydrological characteristics necessary for vernal pool fairy shrimp growth, reproduction, dispersal, and other primary constituent elements essential to the conservation of this species. Different geologic formations provide a diversity of habitats for vernal pool fairy shrimp primarily through their effects on pool size and depth (Platenkamp 1998, Helm 1998).

This unit contains DOD land (419 ha (1,048 ac)) at Beale Air Force Base and BLM (3 ha (8 ac)) lands. Other lands within this unit are located on private property, and are threatened by agricultural conversion, urban expansion, and the expansion of Highway 70 and other transportation projects planned in the region. This unit is found east of Yuba City and State Highway 65, generally south of Hammonton Road and north of South Beale Road and 6th Street. The unit includes the western portion of Beale Air Force Base, west of Erle Street and Doolittle Drive. Other rare vernal pool

species found within this unit include vernal pool tadpole shrimp and California linderiella.

Unit 12, Western Placer County Unit (19,387 ha (47,905 ac))

The Western Placer Unit was identified as critical habitat for vernal pool fairy shrimp because it contains numerous occurrences of the species (CNDDDB 2001). The unit boundary was drawn to include these occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and Glazner (2001) and as visible on SPOT imagery. These complexes form interconnected hydrologic units of pools, swales and uplands that together maintain the timing and duration of inundation necessary for vernal pool fairy shrimp to hatch, mature, and reproduce. Vernal pool fairy shrimp within this unit occur in both Northern Hardpan and Northern Volcanic Mudflow vernal pools as described by Sawyer and Keeler-Wolf (1995). This unit also supports vernal pool fairy shrimp found in vernal pools on Exchequer soils on the Mehrten geologic formation, a rare type of Northern Volcanic Mudflow vernal pool which has been reduced to only a few acres in extent. The pools are relatively short lived and do not provide habitat for most other species of fairy shrimp (CNDDDB 2001).

This unit includes a large number of conservation areas established specifically to contribute to the recovery of vernal pool fairy shrimp partly established through conservation efforts under section 7 of the Act. These include the Ahart Preserve, one of the few remaining examples of Northern Volcanic Mudflow vernal pools in the region, as well as the Orchard Creek Conservation Bank. This conservation bank was established for the protection of vernal pool fairy shrimp and to compensate for the loss of thousands of acres of vernal pool grassland habitats throughout Placer and Sacramento counties. Additional smaller conservation areas in this unit are located within the cities of Lincoln and Roseville, and in Placer County. Approximately 20 percent of all mitigation areas established for the long-term protection of vernal pool fairy shrimp are found within this unit. Placer County is currently developing a HCP for the conservation of vernal pool fairy shrimp in this area. A WRP easement of 63 ha (157 ac) is within this unit.

The Western Placer Unit contains 70 percent of the remaining vernal pool habitats in Placer County. TNC identified this area as one of the

outstanding vernal pool sites remaining in the Sacramento Valley. Vernal pool habitats within this unit are threatened by the development of large transportation projects, the development of a university and associated infrastructure, residential developments, gravel mining operations, and agricultural conversion in the western portion of Placer County.

This unit generally occurs in western Placer County immediately north of the Sacramento County line, north of the City of Roseville and the City of Rocklin. The northern boundary occurs just north of the City of Lincoln. This unit occurs mostly west of State Highway 65. This unit provides habitat for sensitive vernal pool species such as Bogg's Lake hedge-hyssop, Red Bluff dwarf rush, western spadefoot toad, legenera, California linderiella, Ahart's paronychia, and dwarf downingia. A number of riparian species are also found in this unit in the vernal pool grasslands that border Coon Creek.

Unit 13, Mather Unit, Sacramento County (14,866 ha (36,733 ac))

This unit is proposed as critical habitat for vernal pool fairy shrimp because it contains occurrences of the species and vernal pool habitats that sustain the necessary timing and length of inundation required for the species to hatch, mature, reproduce, disperse, and enter dormancy (Holland 1998, Sacramento County 1999, CNDDDB 2001). Vernal pool fairy shrimp in this unit occur within a diversity of vernal pool habitats, including young or low terrace vernal pools on the Riverbank Formation, old or high terrace vernal pools on the Laguna and Arroyo Seco geologic formations, and Northern Volcanic Mudflow vernal pools on the Mehrten and Valley Springs geologic formations.

This unit includes several conservation areas established by private entities, including the Sunrise Douglas Conservation Bank, the Arroyo Seco Conservation Bank, the Churchill Downs mitigation area, and Teichert mitigation areas. These areas were established specifically to contribute to the conservation of vernal pool fairy shrimp, and represent compensation measures for the loss of thousands of acres of vernal pool fairy shrimp habitat within Sacramento County. The continued functioning of these areas is essential to the conservation of vernal pool fairy shrimp and other vernal pool species. The boundaries of the unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of

the vernal pools where vernal pool fairy shrimp occur, and which maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool fairy shrimp hatching, growth, reproduction, and dispersal.

This area supports a diversity of vernal pool species and habitats, and is the focus of numerous conservation planning efforts. This area has been identified by the Sacramento Valley Open Space Conservancy, the CNPS, and TNC as an excellent example of vernal pool grasslands, supporting a rich and diverse community of vernal pool endemic plants and animals within Sacramento County. This unit contains areas on private, county, and Federal land, including lands leased or owned by Sacramento County at Mather Regional Park, the former Mather Air Force Base, and at the county landfill. BLM owns 6 ha (18 ac) within this unit. Vernal pool habitats in this unit are threatened by urbanization from the expanding cities of Sacramento and Elk Grove. Conversion to intensive agriculture, particularly vineyards, is also a significant threat to vernal pool fairy shrimp in this unit.

This unit includes the area to the southeast of the City of Sacramento in Sacramento County, east of Highway 99 and south of Interstate 80. The unit is generally east of Bradshaw Road, northwest of Grant Line Road, west of Scott Road, and includes a portion of Mather Field. The unit is bisected by the Folsom South Canal. This unit also represents Unit 8 for vernal pool tadpole shrimp, and contains Unit 6 for slender Orcutt grass and Unit 2 for Sacramento Orcutt grass. In addition to these species, this unit contains occurrences of many other rare, endemic vernal pool species including midvalley fairy shrimp (*Branchinecta mesovalliensis*), Bogg's Lake hedge-hyssop, western spadefoot toad, legenera, California linderiella, and Ahart's paronychia.

Unit 14, Cosumnes Unit, Sacramento County (26,600 ha (65,728 ac))

This unit is proposed as critical habitat for vernal pool fairy shrimp because it supports the species (CNDDDB 2001) and its habitat (Holland 1998, Sacramento County 1999). The unit boundary was drawn to include several large vernal pool complexes mapped by Holland (1998) and numerous individual vernal pools mapped by Sacramento County (1999) and visible on SPOT imagery. Together, these identified habitats represent some of the largest remaining vernal pool complexes in the Sacramento Valley that provide the necessary timing and duration of inundation for vernal pool fairy shrimp

hatching, growth, and reproduction. Vernal pool fairy shrimp within this unit are found in a diversity of pool types, including Northern Volcanic Mudflow vernal pools on Pardee and Pentz soils, vernal pools occurring on low terrace landforms associated with San Joaquin soils, and vernal pools occurring on high terrace landforms associated with Redding and Corning soils. These pool types provide a diversity of habitats for this species. The large vernal pool complexes found within this unit provide relatively undisturbed, hydrologically intact vernal pool habitats that support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool fairy shrimp.

Many areas within this unit include actively restored and created vernal pools that support occurrences of vernal pool fairy shrimp (CNDDDB 2001). This unit is also proposed as critical habitat to encourage that special management actions will be taken so that these areas continue to provide the necessary timing and length of inundation for vernal pool fairy shrimp survival. In many cases, the special management action necessary will simply be to monitor vernal pool hydrology to verify the success of the restoration effort.

This unit contains a number of conservation areas established specifically to contribute to the conservation of vernal pool fairy shrimp, and to compensate for the loss of thousands of acres of vernal pool grassland habitats throughout the Sacramento Valley. Many areas within this unit are managed specifically to provide habitat for migratory waterfowl, this unit also provides essential habitat for avian species that aid in the dispersal of vernal pool fairy shrimp and other vernal pool crustacean cysts.

This unit contains state and federally owned land, as well as private properties. Portions of the Cosumnes River Preserve occur within this unit. The Cosumnes River Preserve is jointly owned and managed by a variety of state, local, and Federal agencies including the BLM, CDFG, Ducks Unlimited, Inc., California Department of Water Resources, Sacramento Co. Dept. of Regional Parks, Open Space, and Recreation, TNC, and the Wildlife Conservation Board. The Cosumnes River Preserve encompasses and protects thousands of acres of wetlands and adjacent uplands, oak woodlands, and riparian forests along the Cosumnes River, the only undammed river on the west slope of the Sierra. The Cosumnes floodplain is a haven for tens of thousands of migratory waterfowl, songbirds, and raptors, a large portion of

the Central Valley's population of greater sandhill cranes, and for rare reptiles and mammals like the river otter and threatened giant garter snake. Several large, diverse, vernal pool landscapes are protected within this unit including the Howard Ranch and Valensin Ranch. The Clay Station Mitigation Bank, Laguna Creek Mitigation Bank, and the Borden Ranch Mitigation site are included in this unit, as well as a number of smaller conservation areas including the Rancho Seco Preserve. Land ownership and protection within the unit includes CDFG (630 ha (1,557 ac)), TNC (3,988 ha (9,970 ac)) lands and WRP easements (4 ha (11 ac)). This area has been identified by the Sacramento Valley Open Space Conservancy, the CNPS, and TNC as an excellent example of vernal pool grasslands, supporting a rich and diverse community of vernal pool endemic plants and animals within Sacramento County. Urban expansion, conversion from grazing to other agricultural practices, particularly vineyards, have greatly affected existing vernal pool habitats throughout this unit.

This unit for vernal pool fairy shrimp occupies the area south of Deer Creek and Cosumnes River to just north of the Sacramento and San Joaquin county line near Simmerhorn Road. The eastern boundary is the low elevation foothills near the Amador county line. The western limit follows Dillard Road south to Colony Road near Herald. This unit also coincides with Unit 10 for vernal pool tadpole shrimp, and Unit 3 for Sacramento Orcutt grass. Other sensitive species found within this unit include Bogg's Lake hedge-hyssop, western spadefoot toad, legenere, California linderiella, California tiger salamander, Ahart's paronychia, Henderson's bent grass, Sanford's arrowhead, pincushion navarretia (*Navarretia myersii* ssp. *deminuta*), and dwarf downingia.

Unit 15 Vacaville Unit, Solano County (1,624 ha (4,012 ac))

This unit is proposed as critical habitat because it contains vernal pool fairy shrimp within large vernal pool complexes (Holland 1998, Solano County 2000, CNDDDB 2001). This unit contains vernal pool fairy shrimp occurring within vernal pools and swales formed on Corning gravelly loam soil series, which form Northern Hardpan vernal pools (Sawyer and Keeler-Wolf 1995). These pool types maintain the necessary conditions for vernal pool fairy shrimp hatching, feeding, reproduction, and dispersal (CNDDDB 2001).

The Vacaville Unit supports the only examples of Northern Hardpan vernal pool types, including high terrace vernal pools on Corning soils, on the western side of the valley. These unique habitats are necessary to maintain the diversity of habitats in which vernal pool fairy shrimp are known to occur. This unit is located primarily on private land although the State Land Commission owns approximately (60 ha (149 ac)) within this unit. Vernal pool habitats within this unit are threatened by urbanization from the expanding City of Vacaville. Solano County is currently developing a HCP which will address the conservation of vernal pool fairy shrimp in this area.

The Vacaville Unit is situated north and northeast of the City of Vacaville. The eastern boundary parallels Interstate 80, the northern boundary parallels Midway Road, and the western boundary is near Browns Valley Road. This unit also provides habitat for vernal pool tadpole shrimp, dwarf downingia, as well as Swainson's hawks (*Buteo swainsoni*) and burrowing owls.

Unit 16, Jepson Prairie Unit, Solano County (34,910 ha (86,261 ac))

We propose this area as critical habitat for vernal pool fairy shrimp because it supports numerous occurrences of the species (CNDDDB 2001) living within systems of hydrologically interconnected pools and swales within a matrix of surrounding uplands that together form hydrologically and ecologically functional vernal pool complexes. These features contribute to the filling and drying of the vernal pools where vernal pool fairy shrimp are known to occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool fairy shrimp hatching, growth and reproduction, and dispersal. These features have been identified and mapped by Solano County (2000), Holland (1998), and the Solano County Farmlands and Open Space (2000). The Jepson Prairie Unit encompasses the greater Jepson Prairie grassland area, one of the most pristine, intact vernal pool ecosystems remaining in California. Jepson Prairie contains large, playa-like vernal pools which may be over several acres in size, including the 32 ha (80 ac) Olcott Lake. These larger pools often occur in complexes with smaller pools and hogwallow depressions.

This unit includes one of only two large contiguous areas of habitat remaining for vernal pool fairy shrimp on the floor of the Central Valley. The relatively undisturbed, hydrologically intact condition of the Jepson Prairie

increases the likelihood that it will continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool fairy shrimp. This unit also provides essential habitat for migratory waterfowl that aid in the dispersal of vernal pool fairy shrimp and other vernal pool crustacean cysts. Vernal pool fairy shrimp in the Jepson Prairie grassland area inhabit unique combinations of low terrace and basin rim landform vernal pools on a diversity of soil types.

Jepson Prairie has long been recognized as an outstanding example of vernal pool ecosystems. In 1987 the National Park Service (NPS) named Jepson Prairie a National Natural Landmark, a designation given to sites that provide high quality habitat for threatened or endangered species. Jepson Prairie is the target of ongoing conservation planning efforts and active management. As part of the UC Reserve System, this area also provides critical research opportunities for scientists to study vernal pool species, including vernal pool fairy shrimp.

The unit contains 1,038 ha (2,564 ac) owned and or administered by CDFG. Additional lands are owned by DOD (760 ha (1,879 ac)), California State Parks (15 ha (38 ac)), and the State Land Commission (109 ha (273 ac)). NRCS holds easements or agreements protecting 436 ha (1,090 ac) of private land in the unit under the WRP program. TNC also holds a conservation easement on 623 ha (1,558 ac) in the unit. The Jepson Prairie Preserve is jointly managed by the Solano County Land Trust and the UC Reserve System. CDFG owns several ecological reserves in the vicinity of Jepson Prairie. This unit also contains several privately owned mitigation areas, and portions of Travis Air Force Base. Within the greater Jepson Prairie grassland area, existing vernal pools are threatened by agricultural conversion, landfill expansion, power plant construction, and utility maintenance.

This unit is located in the southern portion of Solano County, southeast of Interstate 80 and the cities of Fairfield and Vacaville, north of Grizzly Bay and Montezuma Slough, west of the Sacramento River and the Solano and Sacramento County line, and south of Midway Road and the City of Dixon. The unit is bisected by Highway 13. This unit is also described as Unit 11 for vernal pool tadpole shrimp. This unit contains Unit 3 for Colusa grass, Unit 2 for Solano grass, Unit 3 for Conservancy fairy shrimp, and Unit 4 and portions of Unit 5 for Contra Costa goldfields. Other rare vernal pool species which occur in

this unit include alkali milk-vetch (*Astragalus tener* var. *tener*), Ferris's milk-vetch, vernal pool small scale (*Atriplex persistens*), dwarf downingia, Delta green ground beetle (*Elaphrus viridus*), Bogg's Lake hedge-hyssop, Ricksecker's water scavenger beetle (*Hydrochara rickseckeri*), California linderiella, midvalley fairy shrimp, legener, and California tiger salamander.

Unit 17, Napa River Unit, Napa and Sonoma Counties (656 ha (1,621 ac))

We propose this unit as critical habitat for vernal pool fairy shrimp because it contains vernal pools where vernal pool fairy shrimp are known to occur (CNDDDB 2001). The boundaries of this unit were designed to include vernal pool complexes mapped by Holland (1998) and within the Fagan Marsh Ecological Area owned by the CDFG (420 ha (901 ac)) that contribute to the inundation patterns, water quality, and soil moisture for vernal pool fairy shrimp hatching, growth and reproduction, and dispersal, but not necessarily every year. The minimum mapping unit of Holland (1998) of 16 ha (40 ac) and the resolution of the SPOT imagery did not allow us to identify all vernal pool habitat areas which provide the primary constituent elements for vernal pool fairy shrimp in this area. The unit boundary was designated to exclude tidal marsh habitats in the south, and urban and agricultural areas along the northern and eastern boundaries. The Napa River parallels the western boundary of this unit.

This unit represents the western extent of vernal pool fairy shrimp range. Such isolated and peripheral populations may be essential to the conservation of this species because of their genetic uniqueness (Fugate 1992, 1998, Lessica and Allendorf 1995). This unit represents the only area where vernal pool fairy shrimp occur in vernal pool habitats forming a transition zone with tidal marshes. This unit is located on private and CDFG land, including the Napa-Sonoma Marsh and Fagan Marsh Wildlife Areas. Habitats within this unit are primarily threatened by urbanization from the City of Napa.

Most of this unit is situated south and southwest of the City of Napa; primarily west of Highway 29, south of Highway 12, and east of Highway 121. This unit forms a narrow strip following the northwestern banks of the Napa River and extending westward along Hudeman and Schell sloughs. This unit is also identified as Unit 3 for Contra Costa goldfields. Other rare vernal pool species found in this unit include the alkali milk-vetch.

Unit 18, San Joaquin Unit, San Joaquin County (7,105 ha (17,557 ac))

This unit is proposed as critical habitat for vernal pool fairy shrimp because it contains vernal pool habitats identified by Holland (1998) and San Joaquin County (1998) that support populations of vernal pool fairy shrimp (CNDDDB 2001). This unit contains vernal pool fairy shrimp occurrences found within Northern Volcanic Mudflow vernal pools on the Laguna geologic formation, as well as high terrace pools on the Valley Springs geologic formation. The Northern Volcanic Mudflow vernal pools tend to be short-lived, and are a relatively rare habitat type for vernal pool fairy shrimp. This unit contains the largest vernal pool complex remaining in San Joaquin County and the southern Sacramento Valley, and contains the necessary geographic, topographic, and edaphic features to support vernal pool fairy shrimp occurrences found within this unit. San Joaquin County has completed a HCP, which includes measures to protect conversion of vernal pool fairy shrimp habitat from vernal pools grasslands to vineyards. Conversion from grazing to other agricultural practices have greatly reduced the remaining acreage of vernal pool habitats throughout this unit.

This unit occupies the area from the Calaveras River south to Duck Creek. The eastern boundary extends to near Valley Springs at the intersection of State routes 12 and 26. The western boundary extends to near Tully Road east of the City of Lodi. This unit also coincides with Unit 14 for vernal pool tadpole shrimp. Other sensitive vernal pool species found within this unit include western spadefoot toad and California tiger salamander. All the land within this unit is privately owned.

Unit 19A, B, and C, Altamont Hills Unit, Contra Costa and Alameda counties (3,356 ha (8,292 ac))

This unit is proposed as critical for vernal pool fairy shrimp because it contains vernal pool habitats mapped by Holland (1998) and East Bay Regional Parks District (2001) supporting vernal pool fairy shrimp occurrences identified by CNDDDB (2001). Vernal pool fairy shrimp have been discovered in very small (less than 1 m (3.3 ft) in diameter) clear water depression pools in sandstone outcrops in the area (Eriksen and Belk 1999). The unit represents the only known location that supports vernal pool fairy shrimp within sandstone outcrop pools (Eriksen and Belk 1999).

Vernal pool fairy shrimp in the Altamont Hills Unit are located over 60 km (40 miles) from the closest known occurrence to north in Solano County and to the south in Stanislaus County, and over 60 km (40 mi) from the next occurrence to the west in San Joaquin County. These populations may be genetically different from other vernal populations because of their relative isolation (Fugate 1998).

The unit is comprised of three subunits in the general vicinity of Mount Diablo and Morgan Territory Regional Park. The unit primarily consists of private land, with 64 ha (157 ac) owned by the state and an additional 288 ha (711 ac) administered by the California Department of Fish and Game for conservation purposes.

This unit overlaps Unit 7 for Contra Costa goldfields. The unit lies north of Corral Hollow Road, west of Clifton Court Forebay, east of the City of Danville, southeast of Concord, and south of Antioch. It includes vernal pool habitat within the Altamont Hills, around the northern and eastern boundaries of the City of Livermore, and east of the Altamont Hills and west of Clifton Court Forebay. The unit includes Fricke Lake which supports a large population of California tiger salamanders.

Unit 20, Caswell Unit, Stanislaus County (302 ha (746 ac))

This unit is proposed as critical habitat for vernal pool fairy shrimp because it contains vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated for sufficient lengths of time necessary for vernal pool fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, but which are dry during the summer (Holland 1998, CNDDDB 2001). This unit also supports aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes (Holland 1998). These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool fairy shrimp hatching, growth and reproduction, and dispersal, but not necessarily every year. This unit includes vernal pool complexes mapped by Holland (1998) where vernal pool fairy shrimp have been documented by CNDDDB (2001).

This unit is located within the San Joaquin River National Wildlife Refuge

and efforts to restore vernal pool habitats are currently underway. Additional restoration designed to enhance habitat for riparian species, as well as migratory birds and waterfowl, is also being conducted. The San Joaquin River National Wildlife Refuge is the primary wintering site of 98 percent of the Aleutian Canada geese that winter in the Central Valley (October–April), and it is a major wintering and migration area for lesser and greater sandhill cranes, cackling Canada geese, and white-fronted geese. These migratory birds act as important dispersal agents for vernal pool fairy shrimp. Lands within this unit form a mosaic of riparian habitat, wetlands, and grasslands.

This unit is over 75 km (47 mi) from the nearest unit to the north. Such isolated populations may have genetic characteristics essential to overall long-term conservation of the species (*i.e.* they may be genetically different than more central populations) (Fugate 1992, 1998). This unit may be threatened by agricultural development, oil and natural gas exploration and development, and conversion from grazing to other agricultural practices. Water management practices may also threaten vernal pool fairy shrimp in this unit if natural vernal pool hydrology is altered.

This unit is situated west of the City of Modesto and east and southeast of the confluence of the San Joaquin and Stanislaus rivers. Caswell Memorial State Park lies just north of this unit and is not included. The San Joaquin River forms the western boundary of the unit. The unit is bisected by the Hetch Hetchy Aqueduct, State Highway 132, and the Tuolumne River. Roughly the northern one-third of this unit overlaps with Unit 5 for Conservancy fairy shrimp. It also contains California linderiella and California tiger salamander occurrences, in addition to a number of rare non-vernal pool species, including the federally listed endangered riparian wood rat and riparian brush rabbit.

Unit 21, Stanislaus Unit, Stanislaus and Merced Counties (25,317 ha (62,557 ac))

This area is proposed as critical habitat for vernal pool fairy shrimp because it contains occurrences of the species within large, relatively intact, and contiguous vernal pool complexes ranging from the floor of the valley to the low elevation foothills (Holland 1998, CNDDDB 2001). These areas are essential to the conservation of vernal pool fairy shrimp because they provide relatively undisturbed, hydrologically intact vernal pool habitats that will

likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool fairy shrimp. This unit contains vernal pool fairy shrimp living within hardpan pools that occur on soils of alluvial fans and terraces forming numerous small pools and swales on mima mound topography. Soils supporting these vernal pools are typically older than those of the alluvial terraces in the Sacramento area. These pools provide the necessary timing and length of inundation for vernal pool fairy shrimp to complete their life cycle, reproduce, and disperse.

The Stanislaus Unit is in the northern portion of the chain of vernal pools that runs through the southern Sierra Nevada foothills, within the Southern Sierra Foothill vernal pool region described by Keeler-Wolf *et al.* (1998). This vernal pool region contains 35 percent of all remaining vernal pool habitat in the Central Valley, and is extremely important to the conservation of vernal pool fairy shrimp and other vernal pool species. Land ownership within this unit includes the BLM (7 ha (17 ac)) and the California State Parks (25 ha (61 ac)). The well-known Hickman pools in Stanislaus County are located within this unit. Not only does the Hickman pool complex contain one of the largest vernal lakes in California at more than 121 ha (300 ac), but it also exhibits tremendous biodiversity, including one of the largest concentrations of imperiled amphibians (Medeiros 2000). However, the watershed containing the Hickman vernal pools has been breached by hundreds of acres of orchards that have been planted upstream. While most of the watershed has been managed over the years in a trust of the Fred Robison family, the integrity of the vernal pool ecosystem is threatened by agricultural development and potential biocide pollution (Medeiros 2000).

The Stanislaus Unit is located in the southeast corner of Stanislaus County and the northeast corner of Merced County. It lies between the Tuolumne River and the Merced River. The Mariposa County line is located east of the unit. Turlock Lake and Dawson Lake are adjacent to the northern boundary. County Road J9 and the High Line Canal are west of the unit. This unit coincides with vernal pool tadpole shrimp Unit 16. It includes succulent owl's-clover Unit 3, hairy Orcutt grass Unit 5, Colusa grass Unit 6, and Hoover's spurge Unit 5. Other sensitive vernal pool species found within this unit include western spadefoot toad, dwarf downingia, California linderiella, California tiger

salamander, and Hartweg's golden sunburst (*Pseudobahia bahiiflora*).

Unit 22, Merced Unit, Merced and Mariposa Counties (44,106 ha (108,984 ac))

We propose this unit as critical habitat for vernal pool fairy shrimp because it encompasses the largest block of pristine, high density vernal pool grasslands supporting the species remaining in California (Holland 1998, Vollmar 1999, CNDDDB 2001). These habitats provide the primary constituent elements essential for vernal pool fairy shrimp. There are more documented occurrences of vernal pool fairy shrimp in this unit than any other area throughout the species range (CNDDDB 2001). Almost 15 percent of all remaining vernal pool habitats in the Central Valley are located within this unit (Holland 1998).

The Merced Unit is located midway in a chain of vernal pool complexes that straddles the valley floor and the foothills of the southern Sierra Nevada. This unit helps to maintain connectivity between vernal pool fairy shrimp habitats on the valley floor and habitats to the north and south of the Merced Unit. Genetic analyses of vernal pool tadpole shrimp revealed that occurrences in this unit were genetically different from other sampled occurrences in California, and that this area had likely been isolated from other vernal pool habitats for a significant period of time (King 1996). Given that vernal pool fairy shrimp and vernal pool tadpole shrimp are dispersed in similar ways, it is reasonable to assume that vernal pool fairy shrimp occurrences in this area are also isolated from other occurrences throughout its range.

This unit contains habitat for three listed branchiopods, six listed plants, and a suite of sensitive species. Forty percent of vernal pool habitats in the Southern Sierra Foothill vernal pool region are found within this unit. The integrity of the vernal pool complexes in eastern Merced is seriously threatened by irrigated agriculture, upland housing development, and the proposed UC Merced Campus and associated development. Construction of facilities to educate and serve twenty-five thousand UC students as well as faculty, staff, and their families within the vernal pool complexes in eastern Merced County could have a major impact on vernal pool fairy shrimp occurrences. However, the recent draft biological opinion for the UC Merced campus and community developed environmental parameters which should reduce impacts to vernal pool habitats. Indirect and cumulative impacts of the

proposed 1,673 ha (4,133 ac) campus and associated community may be minimized with the creation of a 2,036 ha (5,030 ac) preserve intended to protect sensitive vernal pool habitat, to be purchased with money donated by the Packard Foundation.

A majority of vernal pool habitat in the Merced Unit is in Merced County. The eastern edge of the unit overlaps into Mariposa County. Bear Creek flows along the southern boundary of the unit, crossing through it in several locations. The City of Merced is south of the unit, Bear Reservoir is southeast of the unit and the Castle Airport is located outside of the southwest boundary. The northern boundary parallels the Merced River. The entire unit is located east of Highway 99. Land ownership within the unit includes approximately 3 ha (8 ac) of BLM, and 10 ha (26 ac) of California State Parks. TNC has a total of 4,513 ha (11,283 ac) of conservation easements within this unit. The Merced Unit coincides with vernal pool tadpole shrimp Unit 13, succulent owl's-clover Unit 4, San Joaquin Valley Orcutt grass Unit 2, Colusa grass Unit 7, and Conservancy fairy shrimp Unit 6. Other sensitive vernal pool species found within this unit include the California tiger salamander, shining navarretia (*Navarretia nigelliformis* ssp *radians*), dwarf downingia, Bogg's Lake hedge-hyssop, western spadefoot toad, and California linderiella.

Unit 23, Grassland Ecological Unit, Merced County (55,910 ha (138,153 ac))

We propose this unit as critical based upon the presence of vernal pools and vernal pool fairy shrimp. This unit supports numerous occurrences of vernal pool fairy shrimp within a diversity of vernal pools supported by a number of different soil types, including Delhi-Dello-Himar, Solano-Caypay-Willows, Rossi-Waukena, and Lewis-Landlow soils (CNDDDB 2001, USDA 2001). This diversity of soils creates a wide range of vernal pool shapes, sizes, and physical characteristics which provide the essential timing, frequency, and length of inundation necessary for the conservation of the species. This unit contains numerous large, intact vernal pool grasslands, and is one of only two areas on the floor of the Central Valley that provide expansive areas of vernal pool complexes within which vernal pool fairy shrimp can hatch, mature, and reproduce. These areas will likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool fairy shrimp. This unit also provides habitat for migratory waterfowl that aid in the dispersal of

vernal pool fairy shrimp and other vernal pool crustacean cysts. This is the only area where all four vernal pool crustaceans addressed in this proposed rule are known to co-occur.

The Grasslands Unit includes Kesterson, San Luis, and Merced National Wildlife Refuges, as well as several Federal and State conservation easement areas, lands owned by the California State Parks and Wildlife Areas, and private lands. Land ownership within the unit includes the Service (13,943 ha (34,452 ac)), CDFG lands (1703 ha (4,257 ac)), California State Parks (1,357 ha (3,392 ac)), CDFG administered lands (1,052 ha (2,631 ac)) and WRP conservation easements (54 ha (134 ac)). All other lands within this unit are privately owned. Together, these areas are known as the Grasslands Ecological Area. This area supports diverse wetland habitats including seasonally flooded marshlands, semi-permanent marsh, riparian habitat, wet meadows, vernal pools, native uplands, pastures, and native grasslands. Wetlands within this area, including seasonal marsh and open water habitats, constitute 30 percent of the remaining wetlands in California's Central Valley and are extremely important to Pacific Flyway waterfowl populations. Over 60 million duck use-days and 3 million goose use-days occur annually in this unit. This habitat also supports a diversity of other migratory birds, including raptors, shorebirds, wading birds, and other wildlife species.

This unit contains over 50 percent of the remaining vernal pool habitats within the San Joaquin Valley identified by Holland (1998). This area is an important portion of the geographic distribution of vernal pool fairy shrimp within the San Joaquin Valley. Threats to vernal pool fairy shrimp within this unit include conversion to agriculture, changes in hydrology, invasion by aggressive plants, and certain wetland management practices.

The unit lies north of the City of Los Banos, southwest of the City of Merced, and is bisected by the San Joaquin River. This unit also represents Unit 24 for tadpole shrimp. The western half of this unit also represents Unit 2 for longhorn fairy shrimp and the eastern half represents Unit 8 for Colusa grass, Unit 8 for Hoover's spurge, and Unit 7 for Conservancy fairy shrimp. In addition to the species mentioned above, other sensitive vernal pool species occur within the unit including Hispid's bird beak, Sanford's arrowhead, heartscale, brittlescale, vernal pool smallscale, delta button celery, alkali milk-vetch, California tiger

salamander, western spadefoot toad, and California linderiella.

Unit 24A and B, Madera Unit, Madera and Fresno Counties (17,232 ha (42,579 ac))

The Madera Unit is proposed as critical habitat for vernal pool fairy shrimp because it contains occurrences of the species living within hardpan vernal pool complexes composed of numerous small pools and swales on mima mound topography (Holland 1998, Keeler-Wolf *et al.* 1998, CNDDDB 2001). These vernal pools occur on alluvial fans and terraces and provide the necessary timing and duration of inundation essential to the conservation of vernal pool fairy shrimp. South of this unit in Fresno County these pools become less common as the soils that support them are less widespread (Keeler-Wolf *et al.* 1998).

Located in western Madera County, this unit is located between the Fresno River and San Joaquin River. Land ownership within this unit includes 0.4 ha (1 ac) of CDFG lands. All other land within this unit is privately owned. All vernal pools in this unit are located east of Highway 99 and the Atchison, Topeka, and Santa Fe Railroad, extending east toward the low elevation foothill region of the Sierra Nevada. State Route 145 bisects the unit. The Madera Unit encompasses San Joaquin Valley Orcutt grass Unit 5a, hairy Orcutt grass Unit 7, and succulent owl's-clover Unit 7a. Other sensitive vernal pool species found within this unit include California linderiella, California tiger salamander, and western spadefoot toad.

This unit consists of two subunits. Subunit A contains vernal pool habitats south of Millerton Lake. The western boundary of this unit is bordered by the San Joaquin River. Gordon Road cuts through the southernmost tip of the unit. Owens Mountain and Table Mountain Rancheria are located east of the Unit. The Friant Kern Canal crosses through the unit in a southeasterly direction. Subunit B is located mostly west of State Route 41 along Little Dry Creek and Cottonwood Creek.

Unit 25, Kennedy Table Unit, Madera County (994 ha (2,456 ac))

We propose this unit as critical habitat because it contains vernal pools and vernal pool fairy shrimp (Holland 1998, CNDDDB 2001). Vernal pool fairy shrimp within this unit live within rare Northern Basalt Flow vernal pool complexes that provide the necessary topographic and edaphic conditions essential to the conservation of the species. Northern Basalt Flow vernal

pools within this unit are perched on narrow, sinuous basalt mesas above the surrounding low-lying terrain, and typically contain small, irregularly clustered pools with "flashy hydrology" (pools fill and dry quickly) (Keeler-Wolf *et al.* 1998). These pool types provide the necessary timing and length of inundation for vernal pool fairy shrimp to hatch, mature, and reproduce, but do not stay inundated long enough to allow the invasion of aquatic species (CNDDDB 2001). The Kennedy Table Unit is over 50 km (31 mi) from the next closest unit to the south and over 65 km (40 mi) from the nearest unit to the north. Such peripheral populations may have genetic characteristics essential to overall long-term conservation of the species (*i.e.*, they may be genetically different than more central populations) (Fugate 1998).

This unit is located north and west of the Fresno County line on Kennedy Table in Madera County. It is northeast of Millerton Lake, and the San Joaquin River flows east and south of it. Land ownership within this unit includes 65 ha (161 ac) of BLM lands. All other land within this unit is privately owned. This unit coincides with vernal pool tadpole shrimp Unit 19, succulent owl's-clover Unit 8A and B, San Joaquin Valley Orcutt grass units 5B and 6A, and hairy Orcutt grass Unit 10. In addition to these federally listed species other sensitive vernal pool species found within this unit include California linderiella, California tiger salamander, and the western spadefoot toad. In addition to these, the federally endangered Hartwig's golden sunburst also occurs within this unit.

Unit 26A, B, and C, Cross Creek Unit, Tulare and Kings Counties (3,193 ha (7,891 ac))

This unit is proposed as critical for vernal pool fairy shrimp because it contains vernal pools that support occurrences of the species (Holland 1998, CNDDDB 2001). Vernal pool fairy shrimp in this area occur in vernal pools formed on Lewis and Youd soils (USDA 2001). This area represents the southern extent of vernal pool fairy shrimp range along the eastern margin of the Central Valley, and is the largest contiguous vernal pool habitat in this region (Holland 1998, CNDDDB 2001).

This unit contains the CDFG's Sequoia Field and Stone Corral Ecological Reserves in Tulare County. These reserves are one of the few vernal pool conservation areas in the eastern portion of the San Joaquin Valley, and they have been the focus of several monitoring and management efforts. Land ownership within this unit

includes 348 ha (861 ac) of CDFG lands. All other land within this unit is privately owned. TNC, Tulare County, and the Sierra Los Tulares Land Trust have identified this area as one of the best remaining examples of vernal pool habitats in the region. Much of the vernal pool habitat within Tulare County has been severely degraded and converted. The conversion of habitat adjacent to this unit to urbanized areas, orchards, and other forms of irrigated agriculture continues to threaten the long-term viability of the vernal pools within this unit.

This unit is comprised of three subunits. Subunit A is located in northwest Tulare County and contains vernal pool habitat located west of Seville. The Friant Kern Canal is north of the unit and the Cottonwood Creek Levee is south of the unit. Road 140 runs west of the unit. Subunit B contains vernal pools in northeastern Kings County and northwestern Tulare County. Highway 99 and St. Johns River cut through the unit in a southeasterly direction. Cross Creek and Cottonwood Creek cut through the unit in a southwesterly direction. Road 112 is east of the unit and the Lakeland Canal is west of the unit. The towns of Goshen and Visalia are south of the unit and Traver and London are north of the unit. Subunit C is known as Sequoia Field Unit and is located in northwestern Tulare County. This unit is south of County Road J36. Road 112 crosses through the western edge of the unit, Avenue 352 crosses through the southern edge, and State Route 63 crosses through the eastern edge. The Cross Creek Unit coincides with vernal pool tadpole shrimp Unit 20 and contains portions of San Joaquin Valley Orcutt grass Unit 8 and Hoover's spurge Unit 9. Other sensitive vernal pool species found within this unit include the California tiger salamander, spiny-sepaled button-celery, and western spadefoot toad.

Unit 27A and B, Pixley Unit, Tulare County (7,842 ha) 19,377 ac)

This unit is proposed for vernal pool fairy shrimp because it contains the largest contiguous area of habitat for the species in the southern portion of the San Joaquin Valley, and supports vernal pools that provide the necessary timing and length of inundation essential to the conservation of vernal pool fairy shrimp (Holland 1998, CNDDDB 2001). Vernal pool fairy shrimp in this area occur within Northern Claypan vernal pools that tend to be alkaline and larger than other vernal pool fairy shrimp habitats, such as those found on the eastern margin of the San Joaquin Valley.

This unit contains wintering areas for migratory waterfowl, shorebirds, marsh, and waterbirds in the southern San Joaquin Valley, and include natural valley grasslands and developed marsh habitats within the Pixley National Wildlife Refuge complex (2,742 ha (6,776 ac)). Other ownership within this unit include CDFG (490 ha (1,210 ac)) and TNC lands (1,309 ha (3,274 ac)). All other lands within this unit are privately owned. These habitats are important for migratory waterfowl that aid in the dispersal of vernal pool fairy shrimp and other vernal pool crustacean cysts. This unit represents one of only three areas designated for vernal pool fairy shrimp in the San Joaquin Valley vernal pool region described by Keeler-Wolf *et al.* (1998). The refuge also provides habitat for the endangered San Joaquin kit fox and the blunt-nosed leopard lizard. Vernal pool fairy shrimp within this unit are threatened by agricultural development, oil and natural gas exploration and development, subdivision of ranches and land grants, urban expansion, and conversion from grazing to other agricultural practices.

This unit consists of two subunits that lie south of the Cities of Hanford and Lemoore, north of the City of Wasco, and east of the City of the Tulare. In addition to vernal pool fairy shrimp, western spadefoot toad and California tiger salamander are present within this unit.

Unit 28, San Benito County Unit, San Benito and Monterey Counties (48,125 ha (118,915 ac))

The San Benito County unit is located in the southwestern portion of San Benito County and the eastern-most portion of Monterey County. This unit consists of a distinct collection of seasonally flooded wetlands west of the Great Central Valley, and overlaps a portion of the Central Coast vernal pool region that has been delineated by the CDFG (Keeler-Wolf *et al.* 1998). The proposed critical habitat unit contains a minimum of 13 vernal pool complexes that are 7 to 144 ha (17 to 356 ac) in size, and also includes a number of unmapped vernal pools or pool complexes that are less than 4 ha (10 ac) in size. Focused surveys for vernal pool fairy shrimp have not been conducted within the proposed critical habitat unit, and it is therefore likely that this species is present in many, if not most, of the vernal pool complexes that have not been censused due to habitat similarity to where the occurrences have been documented. This conclusion is supported by the fact that two-thirds of vernal pool fairy shrimp occurrences

that have been documented within the critical habitat unit were not located within large vernal pool complexes, but were instead found in smaller, unmapped vernal pools. Land ownership within this unit includes BLM (1,581 ha (3,906 ac)) and State Land Commission (2 ha (5 ac)). All other lands within this unit are privately owned. The critical habitat unit perimeter is defined by the presence of low slope areas within watershed boundaries that are known to contain vernal pool fairy shrimp occurrences and vernal pool habitats. Conservation of vernal pools in the San Benito County unit is necessary to maintain and restore occurrences of vernal pool fairy shrimp that are disjunct from other listed fairy shrimp localities in the Great Central Valley.

Unit 29A, B, and C, Central Coastal Ranges Unit, Monterey and San Luis Obispo Counties (41,054 ha (101,444 ac))

The Central Coastal Ranges Unit includes three subunits that occur in Monterey and San Luis Obispo counties. The three subunits include areas at or adjacent to Fort Hunter Liggett, Camp Roberts, and the city of Paso Robles. The vast majority of the Fort Hunter Liggett subunit overlaps the military reservation, and also includes a small portion of privately owned land east of the military base. Land ownership within this unit includes DOD (20,585 ha (50,866 ac)) and BLM (1 ha (2 ac)). All other lands within this unit are privately owned. Intensive surveys on Fort Hunter Liggett have documented the occurrence of listed fairy shrimp in a minimum of 65 different pools within the base boundary (Fort Hunter Liggett 2000). Several additional pools in restricted access areas on the base have not been surveyed, and some of these are also likely to possess listed fairy shrimp. The majority of the Camp Roberts subunit includes land within that military base boundary, and includes a limited amount of privately owned land north and southeast of the military base. Surveys on Camp Roberts have documented the presence of vernal pool fairy shrimp at 61 sites (Jones and Stokes 1997a). One hundred and nineteen additional sites were also found to possess unidentified juvenile fairy shrimp, and the inability to document the presence of other fairy shrimp taxa on the base suggests that these pools are therefore likely to contain listed species. The Paso Robles subunit consists of a polygon that is 3.2 to 24 km (2 to 15 mi) northeast of the city boundary. A limited number of surveys for fairy shrimp within the

subunit have been conducted by California Department of Transportation staff along State Highway 46. These surveys have documented the occurrence of vernal pool fairy shrimp within the subunit (Mitch Dallas, California Department of Transportation, pers. comm.). The Paso Robles subunit possesses several large vernal pool complexes that are 42,314 ha (105,776 ac) in size. The discovery of vernal pool fairy shrimp in the area 6 km (4 mi) east of the city suggests that the species is likely to be widely dispersed in remnant vernal pools or complexes that still exist within the critical habitat subunit. The Fort Hunter Liggett subunit occurs within the Central Coast vernal pool region that has been delineated by the CDFG (Keeler-Wolf *et al.* 1998), and the Camp Roberts and Paso Robles subunits occur within the Carrizo vernal pool region. The subunit perimeters are defined by the presence of low slope areas within watershed boundaries that are known to contain vernal pool fairy shrimp and vernal pool habitats. Conservation of vernal pools in the region is necessary to stabilize and recover remnant populations of vernal pool fairy shrimp in the central coastal county area of southern California.

Unit 30, Carrizo Plain Unit, San Luis Obispo County (10,466 ha (25,862 ac))

This unit is proposed as critical for vernal pool fairy shrimp because it contains vernal pool habitats identified by Holland (2002) and that support occurrences of vernal pool fairy shrimp (CNDDDB 2001). Vernal pool fairy shrimp found in the Carrizo Plain live within Northern Claypan vernal pools (Sawyer and Keeler-Wolf 1995) which occur in numerous shallow alkaline depressions within a Valley Saltbush Scrub matrix. These pools provide all of the primary constituent elements essential for the conservation of vernal pool fairy shrimp, as well as the edaphic and geologic features necessary to maintain the hydrology of the vernal pool complexes.

Many vernal pools in the region are adjacent to the 1,214 ha (3,000 ac) Soda Lake, the largest alkali wetland in central and southern California, which provides a winter haven for thousands of migratory birds. Vernal pool fairy shrimp in the Carrizo Plain Unit are located 235 km (146 mi) southeast of the closest known occurrences at Kesterson National Wildlife Refuge in Merced County. Such isolated and peripheral populations may have genetic characteristics that are different than more central populations, and may be important for conservation (Lesica and

Allendorf 1995, Fugate 1998). The Carrizo Plain Unit is the only area where vernal pool fairy shrimp are known from saline salt brush scrub vernal pool habitats.

The Carrizo Plain contains examples of native bunch grass, needle grass, and blue grass grasslands, as well as populations of federally listed San Joaquin kit fox, blunt nosed leopard lizard, giant kangaroo rat, California jewel flower, Lost Hills salt brush, Kern mallow and San Joaquin woolly threads. Most of the habitat within this unit is part of the Carrizo Plain National Monument, which is administered by the BLM, TNC, and the CDFG. The BLM lands within the unit total approximately 6,220 ha (15,549 ac) and the CDFG lands total approximately 93 ha (233 ac). Other vernal pool habitats in the unit are located on private land.

This unit includes vernal pool habitat in the interior basin of the Carrizo Plain. It encompasses California Valley and Soda Lake. State Highway 58 is located north of the unit. Most of the habitat is east of Soda Lake Road, however, Soda Lake Road crosses through the western edge of the unit in several areas. To the east, the unit is bordered by the San Andreas Rift Zone. This unit coincides with longhorn fairy shrimp Unit 3.

Unit 31, Lake Cachuma Area, Santa Barbara County (8,399 ha (20,754 ac))

The Lake Cachuma critical habitat unit is located within a 16 km (10 mi) radius of the northwestern portion of Lake Cachuma in central Santa Barbara County. The unit boundary has been delineated to include hydrologic units that contain vernal pool fairy shrimp and vernal pool habitats. Vernal pool complexes within the unit vary in size from 16 to 81 ha (40 to 199 ac). Surveys for fairy shrimp species have rarely been conducted within the unit. A portion of the unit overlaps the Santa Barbara vernal pool region that has been delineated by the CDFG (Keeler-Wolf *et al.* 1998). The Lake Cachuma unit is essential for the conservation of vernal pool fairy shrimp because it contains seasonally flooded aquatic environments that contain markedly disjunct species occurrences. Landownership within this unit includes U.S. Forest Service (USFS) (2,199 ha (5,434 ac)) and BLM (37 ha (92 ac)). Other land within this unit is privately owned.

Unit 32, Ventura County Unit, Ventura County (18,831 ha (46,531 ac))

The Ventura County unit is located in the north-central portion of Ventura County. All the lands within this unit are owned by the USFS. Vernal pool

fairy shrimp and Conservancy fairy shrimp are known to co-occur at relatively high elevation (~1700 m (5500 ft)) forested sites within the Los Padres National Forest. Almost all of the known localities that possess these two species within the state of California exist at much lower elevations in grassland habitats. The critical habitat perimeter consists of an area that is known to contain vernal pool and Conservancy fairy shrimp occurrences and isolated pools that provide habitat for the two species. Fairy shrimp surveys have rarely been conducted in the proposed critical habitat unit. The Ventura County unit is essential for the conservation of vernal pool fairy shrimp because it contains ephemeral aquatic environments that are rarely associated with fairy shrimp, and the occupied sites represent markedly disjunct occurrences for the species.

Unit 33A, B, and C San Jacinto-Hemet Unit, Riverside County (2,319 ha (5,730 ac)).

This unit lies in the southern portion of the San Jacinto Valley and contains two primary subunits (San Jacinto and Hemet), the latter of which is itself divided into two smaller subunits (33B and 33C). Unit 33 consists of the remnant alkali playa associated with the San Jacinto River (subunit A) and the upper Salt Creek drainage (subunits B and C). Large portions of the alkali willow soils associated with these watercourses have been historically altered by drainage projects and agriculture resulting in the degradation or destruction of vernal pool habitat. The unit consists of areas where vernal pool fairy shrimp remain extant and/or where essential hydrology and alkali soils are intact supporting vernal pool and alkali playa habitat. All the lands within this unit are privately owned.

The San Jacinto primary subunit (subunit 33A) consists of lands along the San Jacinto River floodplain from the Ramona Expressway westward past Interstate 215 to the upper reaches of the northern portion of Railroad Canyon Reservoir. The lands delimited by this subunit represent the largest remaining contiguous alkali playa/vernal pool habitat within the historic range of vernal pool fairy shrimp in southern California. The subunit contains multiple extant vernal pools and complexes scattered along the river floodplain with intact water circulation processes and alkaline soil substrates preferred by vernal pool fairy shrimp.

A presence/absence survey for federally listed fairy shrimp was conducted in a portion of the pools in this subunit in the spring of 2000. No

listed fairy shrimp were detected. However, not all vernal pool basins filled in the spring of 2000, and of those that did, not all retained water throughout the sample period. Additionally, no survey for fairy shrimp cysts (dry season survey) has been conducted. Therefore, the survey effort is inconclusive for the presence of listed fairy shrimp species. However, the common versatile fairy shrimp (*Branchinecta lindahli*) was detected in these pools (Bomkamp 2000). Further, the threatened spreading navarretia (*Navarretia fossalis*), the threatened thread-leaved brodiaea (*Brodiaea filifolia*), and the endangered San Jacinto Valley crowscale (*Atriplex coronatum* var. *notatior*) have also been documented within this subunit. These species are all associated with vernal pool and alkali playa habitats.

Even though the presence of vernal pool fairy shrimp in the San Jacinto River floodplain has not been established, the vernal pool alkali playa habitat of subunit 33A is considered to be essential for the conservation of vernal pool fairy shrimp in southern California. As previously indicated, these pools contain the largest remaining contiguous alkali playa/vernal pool habitat within the historic range of vernal pool fairy shrimp in southern California, as well as appropriate water circulation patterns, alkali soils, and relatively close proximity to the occupied Hemet primary subunit.

The Hemet primary subunit (subunits 33B and 33C) include the west Hemet vernal pool complex along Florida Avenue (subunit 33B), as well as a small area east of Warren Road and north of Tres Cerritos (subunit 33C). Vernal pool fairy shrimp have been documented in the southwestern portion of the vernal pool complex. The remainder of this proposed subunit contains lands within the watershed of the occupied pool complex and other vernal pools in the basin. Lands within the watershed have been included to maintain the integrity of the surface flow and water quality to the pool complexes and playa overall.

In addition to vernal pool fairy shrimp, several federally listed plants including the threatened spreading navarretia, the threatened thread-leaved brodiaea, the endangered California Orcutt grass (*Orcuttia californica*), and the endangered San Jacinto Valley crowscale have also been documented within this subunit. These species are all associated with vernal pool and alkali playa habitats.

Unit 33 includes areas where vernal pool fairy shrimp are extant and recovery value for this species is high

because of appropriate hydrology, soils and alkali vernal pool habitat. The alkali soils and their associated hydrology in the unit are essential to the conservation of vernal pool fairy shrimp in southern California (Service 1998).

Unit 34, Santa Rosa Plateau Unit, Riverside County (1,718 ha (4,246 ac))

The Santa Rosa Plateau critical habitat unit is on a large mesa made of basaltic and granitic substrates within the Santa Rosa Plateau Ecological Reserve. The unit contains one of the largest remaining vernal pool complexes in southern Riverside County and includes a series of large and small pools in which several sensitive or federally listed fairy shrimp have been documented. These include the vernal pool fairy shrimp (Angelos 1998), the endangered Riverside fairy shrimp (*Streptocephalus woottoni*) (Service 2001), and the Santa Rosa fairy shrimp (*Linderiella santarosae*) (Angelos 1998). Additionally, the federally endangered California Orcutt grass is documented from the pool complex (Service 1998). This unit was designated as critical habitat for the Riverside fairy shrimp on May 30, 2001 (66 FR 29384). This vernal pool complex represents the southwestern limit of occupied vernal pool fairy shrimp habitat. It is also a unique habitat for vernal pool fairy shrimp, therefore, the fairy shrimp in these pools may have genetic characteristics important to the overall long-term conservation of the species (*i.e.*, they may be genetically different from more centrally located populations) (Lesica and Allendorf 1995). Conservation of this vernal pool basin and its associated watershed is essential to the conservation of the vernal pool fairy shrimp, and the Riverside fairy shrimp in southern California, as indicated in the Vernal Pools of Southern California Recovery Plan (Service 1998). Property ownership and protection within this unit includes CDFG (761 ha (1,880 ac)), TNC (77 ha (1,902 ac)), and TNC conservation easements (150 ha (375 ac)).

Unit 35, Skunk Hollow Unit, Riverside County (97 ha (239 ac))

The Skunk Hollow vernal pool complex consist of a single, large (approximately 14 ha (35 ac)) vernal pool and its essential associated watershed in western Riverside County. All the lands within this unit are privately owned. Several federally listed species have been documented from the Skunk Hollow vernal pool basin. These include the threatened vernal pool fairy shrimp (Simovich in Litt 2001), the endangered Riverside fairy shrimp

(Service 2001), the threatened spreading navarretia, and the endangered California Orcutt grass (Service 1998). The vernal pool complex and watershed is currently protected as part of a reserve established within an approved mitigation bank in the Rancho Bella Vista Habitat Conservation Plan (HCP) area and as part of the conservation measures contained in the Assessment District 161 Subregional HCP. While neither HCP include the vernal pool fairy shrimp as a covered species, both HCPs provide protection for the vernal pool complex and its associated watershed in perpetuity. Further, the HCPs address the endangered Riverside fairy shrimp as a covered species. Because we believed that the management and protections afforded the vernal pool complex and the Riverside fairy shrimp were adequate for the long-term conservation of this complex and this species, and it is in the long-term survival interest of the species to preserve the partnerships that we had developed with the local jurisdiction and project proponents in the development of the HCPs, we excluded the Skunk Hollow vernal pool complex from critical habitat for the Riverside fairy shrimp. We do not believe that this exclusion from critical habitat would result in the extinction of this Riverside fairy shrimp.

Even though the two HCPs do not have the vernal pool fairy shrimp listed as a covered species, we believe that the protections and management afforded the Skunk Hollow vernal pool complex and the other listed vernal pool species through the terms and conditions of those HCPs are adequate to ensure the long-term conservation of the vernal pool fairy shrimp as well. Therefore similar to the Riverside fairy shrimp, we believe that the benefits of the exclusion of the Skunk Hollow vernal pool complex from critical habitat for the vernal pool fairy shrimp outweighs the benefit of its inclusion. Additionally, we do not believe that this exclusion would result in the extinction of the vernal pool fairy shrimp.

Vernal Pool Tadpole Shrimp Criteria

In proposing critical habitat units for vernal pool tadpole shrimp we evaluated the life history and current distribution of the species, the primary constituent elements, and the threats to the species. This information allowed us to determine which areas are likely to contribute to the conservation of vernal pool tadpole shrimp and to delineate units so that threats to this species might be minimized.

CNDDDB (2001) estimates that 32 percent of the remaining occurrences of

this species are threatened by development and agricultural conversion. Other vernal pool tadpole shrimp occurrences are threatened by off road vehicle use, road construction and maintenance, mining, and landfill construction (CNDDDB 2001). Several occurrences are threatened by intentional discing and draining of their habitats (CNDDDB 2001). Vernal pool tadpole shrimp occurrences have been extirpated as a result of urban development, primarily in Sacramento and Tehama counties.

Numerous occurrences of vernal pool tadpole shrimp are threatened by altered hydrology. In some cases vernal pool tadpole shrimp habitat has been altered so that it contains water year round, allowing predators such as bullfrogs and fish to colonize the areas (CNDDDB 2001). In other cases artificial run off has resulted in the delivery of materials that destroy vernal pool water quality, including pesticides from vineyards and other irrigated agricultural lands, pesticides from golf courses, and sediment from surrounding developments (CNDDDB 2001). Several vernal pool tadpole shrimp occurrences are threatened by wetland management activities that are designed to transform their vernal pool habitats into permanent marshes for the benefit of other species (CNDDDB 2001). Several other occurrences are threatened by the construction of drainage ditches, which artificially drain vernal pool tadpole shrimp habitats (CNDDDB 2001).

Vernal Pool Tadpole Shrimp Unit Review

We conducted a regional review across the current range of vernal pool tadpole shrimp to evaluate and select areas that are essential to the conservation of the species and that may require special management actions. Important factors we considered were the presence of vernal pool tadpole shrimp and the presence of the primary constituent elements essential to the conservation of the species. We identified areas that support vernal pool tadpole shrimp occurrences identified by CNDDDB (2002) within large vernal pool complexes mapped by Holland (1998) and other local sources throughout the range of the species. We have identified the areas necessary to maintain vernal pool tadpole shrimp range and distribution and to include some of the different kinds of habitats in which the species is known to occur. A specific description of each area is outlined below.

Unit 1, Stillwater Plains Unit, Shasta County (1,849 ha (4,569 ac))

This unit is proposed as critical habitat for vernal pool tadpole shrimp because it contains the species (CNDDDB 2002) within vernal pools mapped by Holland (1998) which are found on old alluvial terraces above the Sacramento River, often on Redding and Corning soil complexes (Shasta County 2001). Generally these pools range in size, from small (10 m²) (30 sq ft.) to several ha (ac) in size at the Stillwater Plains area. These vernal pools provide feeding and sheltering habitat for the species and remain inundated for sufficient lengths of time to allow vernal pool fairy shrimp to hatch, mature, and reproduce.

This unit represents critical habitat for vernal pool fairy shrimp because it contains all of the primary constituent elements for the species, and supports systems of hydrologically interconnected pools and swales within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustaceans to complete their life cycles.

The vernal pool tadpole shrimp within this unit were found to be genetically different from other populations, particularly those in the foothills of the Sierra Nevada (King 1996). This unit also comprises the northern extent of the species range in California, and such isolated populations may be essential to the overall long-term conservation of the species (Fugate 1992, 1998, Lesica and Allendorf 1995). The boundaries of the unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where vernal pool fairy shrimp occur, and which maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool tadpole shrimp hatching, growth, reproduction, and dispersal.

This unit includes the Stillwater Plains Conservation Bank. The Stillwater Plains Conservation Bank was established specifically for the conservation of vernal pool tadpole shrimp, and has been used as mitigation for the destruction of other vernal pool tadpole shrimp habitats throughout the northeastern Sacramento Valley area. Most of the land included within this unit is privately owned, but 52 ha (130

ac) of that is protected by WRP easements or agreements. The BLM owns 17 ha (42 ac). Urban expansion from the Redding Area, and conversion from grazing to other agricultural practices continue to threaten vernal pool tadpole shrimp occurrences throughout this unit.

This unit is located in the area east of the Redding Municipal Airport between Airport Road to the west and Deschutes Road to the east. The unit extends to Dersch Road in the south and towards Lassen Park Highway in the north. This unit comprises a portion of the Stillwater Plains. This unit overlaps slender Orcutt grass Unit 2B and vernal pool fairy shrimp unit 5. Other sensitive species occurring within this unit include Red Bluff dwarf rush (*Juncus leiospermus* var. *leiospermus*), California linderiella (*Linderiella occidentalis*), Henderson's bent grass (*Agrostis hendersonii*), and four angled spike rush (*Eleocharis quadrangulata*).

Unit 2, Dales Unit, Shasta and Tehama Counties (20,446 ha (50,522 ac))

This unit is proposed as critical habitat for vernal pool tadpole shrimp because it contains the species and vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths necessary for vernal pool tadpole to complete their life cycle (Holland 1998, CNDDDB 2001). This unit is one of the few areas where vernal pool tadpole shrimp are known to occur in Northern Mudflow vernal pools. Northern Mudflow vernal pools are generally small and tend to be inundated for relatively short periods of time (Keeler-Wolf *et al.* 1998).

The boundaries of the unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where vernal pool fairy shrimp occur, and which maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool tadpole shrimp hatching, growth, reproduction, and dispersal.

This unit contains some of the largest remaining vernal pool complexes supporting vernal pool tadpole shrimp in the northern portion of the species range, including the Dales Plains. These areas provide relatively undisturbed, hydrologically intact vernal pool habitats that will likely continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool tadpole shrimp. This unit also provides habitat for migratory waterfowl that aid in the dispersal of vernal pool tadpole shrimp and other vernal pool crustacean cysts.

Land ownership within this unit includes BLM (6,226 (15,383 ac)), CDFG (392 ha (981 ac)), State Land Commission (40 ha (100 ac)). The CDFG administers approximately 17 ha (42 ac) and the TNC has conservation easements on 6,230 (15,575 ac) within this unit. The remaining lands included within this unit are privately owned. The CDFG has protected some vernal pool areas at Dales Lake Ecological Reserve. The importance of these vernal pool habitats has been recognized by a number of state, local, and Federal agencies, and they have been the focus of several conservation planning efforts. Portions of the CDFG Battle Creek Wildlife Area are found within this unit but the amount of vernal pool habitat currently protected within the unit is very small. Vernal pool habitats within this unit are fragmented and threatened by urban expansion, subdivision of ranches and land grants, and conversion from grazing to other agricultural practices.

This unit is located from Battle Creek on the Shasta/Tehama County line south of Balls Ferry to Paynes Creek near Dales. The vernal pool habitats west of Inskip Hill are included in this unit, as well as the area west of the Sacramento River known as Table Mountain and Table Mountain Lake. This unit coincides with Unit 3 for slender Orcutt grass. Other vernal pool species occurring within this unit include Bogg's Lake hedge-hyssop, Red Bluff dwarf rush, legener, California linderiella, Ahart's paronychia, Henderson's bent grass, and Sanford's arrowhead.

Unit 3, Vina Plains Unit, Tehama and Butte Counties (23,883 ha (59,015 ac))

This unit is proposed as critical habitat because it contains occurrences of vernal pool tadpole shrimp (CNDDDB 2001) living within large vernal pool grassland areas that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and within a matrix of surrounding uplands that together form hydrologically and ecologically functional units (EPA 1994, Holland 1998, Tehama County 1999). These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool tadpole shrimp hatching, growth and reproduction, and dispersal. This unit is one of the few areas where vernal pool tadpole shrimp are known to occur in Northern Basalt Flow vernal pools. Northern Basalt Flow vernal pools are limited to ancient terraces and

hilltops that comprise some of the oldest geologic formations in California. This unit also provides habitat for migratory waterfowl that aid in the dispersal of vernal pool tadpole shrimp and other vernal pool crustacean cysts.

This unit contains the vernal pool grassland area known as Vina Plains, which is managed by TNC. The Vina Plains area has been the focus of a number of research projects, including long-term adaptive management and monitoring efforts evaluating the effects of grazing and fire on vernal pool plants, animals, and ecosystems (Griggs 2000). Much of the basic life history information known about vernal pool crustaceans was collected at Vina Plains (*e.g.*, Lanway 1974, Ahl 1991, Syrdahl 1993, Gallagher 1996).

The majority of the lands included within this unit are privately owned. This unit contains TNC's Vina Plains preserve as well as other TNC lands 2,264 ha (5,660 ac) and conservation easements 4,348 ha (10,870 ac). The unit also includes 57 ha (142 ac) of private lands protected by WRP easements or agreements. This unit is located in the northeastern portion of the Sacramento Valley from Deer Creek in Tehama County to Big Chico Creek north of Chico in Butte County. This unit is one of only two vernal pool tadpole shrimp units within the Northeastern Sacramento Valley vernal pool region identified by CDFG (Keeler Wolf *et al.* 1998). The unit extends south and east of the Sacramento River paralleling the low elevation foothill region of the Sierra Nevada. This unit coincides with Unit 7 for vernal pool fairy shrimp, and incorporates Unit 1 for Conservancy fairy shrimp, Units 4 for slender Orcutt grass, Unit 2 for Greene's tuctoria, Unit 1 for hairy Orcutt grass, Unit 1 for Hoover's spurge, and Units 1 and 2 for Butte County meadowfoam. Other vernal pool species occurring within this unit include Bogg's Lake hedge-hyssop, Red Bluff dwarf rush, Douglas' pogogyne, western spadefoot toad, legener, California linderiella, California tiger salamander, Ahart's paronychia, Henderson's bent grass, Sanford's arrowhead, and dwarf downingia.

Unit 4, Oroville Unit, Butte and Yuba Counties (15,975 ha (39,474 ac))

This unit is proposed as critical habitat for vernal pool tadpole shrimp because it contains occurrences of the species and vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths necessary for vernal pool tadpole shrimp to complete their life cycle (Holland 1998, CNDDDB 2001, Silveira

2000). This unit contains some of the few areas where vernal pool tadpole shrimp are found in Northern Volcanic Mudflow vernal pools, including vernal pools found on the Tuscan and Lovejoy Basalt geologic formations. Vernal pool tadpole shrimp also occur within Northern Hardpan vernal pools in this unit, including pools formed on the Riverbank and Modesto geologic formations. King (1996) found that vernal pool tadpole shrimp at this site were genetically distinct from vernal pool tadpole shrimp at other locations.

The majority of the lands included within this unit are privately owned. Ownership and protected lands within the unit includes BLM (48 ha (119 ac)), USFS (78 ha (194 ac)), WRP easements (14 ha (35 ac)), and CDFG administered lands (69 ha (173 ac)). The CDFG has some vernal pool areas protected at the Oroville Wildlife Area, and some vernal pool habitats are protected within the City of Chico. However, the amount of vernal pool habitat currently protected within the unit is very small. Vernal pools in this unit are highly threatened due to their location on the lower elevation slopes adjacent to agricultural and urban development. Urban expansion, particularly in the vicinity of Chico, is the greatest threat to existing vernal pool habitats throughout this unit.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where vernal pool tadpole shrimp occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool tadpole shrimp to hatch, feed, and reproduce.

This unit occupies the northeastern portion of the Sacramento Valley from near Chico south to the Yuba River in Yuba County. This area represents one of only two vernal pool tadpole shrimp units within the Northeastern Sacramento Valley vernal pool region identified by CDFG (Keeler Wolf *et al.* 1998). The unit extends southeast of the Sacramento River paralleling the low elevation foothill region of the Sierra Nevada. This unit incorporates portions of Unit 2 for Butte County meadow foam and fully incorporates Unit 9 for vernal pool fairy shrimp, Units 3 for Greene's tuctoria, Unit 2 for hairy Orcutt grass, Unit 2 for Hoover's spurge, and Unit 4 for Butte County meadowfoam. Other vernal pool species occurring within this unit include Bogg's Lake hedge-hyssop, Red Bluff dwarf rush, Douglas' pogogyne, western spadefoot toad, legenera, California linderiella,

California tiger salamander, Ahart's paronychia, Henderson's bent grass, Sanford's arrowhead, and dwarf downingia.

Unit 5, Sacramento National Wildlife Refuge Unit, Glenn and Colusa Counties (5,718 ha (14,129 ac))

This unit is proposed as critical for vernal pool tadpole shrimp because it contains the primary constituent elements necessary for the conservation of the species, and supports occurrences of the species (Holland 1998, Silveira 2000, CNDDDB 2001). Vernal pool tadpole shrimp within this unit live within Northern Claypan and Northern Hardpan vernal pools, as defined by Sawyer and Keeler-Wolf (1995). The edaphic features that support the formation of these vernal pools include the Modesto geologic formation and Willows and Riz soils series. These vernal pools occur on alkaline soils and typically form alkali playas which are larger and contain a more diverse species composition than the hardpan pools further south (Keeler-Wolf *et al.* 1998). They may resemble small alkali playas, and display white salt deposits following pool drying.

This unit is primarily located on the Sacramento National Wildlife Refuge (5,126 ha (12,816 ac)); however, additional private lands were included within this unit. The refuge supports over 355 native plant taxa, including a number of rare alkaline species. The Sacramento National Wildlife Refuge contains the only remnants of the widespread Colusa Plains vegetation that once covered the entire Colusa Basin (Silveira 2000). Vernal pool habitats on the refuge are specifically managed for the conservation of listed species, and to promote habitat for migratory birds and waterfowl. These avian species likely aid in the dispersal of vernal pool tadpole shrimp and other vernal pool crustacean cysts. Vernal pool habitats within the area have become greatly fragmented and isolated from other habitats in the region due to agricultural and urban land conversion.

This unit occurs east of Interstate 5 to the Colusa Trough from Riz Road on the north and Delevan Road on the south. This unit coincides with Unit 1 for Colusa grass, Unit 6 for Greene's tuctoria, Unit 3 for hairy Orcutt grass, Unit 3 for Hoover's spurge, and Unit 2 for Conservancy fairy shrimp. Other important vernal pool and associated upland species found in the unit include pappose spikeweed, Fremont's goldfields, alkali goldfields, Scribe's popcorn flower, Hoover's downingia, folded downingia, Heckard's peppergrass, heartscale, brittlescale, San

Joaquin spearscale, Ferris' milk-vetch, spike-primrose, sessile mousetail, and palmate-bracted bird's beak.

Unit 6, Dolan Unit, Glenn and Colusa Counties (526 ha (1,299 ac))

This unit is proposed as critical for vernal pool tadpole shrimp because it contains the primary constituent elements necessary for the conservation of the species and supports occurrences of the species (Holland 1998, Silveira 2000, CNDDDB 2001). Vernal pool tadpole shrimp within this unit live within Northern Claypan vernal pools, as defined by Sawyer and Keeler-Wolf (1995). These vernal pools occur on alkaline soils and typically form alkali playas which are larger and contain a more diverse species composition than the hardpan pools further south (Keeler-Wolf *et al.* 1998). They may display white salt deposits following pool drying.

This unit is primarily located on the Dolan Ranch Conservation bank. This area supports a number of rare alkaline species, and contains remnants of the widespread Colusa Plains vegetation that once covered the entire Colusa Basin (Silveira 2000). Vernal pool habitats on Dolan Ranch are specifically managed for the conservation of listed species. Vernal pool habitats within the area have become greatly fragmented and isolated from other habitats in the region due to urban and agricultural land conversions. This unit occurs east of Interstate 5 and the Sacramento River, south of the City of Colusa, and west of the Colusa National Wildlife Refuge. All the lands within this unit are privately owned.

Unit 7, Beale Unit, Yuba and Placer Counties (2,853 ha (7,049 ac))

The Beale Unit is proposed as essential because it contains vernal pool tadpole shrimp occurrences within large vernal pool complexes that maintain the primary constituent elements essential for the conservation of the species (Holland 1998, CNDDDB 2001, Jones and Stokes 2002). Vernal pool tadpole shrimp within the Beale Unit live within large, relatively undisturbed vernal pool grassland habitats and a diversity of vernal pool habitat types. Beale Air Force Base contains 8,000 ha (19,800 ac) of vernal pool grasslands occurring on four major geologic formations: the Modesto Formation; the Riverbank Formation; the Laguna Formation; and the Mehrten Formation. Different geologic formations provide a diversity of habitats for vernal pool tadpole shrimp primarily through their effects on pool size and depth (Platenkamp 1998, Helm 1998). King

(1996) found that vernal pool tadpole shrimp within this unit were genetically different than occurrences in other portions of the species range, particularly those on the floor of the Central Valley. This unit is also designated to ensure that special management actions are taken to protect vernal pool habitats within the unit, including vernal pools created and restored throughout the unit which require long-term monitoring and management to ensure they continue to function as viable vernal pools. This unit is also important to maintain an opportunity for long distance dispersal of vernal pool tadpole shrimp cysts the nearest unit to the north is over 45 km (28 mi), and the nearest unit to the south is over 65 km (40 mi) away.

This unit contains DOD land (2,006 ha (5,016 ac) at Beale Air Force Base and 5 ha (13 ac) of BLM land. Other lands within this unit are located on private property. Remaining vernal pool habitats in this unit are threatened by agricultural conversion and by urban expansion. Vernal pool habitats in this area are also threatened by the expansion of Highway 70 and other transportation projects planned in the region.

The Beale Unit is located in southwestern Yuba County, south of the Yuba River and Yuba Goldfields, east of State Route 70, and north of the Bear River. The northwestern boundary of the unit borders the City of Marysville. Other rare vernal pool species found in this unit include vernal pool fairy shrimp, California linderiella, legenera, and dwarf downingia.

Unit 8, Mather Unit, Sacramento County (14,866 ha (36,733 ac))

This unit is proposed as critical habitat for vernal pool tadpole shrimp because it contains 15 percent of all known occurrences of the species (CNDDDB 2001) and vernal pools, swales, and other ephemeral wetlands and depressions mapped by Sacramento County (1999) and Holland (1998) of appropriate sizes and depths for vernal pool tadpole to complete their life cycle. These areas have been identified by the Sacramento Valley Open Space Conservancy, the CNPS, and TNC as excellent examples of vernal pool grasslands, supporting a rich and diverse community of vernal pool endemic plants and animals including vernal pool tadpole shrimp.

This unit supports vernal pool tadpole shrimp occurrences within a diversity of vernal pool habitats, including young or low terrace vernal pools on the Riverbank Formation, old or high terrace vernal pools on the

Laguna and Arroyo Seco geologic formations, and Northern Volcanic Mudflow vernal pools on the Mehrten and Valley Springs geologic formations. This unit is one of the few remaining areas where vernal pool tadpole shrimp occur on low terrace landforms on the eastern side of the Central Valley, and is important to maintain a diversity of habitats for the species. The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where vernal pool tadpole shrimp occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool tadpole shrimp to hatch, mature, and produce cysts.

This unit includes several conservation areas established by private entities, including the Sunrise Douglas Conservation Bank, the Arroyo Seco Conservation Bank, the Churchill Downs mitigation area, and Teichert mitigation areas. These areas were established specifically to contribute to the conservation of vernal pool tadpole shrimp, and represent compensation measures for the loss of thousands of acres of vernal pool tadpole shrimp habitat within Sacramento County. The continued functioning of these areas is essential to the conservation of vernal pool tadpole shrimp and other vernal pool species. This unit contains areas on private, county, and Federal land, including lands leased or owned by Sacramento County at Mather Regional Park, the former Mather Air Force Base, and at the county landfill.

Approximately 6 ha (16 ac) within this unit are BLM lands. Vernal pool habitats in this unit are threatened by urbanization from the expanding cities of Sacramento and Elk Grove. Conversion to intensive agriculture, particularly vineyards, is also a significant threat to vernal pool tadpole shrimp in this unit.

This unit includes areas to the east and south of the cities of Sacramento and Elk Grove in Sacramento County. The Cosumnes River forms part of the southwestern boundary of the unit and State Highway 16 lies just south of the southeastern boundary of the unit. The northern boundary is south of State Highway 50 and the American River. The eastern boundary of this unit lies just west of Latrobe Road. The unit is bisected by the Folsom South Canal. This unit also represents Unit 13 for vernal pool fairy shrimp, and contains Unit 6 for slender Orcutt grass and Unit 2 for the Sacramento Orcutt grass. In addition to vernal pool tadpole shrimp, this unit contains occurrences of many

other rare endemic vernal pool species including midvalley fairy shrimp, legenera, Bogg's Lake hedge-hyssop, Ahart's dwarf rush, western spadefoot toad, and California linderiella.

Unit 9, Cosumnes Unit, Sacramento, Amador, and San Joaquin Counties (29,063 ha (71,813 ac))

This unit is proposed as critical habitat for vernal pool tadpole shrimp because it contains the primary constituent elements necessary for the species survival, including over 30 percent of the remaining vernal pool habitats in the southern Sacramento Valley area (Holland 1998, Sacramento County 1999). These habitats provide the necessary timing, length, and frequency of inundation necessary for the survival of vernal pool tadpole shrimp, and this unit supports numerous occurrences of the species (CNDDDB 2001). Vernal pool tadpole shrimp within this unit occur on a diversity of pool types, including Northern Volcanic Mudflow vernal pools on the Mehrten and Valley Springs geologic formation overlain by Pardee and Pentz soils, vernal pools occurring on low terrace landforms associated with San Joaquin soils, and high terrace landforms associated with Redding and Corning soils (USDA 2001). King (1996) found that vernal pool tadpole shrimp within this unit were genetically most similar to occurrences in Stanislaus County and nearby in Sacramento County. However, vernal pool tadpole shrimp within this unit were generally different from occurrences at other sites sampled throughout the species range, and were very different from vernal pool tadpole shrimp sampled at sites found further to the west on the floor of the Central Valley, for example at Jepson Prairie or Kesterson National Wildlife Refuge (King 1996).

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where vernal pool tadpole shrimp occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool tadpole shrimp to complete their life cycles.

This unit contains state and federally owned land, as well as private properties. Portions of the Cosumnes River Preserve occur within this unit. The Cosumnes River Preserve is jointly owned and managed by a variety of state, local, and Federal agencies including the BLM, CDFG, Ducks Unlimited, Inc., California Department

of Water Resources, Sacramento Co. Dept. of Regional Parks, Open Space, and Recreation, TNC, and the Wildlife Conservation Board. The Cosumnes River Preserve encompasses and protects thousands of acres of wetlands and adjacent uplands, oak woodlands, and riparian forests along the Cosumnes River, the only undammed river on the west slope of the Sierra. The Cosumnes floodplain is a haven for tens of thousands of migratory waterfowl, songbirds, and raptors, for a large portion of the Central Valley's population of greater sandhill cranes, and for rare reptiles and mammals like the endangered giant garter snake and the river otter. These areas provide habitat for migratory waterfowl and other avian species that aid in the dispersal of vernal pool tadpole shrimp and other vernal pool crustacean cysts.

Several large, diverse, vernal pool landscapes are protected within this unit including the Howard Ranch, and Valensin Ranch. The Clay Station Mitigation Bank, Laguna Creek Mitigation Bank, and the Borden Ranch Mitigation site are included in this unit, as well as a number of smaller conservation areas including the Rancho Seco Preserve. The conservation areas contained within this unit have been established specifically to contribute to the survival of vernal pool tadpole shrimp, and to compensate for the loss of thousands of acres of vernal pool grassland habitats throughout the Southeastern Sacramento Valley vernal pool region. This area has been identified by the Sacramento Valley Open Space Conservancy, the CNPS, and TNC as an excellent example of vernal pool grasslands, supporting a rich and diverse community of vernal pool endemic plants and animals within Sacramento County. Land ownership and protection within the unit includes CDFG (630 ha (1,557 ac)), TNC (3,988 ha (9,970 ac)) lands and WRP easements (4 ha (11 ac)). Vernal pool habitats in this unit are threatened by urbanization from the expanding cities of Sacramento and Elk Grove. Conversion from grazing to other agricultural practices, particularly vineyards, is also a significant threat to vernal pool tadpole shrimp in this unit.

This unit occupies the area south of Deer Creek and the Cosumnes River to just south of the Sacramento and San Joaquin County line near Liberty and Collier roads. The eastern boundary is the low elevation foothills of western Amador County. The western limit is the Sacramento River. This unit also coincides with Unit 19 for vernal pool fairy shrimp, and incorporates Unit 1 for succulent owl's-clover, and Unit 3 for Sacramento Orcutt grass. Other sensitive

species found within this unit include Bogg's Lake hedge-hyssop, Ahart's dwarf rush, Henderson's bent grass, legenere, Sanford's arrowhead, pincushion navarretia, dwarf downingia, California tiger salamander, western spadefoot toad, and California linderiella.

Unit 10, Davis Communications Annex Unit, Yolo County (192 ha (474 ac))

This unit is proposed as critical based on the presence of vernal pool tadpole shrimp (CNDDDB 2001) and vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for vernal pool tadpole shrimp incubation, reproduction, dispersal, feeding, and sheltering, but which are dry during the summer and do not necessarily fill with water every year (Yolo County 1995, Holland 1998, Yolo County Parks 2001). Vernal pool tadpole shrimp within this unit are found on claypan type vernal pools. These pools are generally larger and stay inundated for relatively longer periods than vernal pools on alluvial terraces or volcanic mudflows and lava flows. This unit contains DOD (128 ha (321 ac)) and county owned land. Vernal pool habitats in this unit are currently the focus of conservation planning efforts by Yolo County (Yolo County Parks 2001).

This unit coincides with Unit 2 for Colusa grass and Unit 1 for Solano grass. Other rare and special status species that occur in this unit are Baker's navarretia, western spadefoot toad, California tiger salamander, brittlescale, San Joaquin saltbrush, alkali milk-vetch, palmate-bracted bird's beak, and the Heckard's pepper grass.

Unit 11, Jepson Prairie Unit, Solano County (34,610 ha (85,521 ac))

This unit is proposed as critical for vernal pool tadpole shrimp because it includes one of the largest contiguous areas of habitat remaining for the species (Holland 1998, Solano County 2000, Solano County Farmlands and Open Space 2000, CNDDDB 2001). Vernal pool tadpole shrimp at Jepson Prairie occur in large, playa-like vernal pools which may be over several acres in size, including the 32 ha (80 ac) Olcott Lake. The species can also be found in smaller pools and hogwallow depressions that also occur within this unit. The Jepson Prairie area supports vernal pool tadpole shrimp within unusual combinations of low terrace and basin rim landform vernal pools on a diversity

of soil types, maintaining a diversity of habitats for vernal pool tadpole shrimp.

The relatively undisturbed, hydrologically intact condition of the Jepson Prairie increases the likelihood that it will continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for vernal pool tadpole shrimp. This unit also provides habitat for migratory waterfowl that aid in the dispersal of vernal pool tadpole shrimp and other vernal pool crustacean cysts. King (1996) found that vernal pool tadpole shrimp within this unit were genetically distinct from sampled occurrences in other portions of the species' range, including those just a few miles to the east in Sacramento County.

Jepson Prairie has long been recognized as an outstanding example of vernal pool ecosystems. In 1987, the NPS named Jepson Prairie a National Natural Landmark, a designation given to sites that provide high quality habitat for threatened or endangered species. Jepson Prairie is the target of ongoing conservation planning efforts and active management. As part of the UC Reserve System, this area also provides critical research opportunities for scientists to study vernal pool species, including vernal pool tadpole shrimp.

The unit contains lands totaling 2,248 ha (901 ac) owned and approximately 64 ha (160 ac) administered by CDFG. Additional lands are owned by DOD (760 ha (1,879 ac)), California State Parks (15 ha (38 ac)), and the State Land Commission (109 ha (273 ac)). TNC has a conservation easement on 623 ha (1,558 ac) within this unit, and NRCS holds WRP conservation easements or agreements for 436 ha (1,090 ac). The Jepson Prairie Preserve is jointly managed by the Solano Land Trust and the UC Reserve System. Vernal pool tadpole shrimp on private land within this unit are threatened by agricultural conversion, range improvement programs, landfill expansion, power plant construction, and utility maintenance.

This unit is located in the southern portion of Solano County, southeast of Interstate 80 and the cities of Fairfield and Vacaville, north of Grizzly Bay and Montezuma Slough, west of the Sacramento River and the Solano and Sacramento county line, and south of Midway Road and the City of Dixon. The unit is bisected by Highway 13 and Highway 12. This unit is also described as Unit 16 for vernal pool fairy shrimp. This unit contains Unit 3 for Colusa grass, Unit 2 for Solano grass, Unit 3 for Conservancy fairy shrimp, and Unit 4 and portions of Unit 5 for Contra Costa goldfields. Other rare vernal pool

species which occur in this unit include alkali milk-vetch, Ferris's milk-vetch, vernal pool small scale, dwarf downingia, Delta green ground beetle, Bogg's Lake hedge-hyssop, Ricksecker's water scavenger beetle, California linderiella, midvalley fairy shrimp, legenera, and California tiger salamander.

Unit 12, Suisun Marsh Area Unit, Solano County (603 ha (1,490 ac))

This unit is proposed as critical for vernal pool tadpole shrimp because it contains vernal pools that support the necessary timing, frequency, and duration of inundation essential for vernal pool tadpole shrimp life history requirements including feeding, sheltering, reproducing, and dispersing (Levine Fricke 2000, CNDDDB 2001). This unit is one of only two areas where vernal pool tadpole shrimp occur in the saline-alkaline transition zone between vernal pools and tidal marshes, and helps to maintain a diversity of habitat types for this species. All of the habitats within this unit are on private land. The primary threats to vernal pool habitats within this unit are alterations to hydrology from filling, diking, and dredging activities which may occur in the tidal marsh.

This unit is located near the Suisun Marsh in southern Solano County, east of Montezuma Slough and west of Collinsville Road; the northernmost portion of this unit is bisected by Birds Landings Road. Portions of this unit coincide with Unit 4 for Conservancy fairy shrimp. This unit also contains occurrences of other rare vernal pool species including alkali milk-vetch and dwarf downingia.

Unit 13, Stanislaus Unit, Stanislaus, Tuolumne, Mariposa, and Merced Counties (9,408 ha (23,246 ac))

This unit is proposed as critical for vernal pool tadpole shrimp because it contains hardpan pools that occur on soils of alluvial fans and terraces of appropriate sizes and depths that become inundated during winter rains and hold water for sufficient lengths of time necessary for vernal pool tadpole shrimp incubation, reproduction, dispersal, feeding, and sheltering, but which are dry during the summer and do not necessarily fill with water every year (Holland 1998, CNDDDB 2001). Vernal pool tadpole shrimp in this unit occur within numerous small pools and swales on mima mound topography, supported by soils that are typically older than those of the alluvial terraces in the Sacramento area. This unit contains almost 25 percent of vernal pool habitats found along the eastern

margin of the San Joaquin Valley. King (1996) found that vernal pool tadpole shrimp within this unit, although similar to vernal pool tadpole shrimp in eastern Sacramento County, were genetically different from other tadpole shrimp occurrences sampled throughout the species' range, particularly those on the floor of the Central Valley.

The Stanislaus Unit contains very high quality, hydrologically intact vernal pool complexes. The well-known Hickman pools in Stanislaus County are located within this unit. Not only does the Hickman pool complex contain one of the largest vernal lakes in California at more than 121 ha (300 ac), but it also exhibits tremendous biodiversity, including one of the largest concentrations of imperiled amphibians (Medeiros 2000). However, the watershed containing the Hickman vernal pools has been breached by hundreds of acres of orchards that have been planted upstream. While most of the watershed has been managed over the years in a trust of the Fred Robinson family, the integrity of the vernal pool ecosystem is threatened by agricultural development and potential biocide pollution (Medeiros 2000).

The Stanislaus Unit is bordered by the Stanislaus River to the north and Dry Creek to the south and southeast. This unit coincides with vernal pool fairy shrimp Unit 22. It also encompasses succulent owl's-clover units 3 and 4, San Joaquin Valley Orcutt grass units 1 and 2, hairy Orcutt grass units 4 and 5, Colusa grass units 5 and 6, Hoover's spurge units 4 and 5, Greene's tuctoria units 8 and 9, and Conservancy fairy shrimp units 4 and 6. Other sensitive vernal pool species found within this unit include western spadefoot toad, dwarf downingia, California linderiella, California tiger salamander, and Hartweg's golden sunburst. All the land within this unit is privately owned.

Unit 14, San Francisco Bay Unit, Alameda and Santa Clara Counties (458 ha (1,132 ac))

This unit is proposed as critical habitat for vernal pool tadpole shrimp because it contains occurrences of the species living within vernal pools that are inundated for sufficient periods of time for vernal pool tadpole shrimp hatching, growth, and reproduction, but are dry during the summer to prevent the establishment of aquatic predators such as bullfrogs and fish (Holland 1998, CNDDDB 2001). The unit boundary was identified based on the distribution of vernal pool tadpole shrimp and the presence of these primary constituent elements, including vernal pools mapped by Holland (1998) and vernal

pool areas delineated by Wetlands Research Associates (1999). The southern and western boundaries were delineated to exclude estuarine habitats and urban areas visible on SPOT imagery. This unit is also designated so that special management actions will be taken within vernal pool creation areas occurring within this unit. These areas have been created specifically to contribute to the conservation of vernal pool tadpole shrimp. Monitoring and management of these created pools will be necessary to ensure their continued suitability for vernal pool tadpole shrimp. We own approximately 10 ha (24 ac) within this unit.

This area represents the only location where vernal pool tadpole shrimp occur in the San Francisco Bay region. Vernal pool tadpole shrimp within this unit are found in a unique tidal marsh estuary area that represents an unusual habitat type for the species. This unit represents the western extent of the species range, and is disjunct from other vernal pool tadpole shrimp populations elsewhere within the species' range in central California. This unit is over 60 km (37 mi) from the nearest unit to the north, and over 90 km (56 mi) from the nearest units to the east and south. Peripheral populations such as these may have genetic characteristics essential to overall long-term conservation of the species (*i.e.*, they may be genetically different than more central populations) (Lesica and Allendorf 1995).

This unit is situated south of the cities of Fremont and Newark, west of Interstate 880 and north of Mud Slough. This unit is a portion of Unit 8B for Contra Costa goldfields. Portions of this unit occur within the boundaries of San Francisco Bay National Wildlife Refuge. This unit includes a preserve established as conservation measures for vernal pool tadpole shrimp as part of the Pacific Commons development project (Service 2000b). This subunit also supports a large population of the California tiger salamander.

Unit 15, Merced Unit, Merced and Mariposa Counties (71,076 ha (175,626 ac))

This unit is proposed as critical for vernal pool tadpole shrimp because it contains more documented occurrences of the species than any other area throughout the species range (CNDDDB 2001). The vernal pool tadpole shrimp in this area occur in the largest block of pristine, high density vernal pool grasslands remaining in California (Vollmar 1999). These vernal pools provide the primary constituent elements essential for the conservation of vernal pool tadpole shrimp, and

supports multiple large vernal pool tadpole shrimp occurrences that are capable of producing large numbers of cysts in good years, which is important for this species to survive through a variety of natural and environmental changes, as well as stochastic (random) events. The Merced Unit contains almost 15 percent of all remaining vernal pool habitats in the Central Valley, and 40 percent of vernal pool habitats along the eastern margin of the San Joaquin Valley (Holland 1998). Genetic analyses of vernal pool tadpole shrimp revealed that occurrences in this unit are genetically different from other sampled occurrences (King 1996). Of all occurrences studied, King (1996) found these to be the most highly divergent.

The integrity of the vernal pool complexes in eastern Merced is seriously threatened by irrigated agriculture, upland housing development, and the proposed UC Merced Campus and associated development. Construction of facilities to educate and serve twenty-five thousand UC students as well as faculty, staff, and their families within the vernal pool complexes in eastern Merced County, could have a major impact on vernal pool tadpole shrimp occurrences. However, the recent draft biological opinion for the UC Merced campus and community developed environmental parameters which should reduce impacts to vernal pool habitats. Indirect and cumulative impacts of the proposed 1,673 ha (4,133 ac) campus and associated community may be minimized with the creation of a 2,036 ha (5,030 ac) preserve intended to protect sensitive vernal pool habitat, to be purchased with money donated by the Packard Foundation. Land ownership within the unit includes approximately 3 ha (8 ac) of BLM, and 11 ha (26 ac) of California State Parks. TNC has a total of 4,513 ha (11,283 ac) of conservation easements within this unit.

A majority of the vernal pool habitat in the Merced Unit is in Merced County. The eastern edge of the unit generally follows the Mariposa County line. The Chowchilla River in Madera County flows along the southern boundary of the unit. The northern boundary parallels the Merced River. The entire unit is located east of Highway 99. The Merced Unit coincides with vernal pool fairy shrimp Unit 22, succulent owl's-clover units 3B, Greene's tuctoria Unit 6, Conservancy fairy shrimp Unit 6, Colusa grass Unit 7, San Joaquin Valley Orcutt grass units 2 and 3. Other sensitive vernal pool species found within this unit include the California tiger salamander, shining navarretia,

dwarf downingia, Bogg's Lake hedge-hyssop, western spadefoot toad, California linderiella, and spiny-sealed button celery (*Eryngium spinosepalum*).

Unit 16, Grassland Ecological Unit, Madera, Merced and Stanislaus Counties (55,910 ha (138,153 ac))

This unit is proposed as critical for vernal pool tadpole shrimp because it supports seven percent of the known occurrences of the species (CNDDDB 2001) within large vernal pool complexes mapped by Holland (1998). This is the only area where vernal pool tadpole shrimp occur on the floor of the San Joaquin Valley, and contains over 50 percent of the remaining vernal pool habitats within this region (Holland 1998). Vernal pool tadpole shrimp within this unit occur on Northern Claypan vernal pools formed by a diversity of vernal pool soil types, including Delhi-Dello-Himar, Solano-Caypay-Willows, Rossi-Waukena, and Lewis-Landlow soils (Silveira 2000). Many of the vernal pools supporting vernal pool tadpole shrimp within this unit are large (over several acres in size), turbid, and alkaline. All of these pool types provide the necessary timing and length of inundation for vernal pool tadpole shrimp hatching, growth, and reproduction.

This unit boundary was drawn to include the large, intact vernal pool grasslands supporting hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands where vernal pool tadpole shrimp are known, as mapped by Holland (1998) and as visible on SPOT imagery. However, the 16-ha (40-ac) minimum mapping unit of Holland (1998), and the resolution of SPOT imagery, did not allow us to exclude all agricultural areas from within this unit. These features, which comprise the vernal pool complex, contribute to the filling and drying of the vernal pools, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool tadpole shrimp hatching, growth and reproduction, and dispersal. This unit also provides essential habitat for migratory waterfowl that aid in the dispersal of vernal pool tadpole shrimp and other vernal pool crustacean cysts. King (1996) found that vernal pool tadpole shrimp occurrences within this unit, although most similar to occurrences at Sequoia Field in Tulare County, are genetically different from other vernal pool tadpole shrimp throughout the species range. The vernal pool tadpole shrimp in this unit genetically very different from sampled occurrences less than 12 km (7 mi) to

the east in the foothills of the Sierra Nevada.

The Grassland Ecological Unit includes Kesterson, San Luis, and Merced National Wildlife Refuges (13,943 ha (34, 452 ac)), CDFG lands (1,703 ha (4,257 ac)), CDFG administration lands (1,052 ha (2,631 ac)), California State Parks (1,358 ha (3,392 ac)), and WRP easements (54 ha (134 ac)). Together, these areas are known as the Grasslands Ecological Area. This area supports diverse wetland habitats including seasonally flooded marshlands, semi-permanent marsh, riparian habitat, wet meadows, vernal pools, native uplands, pastures, and native grasslands. Wetlands within this area, including seasonal marsh and open water habitats, constitute 30 percent of the remaining wetlands in California's Central Valley and are extremely important to Pacific Flyway waterfowl populations. Over 60 million duck use-day and 3 million goose use-days occur annually in this unit. This habitat also supports a diversity of other migratory birds, including raptors, shorebirds, wading birds, and other wildlife species.

The unit lies north of the City of Los Banos, southwest of the City of Merced, and is bisected by the San Joaquin River. This unit overlaps Unit 23 for vernal pool fairy shrimp and Unit 7 for Conservancy fairy shrimp. The western half of this unit also represents Unit 2 for longhorn fairy shrimp, and the eastern half represents Unit 8 for Colusa grass, and Unit 6 for Hoover's spurge. In addition to the species mentioned above, vernal pool smallscale, alkali milk-vetch, western spadefoot toad, and California linderiella are other special status vernal pool species present in this unit.

Unit 17, Table Mountain Unit, Fresno County (740 ha (1,829 ac))

This unit is proposed as critical for vernal pool tadpole shrimp because it supports occurrences of vernal pool tadpole shrimp (CNDDDB 2001) and extensive vernal pool complexes (Holland 1998, Keeler-Wolf *et al.* 1998). The unit also contains Northern Basalt Flow vernal pools that provide the necessary timing, frequency, and length of inundation necessary for the species to hatch, mature, reproduce, and complete its life cycle. The basalt flow vernal pools within this unit are found on narrow, sinuous basalt mesas above the surrounding low-lying terrain. Basalt flow vernal pools are a very rare habitat type for vernal pool tadpole shrimp and the habitats within this unit are important for maintaining the range of ecological conditions in which the

species occurs. They typically contain small, irregularly clustered pools with "flashy hydrology" (Keeler-Wolf *et al.* 1998). The occurrences of vernal pool tadpole shrimp in this unit are genetically different from occurrences in other portions of the species range, particularly those occurring on the floor of the Central Valley (King 1996). Big Table Mountain, an ancient basalt mesa near Millerton Lake, is found within this unit and is owned and managed by CDFG, TNC, BLM. Land ownership within the unit includes BLM (84 ha (209 ac)), CDFG lands (172 ha (430 ac)), and TNC conservation easements (256 ha (639 ac)). All other lands within this unit are privately owned.

Located in Fresno County, this unit contains vernal pool habitats east and south of the San Joaquin River and east of Millerton Lake. The unit is west of Marshall Station and North of Table Mountain Rancheria. This unit coincides with succulent owl's-clover Unit 6A and San Joaquin Valley Orcutt grass Unit 6B. Other sensitive vernal pool species found within this unit include the Bogg's Lake hedge-hyssop, Molestan blister beetle (*Lytta molesta*), California linderiella, California tiger salamander, and the western spadefoot toad.

Unit 18 A, B and C, Tulare Unit, Tulare County (3,193 ha (7,890 ac))

This unit is proposed as critical for vernal pool tadpole shrimp because it supports occurrences of the species (CNDDDB 2001) within vernal pools that provide the essential primary constituent elements essential for vernal pool tadpole shrimp conservation (Holland 1998). The unit boundary was delineated to include vernal pool tadpole shrimp occurrences (CNDDDB 2001) and the vernal pool complexes in which they occur (Holland 1998). However, the 16-ha (40-ac) minimum mapping unit of Holland (1998), and the resolution of SPOT imagery, did not allow us to exclude all agricultural or developed areas from within this unit. Vernal pool tadpole shrimp in this area are found within pools formed on San Joaquin, Cometa, and Madera soils, among others. This unit represents the southern extent of vernal pool tadpole shrimp's range. The Sequoia Field occurrence was most closely related to occurrences at Kesterson National Wildlife Refuge, and was generally more similar to other occurrences on the valley floor than occurrences found on the eastern margin of the valley in the Sierra Nevada Foothills. However, King (1996) found that vernal pool tadpole shrimp within this unit were genetically

different from other populations studied.

These pools are the focus of ongoing conservation efforts by CDFG, who manage vernal pool habitats at the Stone Corral and Sequoia Field Ecological Reserves found within this unit. Keeler-Wolf *et al.* (1998) identified the vernal pools in these areas as "high quality hardpan pools." Much of the area within this unit is owned by CDFG (348 ha 861 ac) or occurs on private land. Agricultural conversion of range or barren land, particularly for orchards and feed lots, as well as residential and commercial development, have greatly reduced the amount of vernal pool habitat in Tulare County and threatens remaining habitats on private land in this unit.

This unit is comprised of three subunits. Subunit A is located in northwest Tulare County and contains vernal pool habitat located west of Seville. The Friant Kern Canal is north of the unit and the Cottonwood Creek Levee is south of the unit. Road 140 runs west of the unit. Subunit B contains vernal pools in northeastern Kings County and northwestern Tulare County. Highway 99 and St. Johns River cut through the unit in a southeasterly direction. Cross Creek and Cottonwood Creek cut through the unit in a southwesterly direction. Road 112 is east of the unit and the Lakeland Canal is west of the unit. The towns of Goshen and Visalia are south of the unit and Traver and London are north of the unit. Subunit C is known as Sequoia Field Unit and is located in northwestern Tulare County. This unit is south of County Road J36. Road 112 crosses through the western edge of the unit, Avenue 352 crosses through the southern edge, and State Route 63 crosses through the eastern edge. The Cross Creek Unit coincides with vernal pool fairy shrimp Unit 26 and contains portions of San Joaquin Valley Orcutt grass Unit 8 and Hoover's spurge Unit 9. Other sensitive vernal pool species found within this unit include the California tiger salamander, spiny-sealed button-celery, and western spadefoot toad.

Butte County Meadowfoam

In proposing critical habitat units for Butte County meadowfoam, we evaluated the life history and current distribution of the species, the primary constituent elements, the threats to the species. This information allowed us to determine which areas are likely to contribute to the conservation of these species and to delineate units so that threats to this species might be minimized.

Butte County meadowfoam is restricted to a single county in California. The species is only known from 11 extant occurrences. An additional two occurrences are considered extirpated. Butte County meadowfoam is found in four centers of concentration. One center of concentration is the Shippee Road area between Chico and Oroville, while the other three centers of concentration are in the vicinity of the City of Chico.

An important consideration for designating Butte County meadowfoam critical habitat is to minimize the threat of habitat fragmentation. All of the Chico area populations have been fragmented by the construction of roads or canals; several of the now separate occurrences may well have been continuous in the past. The roads and canals also altered the drainage patterns at many sites, reducing their suitability for Butte County meadowfoam by creating conditions too dry or too wet for its survival (Dole 1988, Jokerst 1989, Kelley and Associates Environmental Sciences 1992). Although some plants still remained at the type locality as of 1989, the site had been severely degraded by grading, agricultural use, and off-road vehicles (Jokerst 1989, Dole and Sun 1992, 2000). Several populations have been reduced in size by surface disturbances such as grading and removal of topsoil (Jokerst 1989, Service 1992a).

Another important criterion is that critical habitat units minimize the potential for alterations in hydrology. Changes in hydrology throughout the range of Butte County meadowfoam are possible from developments adjacent to extant populations, from further construction of roads and canals, and from grading or other surface disturbances. Moreover, subtle hydrological changes that already have taken place are likely to continue reducing Butte County meadowfoam, leading to the eventual extirpation of populations such as one occurrence north of the Chico Municipal Airport.

Special management actions may be necessary in some areas to promote occurrences of Butte County meadowfoam. Light grazing may help to control competing plant species and prevent thatch accumulation (Jokerst 1989). Competition from medusa head (*Taeniatherum caput-medusae*) apparently has reduced population size and seed set in Butte County meadowfoam at the Doe Mill Preserve (Center for Natural Lands Management 1997), and invasion of grasses and other weedy non-native plants poses a potential problem at three other occurrences (CNDDDB 2002) including

the occurrence at the Chico airport and an occurrence in the southern portion of the species range near Shippee Road.

Butte County Meadowfoam Unit Review

We conducted a regional review across the range of Butte County meadowfoam to evaluate and select vernal pool habitats that are essential to the conservation of the species and may require special management. Important factors we considered were the known presence of Butte County meadowfoam and the presence of the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Rock Creek Unit, Butte, and Tehama Counties (6,105 ha (15,086 ac))

This unit is proposed as critical for Butte County meadowfoam because it contains the species identified by CNDDDB (2002) within vernal pools, swales, and complexes mapped by Holland (1998) and the EPA (1994). These habitats contain the primary constituent elements necessary for the species survival and long-term conservation, including vernal pools on the Tuscan formation, which typically contain water for shorter periods of time than other types of vernal pools.

This unit represents the northern extent of Butte County meadowfoam's range, and includes occurrences from the northern race of Butte County meadowfoam. This race is genetically different from the southern race (Jokerst 1989, Dole and Sun 1992), and is important to maintain genetic diversity within the species. An introduced occurrence also occurs within this unit, although this occurrence represents individuals thought to be of the southern race. This unit represents one of only four areas where Butte County meadowfoam occurs throughout its entire range. Each unit is likely important to allow the species to tolerate natural and environmental changes, as well as random (stochastic) events.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and to maintain suitable periods of pool inundation, water quality, and soil moisture for Butte County meadowfoam germination and reproduction. The majority of the lands included within this unit are privately owned. Urban development, agricultural conversion, and hydrologic disruptions

or modifications have greatly disturbed vernal pool habitats and restricted Butte County meadowfoam's distribution in this unit.

This unit for Butte County meadowfoam occupies an area north of the City of Chico and includes vernal pool habitats east of Highway 99 along the Sierra foothills from near Pine Creek southeast to Rock Creek. This unit overlaps Unit 1 for Conservancy fairy shrimp, Unit 7 for vernal pool fairy shrimp, and Unit 3 for vernal pool tadpole shrimp. All the lands within this unit are privately owned.

Unit 2, Chico Unit, Butte County (3,508 ha (8,667 ac))

This unit is proposed as critical for Butte County meadowfoam because the species is present and represents a large portion of the species range (CNDDDB 2002). Vernal pools and swales that have the primary constituent elements necessary for the conservation of Butte County meadowfoam occur throughout this unit, including vernal pool habitats on Tuscan-Anita soils and the Tuscan, Riverbank, Redbluff, and Modesto geologic formations (EPA 1994, Holland 1998, Liss 2001, CNDDDB 2001). This unit contains individuals from the northern race of the species, which is genetically different from the southern race (Jokerst 1989, Dole and Sun 1992) and is important to maintain the species genetic diversity. This unit is also designated so that special management actions, such as grazing, will be taken to reduce the negative effects of invasion of non-natives on occurrences of Butte County meadowfoam. This unit is one of only four units for Butte County meadowfoam across its entire range. Each unit is important to allow the species to tolerate a variety of natural and environmental changes, as well as random (stochastic) events.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Butte County meadowfoam germination and reproduction. The majority of the lands included within this unit are privately owned. Portions of the Chico County Airport are included within this unit. A protected area has been set up at Foothill Park. Urban development, agricultural conversion, and hydrologic disruptions or modifications have greatly disturbed vernal pool habitats and reduced Butte County meadowfoam's distribution throughout this unit.

This unit for Butte County meadowfoam occupies an area directly northeast and adjacent to the City of Chico. The unit extends south from Rock Creek and the Chico Airport to near Big Chico Creek. Highway 99 is located west of this unit. This unit is within Unit 7 for vernal pool fairy shrimp, and Unit 3 for vernal pool tadpole shrimp. Other sensitive vernal pool species found within this unit include California linderiella and western spadefoot toad.

Unit 3, Doe Mill Unit, Butte County (1,696 ha (4,191 ac))

This unit is proposed as critical for Butte County meadowfoam because the species is found living within vernal pools that provide the necessary timing and duration of inundation for Butte County meadowfoam growth, reproduction, and dispersal, including vernal pools underlain by the Tuscan geologic formation on Igo-Redding soils (EPA 1994, Holland 1998, Liss 2001, CNDDDB 2001). This unit is also designated so that special management actions, including grazing or other forms of thatch removal, will be taken to reduce the negative effects of invasion of non-natives on occurrences of Butte County meadowfoam. Plants within this unit are of the southern race of Butte County meadowfoam (Jokerst 1989, Dole and Sun 1992) and comprise a significant portion of the species genetic diversity.

The Doe Mill Preserve (6 ha (15 ac)), managed by the City of Chico, is within this unit. Approximately 8.8 ha (22 ac) are public lands owned by the USFS. The remaining lands within this unit are privately owned. Urban development, agricultural conversion, and hydrologic disruptions or modifications have greatly disturbed vernal pool habitats and Butte County meadowfoam occurrences throughout this unit. The distribution of the species and vernal pool habitats within the Chico area have become highly fragmented and isolated from each other.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools and swales where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Butte County meadowfoam germination and reproduction. This unit occupies an area directly southeast and adjacent to the City of Chico. This unit is within Unit 9 for vernal pool fairy shrimp, and Unit 4 for vernal pool tadpole shrimp.

*Unit 4, Oroville Unit, Butte County
(5,011 ha (12,382 ac))*

This unit is proposed as critical for Butte County meadowfoam because it contains vernal pools and swales on the Tuscan, Red Bluff and Riverbank geologic formations where the species is found (EPA 1994, Holland 1998, Liss 2001, CNDDDB 2001). This unit contains individuals from the southern race of Butte County meadowfoam and represents an important component of the species genetic diversity. This unit also represents the southern extent of Butte County meadowfoam's range. The "Shipee Site" has been described as the type locality for the species and is located within this unit. This unit is also designated so that special management actions, such as grazing, will be taken to reduce the negative effects of invasion of non-natives on occurrences of Butte County meadowfoam. This unit represents one of only four units for Butte County meadowfoam across its entire range. All four of these units are essential for the species to endure through a variety of natural and environmental changes, as well as random (stochastic) events.

The lands included within this unit are privately owned. Urban development, highway expansion and construction, agricultural conversion, and hydrologic disruptions or modifications have greatly impacted vernal pool habitats and restricted Butte County meadowfoam's distribution throughout this unit. The distribution of the species and vernal pool habitats within the Chico area have become highly fragmented and isolated from each other.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Butte County meadowfoam germination and reproduction. This unit occupies an area northwest of the City of Oroville. The unit is located south of Dry Creek near State Route 70 southeast to the Thermalito Diversion Pool. This unit is within Unit 4 for vernal pool tadpole shrimp, and encompasses part of Unit 5 for Greene's tuctoria.

Contra Costa Goldfields

In proposing critical habitat units for Contra Costa goldfields, we evaluated the life history and current distribution of the species, the primary constituent elements, and the current threats to the species. This information allowed us to

determine which areas are essential to the conservation of this species and to delineate units so that threats to this species might be minimized.

Of the 30 occurrences of Contra Costa goldfields that were documented between 1884 and 1999, 19 are probably extant. The uncertainty is due in part to the difficulty of relocating sites based on vague descriptions. In addition, this species may reappear on a site after several years even if it is absent during a given survey. Contra Costa goldfields is known from disjunct locations in the coastal regions of California. By far the greatest concentration of this species is in the area east of Fairfield in Solano County. Additional occurrences are extant at Fort Ord in Monterey County, the San Francisco Bay National Wildlife Refuge and near Fremont in Alameda County, near Rodeo in Contra Costa County, near Manchester in Mendocino County, and at Suscol Ridge and Milliken Canyon in Napa County (CNDDDB 2001).

Urban and residential development are believed to be responsible for the loss of at least four Contra Costa goldfields occurrences east of San Francisco Bay. Although the original collection sites cannot be pinpointed from the descriptions given on specimen labels, the areas in question (Antioch, Concord, Newark, San Jose, and Walnut Creek) are highly developed. One site in Fremont (near Newark) was degraded by cultivation and operation of a racetrack, but Contra Costa goldfields reappeared approximately a decade after the fields were abandoned (Baye *in litt.* 2000a). Urbanization is presumed to have extirpated one or more occurrences near Santa Barbara. One Napa County occurrence was destroyed by conversion to a vineyard. At least four former occurrence sites in Solano County have been degraded by surface disturbances, including discing and creek channelization, which removed some habitat, altered the hydrology, and allowed invasion of non-native, upland plants. Contra Costa goldfields has not grown at three of these sites during the past 10 years (CNDDDB 2002).

Urbanization is the greatest threat to Contra Costa goldfields. Except for Travis Air Force Base, the entire concentration area in Solano County is in the Fairfield sphere of influence and is subject to development under the city's general plan. Development also threatens one of the two remaining Alameda County/San Francisco Bay occurrences. Another serious threat is conversion to vineyards. The largest Napa County occurrence, at Suscol

Ridge (CNDDDB 2001), is threatened by vineyard conversion.

Invasion of non-native plants, particularly Italian ryegrass, threatens at least eight occurrences, several of which are also targeted for development (CNDDDB 2001). Encroachment by non-native plants often follows surface-disturbing activities such as discing, grading, filling, and off-road vehicle use, which can alter hydrology and microhabitat conditions. Such surface disturbances are apparent at nine sites, four of which do not yet have reported problems with non-native species (CNDDDB 2001). The CNDDDB (2001) cites livestock grazing as a threat to seven occurrences. However, grazing may help to control invasion of non-native plants under certain conditions. Contra Costa goldfields persisted through horse grazing on Travis Air Force Base, but several small colonies disappeared when horses were excluded. Even moderately heavy grazing can be compatible with Contra Costa goldfields if it is suspended during critical growth periods. Occurrences of Contra Costa goldfields in the Fort Ord area of Monterey County exist at locations that have or potentially contain ordinance and explosives that are byproducts of military training activities. Efforts at the former military base have been underway to remove and dispose of these items. Clearance of ordinance and explosives may involve selectively removing vegetation, digging to expose buried objects, burning, and clearing of the ground surface. Project personnel have and will continue to implement measures that are designed to minimize and mitigate adverse effects to Contra Costa goldfields as ordinance and explosive removal activities proceed, but a potential exists that some plants and habitat may be affected by the clean up activities.

Contra Costa Goldfields Unit Review

We conducted a regional review across the range of Contra Costa goldfields to evaluate and select areas that are essential to the conservation of the species and that may require special management. Important factors we considered were the presence of the species and the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Manchester Unit, Mendocino County (1,067 ha (2,637 ac))

This unit is proposed as critical habitat for Contra Costa goldfields because it contains the last known occurrence of Contra Costa goldfields in Mendocino County and is the northern

and western limit of the species range (CNDDDB 2002). Vernal pools in which Contra Costa goldfields are found occur on Crispin loam soils, which provide the necessary timing and length of inundation to meet the life history requirements of Contra Costa goldfields. This is also the only location where Contra Costa goldfields is found on this soil type.

This unit represents the only occurrence of Contra Costa goldfields in the Mendocino coast area. This unit is over 140 km (87 mi) from the closest Contra Costa goldfields unit to the south. Peripheral populations such as this may have genetic characteristics essential to the overall long-term conservation of the species (i.e., they may be genetically different from more central populations) (Lesica and Allendorf 1995).

The boundaries of this unit were delineated by using SPOT imagery and elevation contours to include the open flat areas associated with the vernal pool habitat and associated uplands that contribute to the filling and drying of the vernal pools where the Contra Costa goldfields occur. The unit includes area sufficient to maintain suitable periods of pool inundation, water quality, and soil moisture for Contra Costa goldfields to germinate, grow, and reproduce.

This unit is on private land and threats to this unit include conversion to vineyards, erosion, draining, and residential development. This unit is located in the vicinity of the town of Manchester just north of the Garcia River and east of the Pacific Ocean. State Highway 1 bisects this unit and Brushy Creek forms the northern and northeastern boundary of the unit.

Unit 2, Berryessa Unit, Napa County (411 ha (1,016 ac))

This area is proposed as critical habitat for Contra Costa goldfields because the species is found (CNDDDB 2002) within rock outcrops pools on soils derived from Rhyolite lava flows, within chaparral ecosystems (Holland 1998, USDA 2001, CNDDDB 2002). These pools provide the necessary primary constituent elements essential for the conservation of Contra Costa goldfields. This is the only unit where Contra Costa goldfields occurs on Northern Basalt Flow vernal pools, and this area is important to maintain the range of habitats in which the species is known to occur.

The boundaries of this unit were delineated by using SPOT imagery, elevation contours, and CNDDDB (2002) data which identified Northern Basalt Flow vernal pool habitat within the unit. The unit includes the open flat

areas associated with the vernal pool habitat and associated uplands that contribute to the filling and drying of the vernal pools where the Contra Costa goldfields occur. The unit includes area sufficient to maintain suitable periods of pool inundation, water quality, and soil moisture for Contra Costa goldfields to germinate, grow, and reproduce.

This unit represents some of the last remaining vernal pool habitats in the north bay foothills, and is the only unit for Contra Costa goldfields in this area. This unit is over 25 km (15 mi) from the nearest Contra Costa goldfields unit.

This unit is located south of Lake Berryessa and lies in the Milliken Canyon area east of the City of Yountville and northeast of the City of Napa. Other sensitive vernal pool species found within this unit include dwarf downingia, and few-flowered navaretia. All the lands within this unit are privately owned.

Unit 3, Napa River Unit, Napa and Sonoma Counties (275 ha (678 ac))

This unit is proposed as critical for Contra Costa goldfields because the species is found within vernal pool habitats that support the primary constituent elements essential to the conservation of Contra Costa goldfields (CNDDDB 2002). This unit is located on private land, including the Suscol Ridge area, which is threatened by vineyard conversion. This unit is located directly east of the Napa River adjacent to the salt marsh areas of the lower Napa River. Other rare vernal pool species found in this unit include alkali milk-vetch.

Unit 4, Travis and Fairfield Unit, Solano County (7,885 ha (19,484 ac))

This unit is proposed as essential for the conservation of Contra Costa goldfields because it contains 30 percent of the known occurrences of this species within vernal pools in alkaline and saline-alkaline sites, as well as those on San Ysidro and Antioch soil series (Holland 1998, USDA 2001, Solano County 1999, CNDDDB 2002). The unit boundary was delineated to include Contra Costa goldfields occurrences and the vernal pool complexes in which they occur. These complexes contribute to the filling and drying of Contra Costa goldfields habitats, and maintain suitable periods of pool inundation, water quality, and soil moisture for Contra Costa goldfields germination, growth and reproduction, and dispersal, but not necessarily every year. The eastern boundary of this unit was identified by the Elmira watershed boundary to exclude vernal pool habitats in the Jepson Prairie area that

are outside the currently known range of Contra Costa goldfields.

This unit is located primarily on private land, but also includes DOD property at Travis Air Force Base (1,931 ha (4,828 ac)), CDFG land (117 ha (292 ac)), and State Land Commission Property (4 ha (9 ac)). Conservation areas have been established for Contra Costa goldfields at Travis Air Force Base, and these occurrences are the subject of on-going research projects addressing the restoration and management of this and other vernal pool species and their habitats. Vernal pool habitats within this unit are threatened by urbanization from the cities of Fairfield and Suisun City, and by large-scale transportation projects, such as Jepson Parkway. The remaining vernal pool habitats within the City of Fairfield and Suisun City are currently the subject of conservation planning efforts by local agencies.

This unit occurs in the southern portion of Solano County, northeast of the City of Fairfield, southwest of the City of Vacaville, and north of the Potrero Hills and Nurse Slough. This unit overlaps with Unit 3 for Conservancy fairy shrimp, and is a portion of Unit 11 for vernal pool tadpole shrimp and Unit 16 for vernal pool fairy shrimp. Other rare vernal pool species which occur in this unit include alkali milk-vetch, legenera, and California tiger salamander.

Unit 5 A and B, Suisun Marsh Area Unit, Solano County (411 ha (1,014 ac))

This unit is proposed as critical habitat for Contra Costa goldfields because it contains occurrences of the species within vernal pools in the saline-alkaline transition zone between vernal pools and tidal marshes on Rincon soil series (USDA 1994, CNDDDB 2002). The boundaries of this unit includes the vernal pool complexes mapped by Holland (1998) and the grassland habitats mapped by Solano County (2001) where Contra Costa goldfields occurs (CNDDDB 2001). These habitats provide the necessary timing and length of inundation for Contra Costa goldfields germination, maturation, reproduction, and dispersal (CNDDDB 2001).

The primary threats to Contra Costa goldfields habitats within this unit are alterations to hydrology from filling, diking, and dredging activities which may occur in the tidal marsh. Most of the habitats within this unit are on private land, although portions of the Hill Slough Wildlife Area managed by the CDFG are also included within this unit. Subunits in the vicinity of

Fairfield and Suisun City are also threatened by urbanization.

This unit consists of two subunits in the Suisun Marsh area of southern Solano County. Subunit 5A is the westernmost subunit and is located south and east of the City of Cordelia and the junction of Interstate Highways 80 and 680; this subunit is bisected by the Southern Pacific Railroad line. Subunit 5B is located southwest of the City of Fairfield and west of the City of Suisun City; this subunit is bisected by the Southern Pacific Railroad line. In addition to vernal pool fairy shrimp and vernal pool tadpole shrimp, this unit contains occurrences of other rare vernal pool species including alkali milk-vetch and dwarf downingia.

Unit 6, Rodeo Creek Unit, Contra Costa County (243 ha (599 ac))

This unit is proposed as critical habitat for Contra Costa goldfields because it supports occurrences of the species within vernal pool habitats formed on Conejo clay loam soils (USDA 2001, CNDDDB 2002). The unit boundary was delineated to include the features that contribute to the filling and drying of the vernal pools where Contra Costa goldfields occurs, and that maintain suitable periods of pool inundation, water quality, and soil moisture for Contra Costa goldfields' germination, growth and reproduction, and dispersal, but not necessarily every year. It is the only area where the species occurs in the vicinity of the Sacramento-San Joaquin delta. This unit is over 25 km (16 mi) from the closest unit to the north, and almost 50 km (32 mi) from the closest unit to the south.

This unit is situated along Rodeo Creek and adjacent to State Highway 4. The unit lies southeast of the City of Rodeo and northeast of the City of Hercules. The unit contains a 3.94 ha (9.74 ac) conservation easement area established in 1999 to protect three known locations of Contra Costa goldfields along Rodeo Creek from highway construction activities along State Route 4. Other rare species which occur in this unit include the federally threatened California red-legged frog and another sensitive species, the western pond turtle (*Clemmys marmorata*). All the lands within this unit are privately owned.

Unit 7, Byron Hot Springs Unit, Contra Costa County (1,379 ha (3,406 ac))

This unit is proposed as critical habitat for Contra Costa goldfields because it contains the only remaining extant occurrence of Contra Costa goldfields in southeastern Contra Costa County (CNDDDB 2001). This occurrence

within vernal pools formed on Linne clay loam soils, and has been characterized as alkaline meadow (USDA 2001, CNDDDB 2002). This habitat provides the timing and frequency of inundation essential to the germination, growth, and reproduction of Contra Costa goldfields, and this area includes a unique habitat type for this species. The unit boundary includes vernal pool complexes mapped by Holland (1998) where Contra Costa goldfields is known to occur (CNDDDB 2002). This unit is over 35 km (22 mi) from the closest unit to the north, and almost 50 km (32 mi) from the closest unit to the south.

This unit is in the vicinity of Byron Hot Springs and Byron Airport and lies directly west of Clifton Court Forebay. This unit mostly includes habitat in low-lying areas east of Altamont Hills, but also includes habitat within a small portion of Altamont Hills. A small portion of this unit overlaps with Unit 19B for vernal pool fairy shrimp. Approximately 232 ha (581 ac) within this unit are owned by the CDFG and 55 ha (137 ac) are owned by the State Land Commission the rest is privately owned.

Unit 8, Southeastern San Francisco Bay Unit, Alameda and Santa Clara Counties (458 ha (1,132 ac))

This unit is proposed as critical for Contra Costa goldfields because it contains occurrences of this species within vernal pools, swales, moist flats, and other ephemeral wetlands in saline alkaline transition zones with tidal marsh habitats that sustain Contra Costa goldfields germination, growth and reproduction (CNDDDB 2002, Holland 1998). The unit boundary was identified based on the distribution of Contra Costa goldfields and the presence of these primary constituent elements, including vernal pools mapped by Holland (1998) and vernal pool areas delineated by Wetland Research Associates (1999). The southern and western boundaries were delineated to exclude estuarine habitats and urban areas visible on SPOT imagery.

This unit contains a 180 ha (450 ac) preserve established specifically to contribute to the recovery of Contra Costa goldfields (Service 2000b, Wetland Research Associates 1999) and 443 ha (1,108 ac) of this unit is owned by the Service. This unit is over 50 km (31 mi) from the nearest units to the north, and almost 100 km (62 mi) from the nearest Contra Costa goldfields unit to the south.

This unit occurs in southeastern San Francisco Bay and also represents Unit 14 for vernal pool tadpole shrimp. The unit lies between the northernmost and

southernmost subunits and is situated south of the cities of Fremont and Newark and north of Mud Slough. Portions of this unit is found within the boundaries of San Francisco Bay National Wildlife Refuge and the rest is privately owned.

Unit 9, Fort Ord Unit, Monterey County (3,372 ha (8,331 ac))

The Fort Ord unit includes seasonally flooded pool habitats and mima mound grassland areas that are within the boundary of an area that was previously managed as the Fort Ord Army Base. These lands are now or will be managed by a number of Federal and local governments following a transfer from the DOD. Approximately 2,894 ha (7,234 ac) of this unit are currently owned by the DOD, 437 ha (1,093 ac) by BLM, and 2 ha (4 ac) by Monterey County. The critical habitat unit includes a number of seasonally-flooded wetland habitats and at least four locations that possess Contra Costa goldfields. Monitoring activities at two of the four locations suggest that listed plant numbers vary on an annual basis, and that differences in species abundance may be attributable to differences in annual rainfall totals and water duration in ponded areas (Harding Lawson Associates 2001). The total combined population estimates for the two areas where monitoring occurred in 1998, 1999, and 2000 were 500–1500, 56,000, and 162,500 individuals, respectively. The areas on the former military base that contain Contra Costa goldfields are being transferred to the BLM as a habitat reserve Natural Resource Management Area. Contra Costa goldfields in Monterey County are located 60 miles south of other locations where the species has been documented. This unit is essential to the conservation of Contra Costa Goldfields because it contains the southern-most extant occurrence of the species.

Hoover's Spurge Criteria

In proposing critical habitat units for Hoover's Spurge we evaluated the life history and current distribution of the species, the primary constituent elements, and the current threats to the species. This information allowed us to determine which areas are likely to contribute to the conservation of these species.

The CNDDDB (2001) includes 30 occurrences of Hoover's spurge, six of which were discovered in 1992 (three each in Glenn and Tulare counties). Of the 30 occurrences, one each in Tehama and Tulare counties are classified as extirpated; two others, in Butte and

Tehama counties, are "possibly extirpated" because this species was not observed for 2 consecutive years (Stone *et al.* 1988, CNDDDB 2001). Of the 26 occurrences presumed to be extant, only 12 have been observed within the past decade (CNDDDB 2001).

The main area of concentration for Hoover's spurge is within the Vina Plains area of Tehama and Butte counties, which contains over half of the 26 presumed extant occurrences for Hoover's spurge (CNDDDB 2001). One other site in the same region is near Chico in Butte County. Other extant occurrences of the species are found in the Visalia-Yettem area of Tulare County, the Hickman-La Grange area of Stanislaus County, the Sacramento National Wildlife Refuge in Glenn County, and on the Bert Crane Ranch in Merced County (CNDDDB 2001).

One population of Hoover's spurge in Tulare County and another in Tehama County were destroyed when the areas were converted for agricultural use (CNDDDB 2002). Agricultural conversion continues to threaten Hoover's spurge, particularly in Stanislaus County (Stone *et al.* 1988). However, more subtle factors such as changes in hydrology, invasion by aggressive plants, and inappropriate livestock grazing regimes constitute a greater threat to survival of the species at this time. Five of the remaining occurrences of Hoover's spurge are subject to obvious hydrologic threats; four of the five are in the San Joaquin Valley and the fifth is in the Vina Plains. Hydrology has been altered by (1) construction of levees and other water barriers and (2) by runoff from adjacent agricultural operations, roads, and culverts. Due to these changes, some pools receive insufficient water and others remain flooded for too long to allow growth of Hoover's spurge. Although no occurrences have been completely extirpated due to hydrologic changes, the species has been eliminated from one or more individual pools at several sites and a number of the remaining populations appear to be declining (Stone *et al.* 1988, Stebbins *et al.* 1995, CNDDDB 2002).

Competition from invasive native or non-native plant species threatens nine of the extant occurrences, including eight in the Vina Plains and one on the Sacramento National Wildlife Refuge in Glenn County. Native competitors of Hoover's spurge include coyote-thistle, alkali mallow (*Malvella leprosa*, a noxious weed according to Hill 1993), lippia (*Phyla nodiflora*), hard-stemmed tulle (*Scirpus acutus* var. *occidentalis*), alkali bulrush (*Scirpus maritimus*), and cocklebur. Non-native competitors include bindweed (a noxious weed

according to Dempster 1993) and swamp grass (*Crypsis schoenoides*) (Silveira *in litt.* 2000, CNDDDB 2001). On the Vina Plains Preserve, the pools with Hoover's spurge also had the highest frequency of bindweed, at least in 1995 (Alexander and Schlising 1997). Increasing dominance by these competitors may be associated with changes in hydrology and livestock grazing practices (Stone *et al.* 1988, Alexander and Schlising 1997, CNDDDB 2002).

The issue of livestock grazing effects on Hoover's spurge is complex. In general, moderate levels of grazing appear to be compatible with Hoover's spurge and presumably benefit the species by reducing competition from other plants (Stone *et al.* 1988). Livestock do not eat Hoover's spurge because it grows so close to the ground and possibly because the milky sap is toxic (Wheeler 1941, Stone *et al.* 1988). During 1986 and 1987, Stone *et al.* (1988) deemed the intensity of cattle grazing at most Hoover's spurge sites to be appropriate. In fact, several species experts (Stone *et al.* 1988, Silveira *in litt.* 2000) have cautioned that decreases in grazing intensity could be detrimental to Hoover's spurge. On the other hand, cattle trampling has seriously reduced Hoover's spurge populations at one site each in Butte and Stanislaus counties (Stone *et al.* 1988), and increased summer stocking rates at other sites could similarly damage those populations.

Populations with small numbers of plants may be more vulnerable to extirpation from random events (Shaffer 1981, Menges 1991). This may be the case for at least four of the known occurrences, which total fewer than 100 individuals even in favorable years (CNDDDB 2002).

Hoover's Spurge Unit Review

We conducted a review across the range of Hoover's spurge to evaluate and select areas that are essential to the conservation of the species and that may require special management. Important factors we considered were the documented presence of the species and the presence of the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Vina Plains Unit, Tehama and Butte Counties (11,673 ha (28,845 ac))

This unit is proposed as critical for Hoover's spurge because it supports numerous occurrences of the species within vernal pools on acidic soils over iron-silica cemented hardpan, including Anita and Tuscan soils (USDA 2001,

Holland 1998, CNDDDB 2002). The Vina Plains Unit contains over 50 percent of the known occurrences of Hoover's spurge, including several large, stable occurrences (CNDDDB 2002). This area represents the northern extent of the species range.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Hoover's spurge germination and reproduction.

The majority of the lands included within this unit are privately owned. This unit contains TNC's 1862 ha (4,600 ac) Vina Plains preserve. The preserve contains over 300 species of plants and diverse communities of aquatic invertebrates. Since the 1960s, the Vina Plains area has been the focus of a number of research projects, including long-term adaptive management and monitoring efforts evaluating the effects of grazing and fire on vernal pool plants (Griggs 2000). Much of the basic life history information known about Hoover's spurge was collected at Vina Plains (e.g., Stone *et al.* 1988, Alexander and Schlising 1997). The results of this research have provided crucial information to guide management and monitoring of vernal pool ecosystems and to identify factors which influence population dynamics of a number of endangered species.

The Vina Plains is open to the public and provides excellent outreach and educational opportunities. In addition to TNC, the importance of vernal pool habitats in this area has been recognized by the CDFG, the Service, the EPA, the CNPS, the NRCS's WRP, and by researchers at the CSU at Chico, who have all supported research and conservation efforts for Hoover's spurge and other vernal pool species within this unit. Urban development north of Chico and the conversion of grazed lands to more intensive agricultural uses threaten vernal pool habitat within this unit.

This unit for Hoover's spurge occupies the area south of Toomes Creek and north of Pine Creek to near Cana Highway. State Route 99 bisects this unit and the western boundary generally parallels the Southern Pacific Railway line. This unit overlaps Unit 7 for vernal pool fairy shrimp, Unit 3 for vernal pool tadpole shrimp, Unit 1 for Conservancy fairy shrimp, Unit 2 for Greene's tuctoria, Unit 1 for Hoover's spurge, and Unit 4 for slender Orcutt grass. Additional sensitive vernal pool

species occurring in this unit include California linderiella and Bogg's Lake hedge-hyssop. Property ownership and protection within this unit includes CDFG (0.4 ha (1 ac)), CDFG administration (0.4 ha (1 ac)), TNC (2,295 ha (5,738 ac)), TNC easements (4,661 ha (11,653)), and WRP easements and agreements (57 ha, 142 ac).

Unit 2, Butte Unit, Butte County (979 ha (2,418 ac))

This unit is proposed as critical habitat for Hoover's spurge because it supports the species within vernal pools on acidic Tuscan soils over iron-silica cemented hardpan (CNDDDB 2002, Liss 2001, USDA 2001, Holland 1998, EPA 1994) and the vernal pool habitat remains inundated for sufficient periods of time to allow Hoover's spurge to complete its life-cycle. This unit represents one of only three areas where Hoover's spurge is known to occur in the Sacramento Valley, and is over 225 km (140 mi) from the nearest occupied areas to the south.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Hoover's spurge germination and reproduction. Hoover's spurge is known from only seven general locations across its entire range, and each of these locations is essential to the conservation of this species.

This unit for Hoover's spurge occupies the area north of the intersection of State Route 99 and Route 149 in Butte County. The eastern boundary extends up the watershed of Clear Creek and the western boundary extends south paralleling State Route 99 to Little Dry Creek. This unit is within Unit 9 for vernal pool fairy shrimp and Unit 4 for vernal pool tadpole shrimp, and coincides with Unit 3 for Greene's tuctoria and Units 2 and 3 for hairy Orcutt grass. All the land within this unit is privately owned.

Unit 3, Sacramento National Wildlife Refuge Unit, Glenn and Colusa Counties (5,718 ha (14,129 ac))

This unit is proposed as critical habitat for Hoover's spurge because it contains multiple occurrences of the species within alkaline vernal pools on Willows and Riz soil types (Holland 1998, Silveira 2000, CNDDDB 2002). The vernal pool habitat remains inundated for sufficient periods of time to allow Hoover's spurge to complete its life cycle. This habitat contributes to the

diversity of environmental conditions in which Hoover's spurge is known to occur. This area represents one of only three general locations where Hoover's spurge is found in the Sacramento Valley, and is one of only seven areas across its entire range where Hoover's spurge is known to occur. This unit is over 40 km (25 mi) from the nearest unit to the northeast, and over 225 km (140 mi) from the nearest unit to the south. Hoover's spurge occurrences at the Sacramento National Wildlife Refuge have been monitored annually since 1992 (Silveira *in litt.* 2000).

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Hoover's spurge germination and reproduction to take place.

This unit for Hoover's spurge occupies the vernal pool habitat and surrounding area east of Interstate 5 to the Colusa Trough from Riz Road on the north and Delevan Road on the south. The area encompasses a portion of the Sacramento National Wildlife Refuge (5,126 ha (12,816 ac)). The remaining portions of the unit are privately owned. This unit is also part of vernal pool fairy shrimp Unit 10, and vernal pool tadpole shrimp Unit 5, and coincides with Unit 2 for Conservancy fairy shrimp, Unit 1 for Greene's tuctoria, and Unit 3 for hairy Orcutt grass. Other vernal pool and associated upland species found in the unit include pappose spikeweed, Fremont's goldfields, alkali goldfields, Scribe's popcorn flower, Hoover's downingia, folded downingia, Heckard's peppergrass, heartscale, brittlescale, San Joaquin spearscale, Ferris' milk-vetch, spike-primrose, sessile mouseltail, and palmate-bracted bird's beak.

Unit 4, Waterford Unit, Stanislaus and Tuolumne Counties (16,839 ha (41,609 ac))

This unit is proposed as critical habitat for Hoover's spurge because it supports the species within vernal pools on Whitney sandy loam soils that maintain the necessary timing and duration of inundation for Hoover's spurge germination, growth, and reproduction (USDA 2001, CNDDDB 2002). This unit contains soils that are typically older than those of the alluvial terraces in the Sacramento area which are estimated to be early Pleistocene.

The Waterford Unit contains very high quality, hydrologically intact vernal pool complexes important for the

conservation of Hoover's spurge. Hoover's spurge is sparsely distributed in the southern Sierra Nevada foothills, and these occurrences are highly disjunct from the occurrences of Hoover's spurge in the northern portion of the species range. This unit is over 225 km (140 mi) from the nearest units to the north. The largest threat to Hoover's spurge in this unit is agricultural conversion (Stone *et al.* 1988). Cattle trampling has also impacted an occurrence of Hoover's spurge in the southeastern region of the unit (CDNNB 2001). There are numerous deep pools in this area that provide suitable habitat for Hoover's spurge because the duration of inundation is generally longer than in shallow pools. These pools contain habitat components that are essential for the primary biological needs of germination, growth, reproduction, and dispersal of the species.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery, as well as elevation contours in the eastern foothill region and sub-watershed boundaries. The Waterford Unit is bordered by the Tuolumne River to the south. The Modesto Reservoir is adjacent to the southwest boundary of the unit. Warnerville Road cuts through the northern portion of the unit. The City of La Grange is located southeast of the unit. The eastern boundary extends into the low elevation foothills of the Sierra Nevada. Vernal pools in the Waterford Unit are located mainly in eastern Stanislaus County, but overlap into western Tuolumne County. This unit coincides with Colusa grass Unit 4, San Joaquin Valley Orcutt grass Unit 1, and hairy Orcutt grass Unit 4. It overlaps succulent owl's-clover Unit 2 and Greene's tuctoria Unit 6. Other sensitive vernal pool species found within this unit include California tiger salamander, western spadefoot toad, dwarf downingia, and California linderiella. CDFG administers approximately 0.8 ha (2 ac) of this unit. The remaining land within this unit is privately owned.

Unit 5, Turlock Unit, Stanislaus and Merced Counties (19,850 ha (49,049 ac))

This unit is proposed as critical habitat for Hoover's spurge because it contains occurrences of the species within large vernal pools on Meikle soils, including two of the seven known occurrences of Hoover's spurge on the eastern margin of the San Joaquin Valley (Holland 1998, CNDDDB 2002). One occurrence is within the well-known Hickman pools in Stanislaus County.

Not only does the Hickman pool complex contain one of the largest vernal lakes in California at more than 121 ha (300 ac), but it also exhibits tremendous biodiversity (Medeiros 2002).

The Turlock Unit contains large intact and contiguous vernal pool grassland areas that help maintain connectivity between hairy Orcutt grass habitat to the north and south. There are numerous vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths in this unit to sustain Hoover's spurge germination, growth and reproduction. Hoover's spurge populations in Stanislaus County typically flower from mid-June into October, whereas those in Merced and Tulare counties typically flower from late May through July (Alexander and Schlising 1997). The Hoover's spurge habitat in this unit is important to conserve phenotypic variation within the species and to maintain the geographic distribution of Hoover's spurge throughout its range.

The largest threat to this species in this unit is agricultural conversion (Stone *et al.* 1988). The watershed containing the vernal pools has been breached by hundreds of acres of orchards that have been planted upstream. East of the Hickman vernal pools, there is a large, hydrologically intact vernal pool complex that likely contains other occurrences of Hoover's spurge.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. The Turlock Unit is bordered by the Tuolumne River to the north and the Merced River to the south. The unit lies between the towns of La Grange and Snelling. County Road J9 runs west of the unit and the eastern edge is located in the low elevation foothills of the Sierra Nevada. Vernal pools in the Turlock Unit are located in Stanislaus and Merced counties. This unit coincides with Colusa grass Unit 6, hairy Orcutt grass Unit 5, succulent owl's-clover Unit 3A, and vernal pool fairy shrimp Unit 21. Other sensitive vernal pool species found within this unit include California tiger salamander, Hartweg's golden sunburst, and dwarf downingia. California State Parks owns approximately 24 ha (60 ac) within this unit. The remaining land within this unit is privately owned.

Unit 6, Grasslands Unit, Madera, Merced and Stanislaus Counties (14,310 ha (35,359 ac))

This unit is proposed as critical habitat for Hoover's spurge because it support occurrences of the species within saline-alkaline vernal pools on Lewis soils (USDA 2001, CNDDDB 2002). The unit boundary was designated to include occurrences of Hoover's spurge and the vernal pool complex in which they occur (Holland 1998). The vernal pools, swales, and associated uplands within this unit contribute to the filling and drying of Hoover's spurge habitat, and maintain suitable periods of pool inundation, water quality, and soil moisture for Hoover's spurge germination, growth and reproduction, and dispersal.

The Grasslands Unit includes portions of the Kesterson, San Luis, and Merced National Wildlife Refuges (3,232 ha (7,985 ac)). The remaining land within this unit is privately owned. This unit contains a diversity of vernal pool types, including vernal pools occurring on Delhi-Dello-Himar, Solano-Caypay-Willows, Rossi-Waukena, and Lewis-Landlow soils (USDA 1994). This unit contains the majority of the remaining vernal pool habitats in the San Joaquin Valley (Holland 1998). Threats to remaining vernal pool habitats within this unit include agricultural conversion.

The unit lies north of the City of Los Banos, southwest of the City of Merced, and is bisected by the San Joaquin River. This unit represents Unit 23 for vernal pool fairy shrimp, Unit 7 for Conservancy fairy shrimp, and Unit 16 for vernal pool tadpole shrimp. The western half of this unit represents Unit 8 for Colusa grass. In addition to the species mentioned above, vernal pool smallscale, alkali milk-vetch, western spadefoot toad, and California linderiella are present in this unit as well.

Unit 7 A, B, C, and D, Tulare Unit, Tulare County (12,375 ha (30,578 ac))

This unit is proposed as critical habitat for Hoover's spurge because it supports almost 20 percent of the known occurrences of the species, including occurrences found within vernal pools on Lewis soils (USDA 2001, CNDDDB 2002). This unit comprises the southern extent of the range of Hoover's spurge. Occurrences within this unit are more than 110 km (68 mi) distant from the nearest Hoover's spurge unit to the north. Peripheral populations may have genetic characteristics essential to overall long-term conservation of the

species (*i.e.*, they may be genetically different than more central populations) (Lesica and Allendorf 1995). Hoover's spurge populations in Tulare County typically flower from late May through July, whereas those in Stanislaus and Sacramento County typically flower from mid-June into October (Alexander and Schlising 1997). This phenotypic variation also suggests there may be regional differences between these and other occurrences in other portions of the species range.

This unit includes several protected areas, including the Sequoia Fields Ecological Reserve and the Stone Corral Ecological Reserve in Tulare County managed by CDFG (355 ha (877 ac)) as well as 13 ha (33 ac) of BLM land. Other areas within this unit are privately owned, and are threatened by conversion to irrigated agriculture of range. This unit contains scattered vernal pool complexes in northwestern Tulare County. This unit contains deeper pools that maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool plant germination, growth and reproduction, and dispersal.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery, as well as elevation contours in the eastern foothill region and sub-watershed boundaries. There are four subunits within the Tulare Unit. The westernmost subunit is located east of J19. Road 63 cuts through its eastern edge. St. Johns River is south of the subunit and the Southern Pacific Railroad runs northeast of the unit. The other three subunits are located east of Road 63. The smallest subunit lies directly east of the westernmost subunit. Road 201 passes through both of the easternmost subunits. The subunit that lies next to the easternmost subunit contains vernal pool habitat north of Stokes Mountain. In the south it is bordered by Cottonwood Creek. The easternmost subunit extends into the low elevation foothills of the Sierra Nevada. Colvin Mountain is located within its southwest boundary. Road 245 bisects this subunit and the south side of Red Mountain is within its northeast boundary. Tulare Unit coincides with San Joaquin Valley Orcutt grass Unit 7, and overlaps with vernal pool tadpole shrimp Unit 18 and vernal pool fairy shrimp Unit 26. Other sensitive vernal pool species found within this unit include the California tiger salamander, spiny-sepaled button-celery, and western spadefoot toad.

Succulent Owl's-clover

In proposing critical habitat units for succulent owl's-clover we evaluated the life history and current distribution of the species, the primary constituent elements, and the threats to the species. This information allowed us to determine which areas are likely to contribute to the conservation of this species and to delineate units so that threats to this species might be minimized.

Succulent owl's-clover is currently known from 63 occurrences, of which one in Fresno County is considered to be "possibly extirpated" (CNDDDB 2002) because the site had been disced when it was last visited in 1981. Another site in Fresno County also may be extirpated. Among the areas where succulent owl's-clover is known to occur, more than half are in Merced County. Additional occurrences are found in Fresno, Madera, Stanislaus, and San Joaquin counties (CNDDDB 2001).

The current status of most succulent owl's-clover populations is unknown because most sites have not been visited for decades. Inappropriate cattle grazing and trampling degraded three occurrences of succulent owl's-clover. One of the same sites plus three others were degraded by discing. The CNDDDB (2002) lists one of the latter as "possibly extirpated" due to discing. However, succulent owl's-clover persisted at another site that had been disced, although the population size was reduced by an order of magnitude (CNDDDB 2001).

A wide variety of factors threaten the continued existence of succulent owl's-clover, including urban development, year-round or summer livestock grazing, changes in hydrology, agricultural conversion, gravel mining, and small population size. Construction of the proposed new UC campus in Merced County, plus the associated residential community and access roads, threatens the extensive population in that area. Different types of urban development that threaten numerous known occurrences include planned housing subdivisions in Fresno, Madera, and San Joaquin counties; a freeway expansion in Madera County; and a proposed landfill in Fresno County (Service 1997, Stebbins *in litt.* 2000, CNDDDB 2001).

Approximately two-thirds of the reported occurrences, including those at the UC Merced site, were subject to cattle grazing when they were discovered (EIP Associates 1999, CNDDDB 2001). However, grazing is not necessarily detrimental to succulent

owl's-clover. Winter and spring grazing may be helping in controlling non-native grass invasions (Barry 1998). Stebbins *et al.* (1995) noted that among the sites they studied, those that were grazed "did not appear to suffer long-term damage due to grazing." Damage from livestock would be harmful when pools are dry and during the time that the water is evaporating; thus summer or year-round grazing poses a threat (Barry 1998).

Hydrological alterations can create conditions unsuitable for succulent owl's-clover and other vernal pool plants by increasing or decreasing the depth and duration of inundation. Threats due to alterations in natural hydrology include the Merced County Stream Channel Project proposed by the U.S. Army Corps of Engineers (Corps)(Service 1997a) and proposed enlargement of Burns Reservoir in Merced County (CNDDDB 2001), which collectively threaten seven occurrences of succulent owl's-clover. Expansion of agricultural operations threatens three occurrences in Fresno and Madera counties that are surrounded by orchards, vineyards, or citrus groves (CNDDDB 2001). Also, populations in grain fields already have been subject to discing, as mentioned above. A proposed gravel mine threatens one occurrence in Fresno County (Service 1997a).

Threats posed by small population size are less immediate but also potentially significant. Random genetic, environmental, or other processes can lead to the extirpation of small populations; adequate populations would be in the range of thousands to millions (Shaffer 1981, Thomas 1990, Menges 1991). Species that are subject to extreme fluctuations in population size from year to year are particularly vulnerable to chance events (Thomas 1990). Among the 24 populations of succulent owl's-clover for which size estimates were given, 10 consisted of fewer than 100 plants at their peak size (CNDDDB 2001, Stebbins *in litt.* 2000).

Succulent Owl's-Clover Unit Review

We conducted a regional review across the range of succulent owl's-clover to evaluate and select areas that are essential to the conservation of the species and that may require special management. Important factors we considered were the presence of the species and the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Southeast Sacramento Valley Unit, Sacramento and San Joaquin Counties (1,052 ha (2,598 ac))

This unit is proposed as critical habitat for succulent owl's-clover because it contains occurrences of the species living within vernal pools occurring on San Joaquin soils that provide the necessary timing and length of inundation for succulent owl's-clover germination, growth, and reproduction (Holland 1998, Sacramento County 1999, CNDDDB 2002).

The site is a "Nature Study Area" for the UC Cooperative Extension (CNDDDB 2001). This unit represents the northern most extent of succulent owl's-clover range and is the only unit designated for this species within the Sacramento Valley. The unit is isolated from other succulent owl's-clover occurrences to the south in the San Joaquin Valley by a distance of over 80 km (50 mi). Isolated and peripheral populations such as this may have genetic characteristics essential to the overall long-term conservation of the species (*i.e.*, they may be different from more central populations) (Lesica and Allendorf 1995).

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for succulent owl's-clover germination and reproduction.

This unit for succulent owl's-clover occupies the area east of Galt near Dustin and Liberty roads. All the lands included within this unit are privately owned. Urban expansion and conversion from grazing to other agricultural practices, particularly vineyards have greatly affected existing vernal pool habitats throughout this area. Other sensitive vernal pool species found within this unit includes the California tiger salamander.

Unit 2, Waterford Unit, Stanislaus and Tuolumne Counties (14,131 ha (34,917 ac))

This unit is proposed as critical habitat for succulent owl's-clover because it supports occurrences of the species within hardpan vernal pools on alluvial terraces on Amador and Redding soils that provide the necessary timing and length of inundation essential to the conservation of the species (CNDDDB 2002). This is the northernmost extent of succulent owl's-clover's range within the San Joaquin Valley, and is over 80 km (50 mi) from

the isolated occurrence to the north. This unit contains a variety of pools and ephemeral habitats in which the plants are known to occur, including shallow and deep pools and pools with both long and short inundation periods. These pools contain appropriate conditions for germination, growth, reproduction, and dispersal of succulent owl's-clover. The Waterford Unit is important for the survival of succulent owl's-clover because it represents large areas of contiguous habitat with relatively intact hydrology. All the lands within this unit are privately owned.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery, as well as elevation contours in the eastern foothill region and sub-watershed boundaries. The Waterford Unit is bordered by the Tuolumne River to the south. The Modesto Reservoir is adjacent to the southwest boundary of the unit. Warnerville Road cuts through the northern portion of the unit. The City of La Grange is located southeast of the unit. The eastern boundary extends into the low elevation foothills of the Sierra Nevada. Vernal pools in the Waterford Unit are located mainly in eastern Stanislaus County, but overlap into western Tuolumne County. This unit overlaps with San Joaquin Valley Orcutt grass Unit 1, hairy Orcutt grass Unit 4, Colusa grass Unit 4, Hoover's spurge Unit 4, and Greene's tuctoria Unit 6. Other sensitive vernal pool species found within this unit include California tiger salamander, western spadefoot toad, dwarf downingia, and California linderiella.

Unit 3A and B, Merced Unit, Merced County (63,352 ha (156,542 ac))

This unit is proposed as critical habitat for succulent owl's-clover because it supports over 50 percent of the known occurrences of the species, living within vernal pools on Redding, Corning, and Pentz soil series that provide the primary constituent elements essential to the conservation of the species (CNDDDB 2002). This unit represents the largest remaining habitat area for succulent owl's-clover, and includes the largest block of pristine, high density vernal pool grasslands remaining in California (Holland 1998, Vollmar 1999). This unit is important to maintain a diversity of habitats for succulent owl's-clover, and supports hydrologically intact vernal pool complexes that are likely to maintain ecosystem processes important to the recovery of succulent owl's-clover.

A majority of the land in this unit is privately owned, and is used to graze cattle. The integrity of the vernal pool complexes in eastern Merced is threatened by the proposed UC Merced Campus and associated development. Succulent owl's-clover has been found in 296 vernal pools in the proposed campus and community area, although only 34 percent of the area was surveyed intensively (EIP Associates 1999). Construction of facilities to educate and serve twenty-five thousand UC students as well as faculty, staff, and their families within the vernal pool complexes in eastern Merced County, could have a major impact on the survival and recovery of succulent owl's-clover. However, the recent draft biological opinion for the UC Merced campus and community developed environmental parameters which should reduce impacts to vernal pool habitats. Indirect and cumulative impacts of the proposed 1,673 ha (4,133 ac) campus and associated community may be minimized with the creation of a 2,036 ha (5,030 ac) preserve intended to protect sensitive vernal pool habitat, to be purchased with money donated by the Packard Foundation.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery, as well as elevation contours in the eastern foothill region and sub-watershed boundaries. The Merced Unit is comprised of two subunits. Subunit A is located north of the Merced River, and south of Dry Creek. Subunit B is located south of the Merced River and north of Mariposa Creek. Both subunits are located east of State Highway 99. Approximately 419 ha (1,048 ac) is owned by the DOD, 3 ha (8 ac) by U.S. Bureau of Reclamation (BOR), 10 ha (26 ac) by California State Parks. TNC has 4,513 ha (11,283 ac) of easement lands within this unit. The remaining lands within this unit are privately owned. The Merced Unit overlaps with vernal pool tadpole shrimp Unit 15, vernal pool fairy shrimp Unit 22, Conservancy fairy shrimp Unit 6, hairy Orcutt grass Unit 5, Hoover's spurge Unit 5, Greene's tuctoria Unit 7, San Joaquin Valley Orcutt grass Units 2 and 3, and Colusa grass Units 5 and 6. Other sensitive vernal pool species found within this unit include California linderiella, California tiger salamander, shining navaretia, dwarf downingia, and Bogg's Lake hedge-hyssop.

Unit 4, Madera Unit, Madera County (33,071 ha (81,717 ac))

This unit is proposed as critical habitat for succulent owl's-clover because it supports multiple occurrences of the species within hardpan vernal pools on soils of alluvial fans and terraces, including San Joaquin soils (CNDDDB 2002). This unit is important for the survival of succulent owl's-clover because it represents large areas of contiguous habitat with relatively intact hydrology. These pools are typically found in vernal pool/swale complexes on mima mound topography. This unit contains vernal pools and other ephemeral features and associated watersheds that maintain suitable periods of pool inundation, water quality, and soil moisture for succulent owl's-clover germination, growth, reproduction, and dispersal.

Most of the area within this unit is on private land, although a large population of succulent owl's-clover occurs on property acquired by the California Department of Transportation for mitigation purposes (CNDDDB 2001). The integrity of vernal pool complexes and their associated watersheds in the Madera Unit is threatened by agricultural conversion and urban encroachment.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery, as well as elevation contours in the eastern foothill region and sub-watershed boundaries. Located entirely in Madera County, this unit contains vernal pool habitat extending from the Chowchilla River in the north to the San Joaquin River in the south. All vernal pools in this unit are located east of State Highway 99. Land ownership within the unit includes 3 ha (8 ac) by BOR, 2 ha (5 ac) by NPS, 47 ha (117 ac) by CDFG, and 9 ha (22 ac) by State Land Commission. The Madera Unit overlaps hairy Orcutt grass Units 6 and 7, Greene's tuctoria Unit 8, San Joaquin Valley Orcutt grass Units 4 and 5 and vernal pool fairy shrimp Unit 24A. Other sensitive vernal pool species found within this unit include spiny-seped button-celery, California tiger salamander, western spadefoot toad and California linderiella.

Unit 5, Fresno Unit, Fresno County (11,888 ha (29,375 ac))

This unit is proposed as critical habitat for succulent owl's-clover because it contains occurrences of the species growing within vernal pools formed on Fallbrook, Ramona, San Joaquin, Vista, and Pollasky soil series

(CNDDDB 2002). The diversity of vernal pool types found within the Fresno Unit contributes to the range of ecological conditions in which succulent owl's-clover occurs. This area represents the southern extent of the species range. This unit contains suitable habitat within annual grassland communities to enable the species to carry out its life-cycle. Some habitat in this unit consists of typical "bowl-like" pools, whereas other areas are more similar to swales. Vernal pools within this unit have been destroyed by conversion to irrigated agriculture, as well as urban encroachment from the cities of Fresno and Clovis.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. Located in Fresno County, this unit contains vernal pool habitat extending from the San Joaquin River in the north to Shaw Avenue in the south. The western boundary of this unit lies east of Fresno and Clovis and the eastern boundary parallels the low elevation foothill region of the Sierra Nevada. Property ownership and protection within this unit includes CDFG (0.4 ha (1 ac)) and CDFG administered land (0.4 ha (1 ac)). The remainder of the property within this unit is privately owned. The Fresno Unit overlaps San Joaquin Valley Orcutt grass Unit 5 and vernal pool fairy shrimp Unit 24B. Other sensitive vernal pool species found within this unit include California linderiella, California tiger salamander, and western spadefoot toad.

Unit 6A and B, Table Mountain Unit, Fresno and Madera Counties, (1,723 ha (4,258 ac))

This area is proposed as critical habitat for succulent owl's-clover because it supports occurrences of the species within Northern Basalt Flow vernal pools (CNDDDB 2002). This is the only area where succulent owl's-clover is found on this vernal pool type. Northern Basalt Flow pool complexes, such as Table Mountain, are extremely rare, occurring only on ancient terraces and hilltops. Basalt tables are perched on narrow, sinuous basalt mesas above the surrounding low-lying terrain. They typically contain small, irregularly clustered pools with "flashy hydrology" (Keeler-Wolf *et al.* 1998). They are less common than hardpan and claypan pools that are typically found in this region, and occur in complexes that are less dense than habitat in units further north.

Three occurrences of succulent owl's-clover within this unit are wholly or in

part within designated reserves, which are on two "tabletop" mountains near Millerton Lake. The Sierra Foothill Conservancy's Big Table Mountain Preserve includes one of these occurrences and a portion of another, which is shared with the BLM. The other is in the CDFG's Big Table Mountain Ecological Reserve. A fourth occurrence, which is on a nearby tabletop, is partially under the control of the BLM and partly in private ownership. A cooperative group consisting of the CDFG, California Department of Parks and Recreation, Sierra Foothill Conservancy, BLM and BOR has developed a management and monitoring plan for Big Table Mountain. Initial efforts of the plan will focus on grazing as a means to control non-native grasses while comparing population trends of threatened and endangered species in grazed and ungrazed portions of the tableland (Griggs *in litt.* 2000a). BLM owns approximately 149 ha (371 ac) and CDFG owns approximately 429 ha (172 ac) of land within this unit. TNC has 256 ha (650 ac) of conservation easements within this unit. The BLM has attempted to protect the occurrence on the other tabletop mountain by erecting fencing to prevent trespass by cattle (Franklin *in litt.* 1993).

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery, as well as elevation contours in the eastern foothill region and sub-watershed boundaries. Unit 6 for succulent owl's-clover is comprised of two subunits. Both subunits are located east of Millerton Lake on basalt mesas above the San Joaquin River. Subunit 6B is located on Kennedy Table in Madera County, and Subunit 6A is directly south of this unit across the San Joaquin River on Table Mountain in Fresno County. The Table Mountain Rancheria is south of this unit. Unit 6 coincides with vernal pool fairy shrimp Unit 25, vernal pool tadpole shrimp Unit 17, and San Joaquin Valley Orcutt grass units 6A and 6B. Other sensitive vernal pool species found within this unit include Bogg's lake hedge-hyssop and California linderiella.

Colusa Grass Criteria

In proposing critical habitat units for Colusa grass, we evaluated the life history and current distribution of the species, the primary constituent elements, and the current threats to the species. This information allowed us to determine which areas are most likely to contribute to the conservation of Colusa grass.

Currently, the CNDDDB (2001) includes 59 occurrences of Colusa grass; 48 occurrences are presumed to be extant and 11 others are either known or presumed to be extirpated. The extant populations occur primarily in the foothills region of the San Joaquin Valley, where 80 percent known occurrences are found northeast of the city of Merced in Merced County and east of Hickman in Stanislaus County. Of the remaining extant occurrences, four are in central Merced County, and two each occur in southeastern Yolo and central Solano counties (Stone *et al.* 1988, Keeler-Wolf *et al.* 1998, CNDDDB 2001). This species has been extirpated from Colusa County (CNDDDB 2001).

Colusa grass declined primarily because pools in which it occurred were destroyed by conversion to irrigated agriculture, primarily to orchards and vineyards (Crampton 1976, Medeiros 1976, CNDDDB 2002). Agricultural conversion continues to threaten Colusa grass. In eastern Stanislaus County agricultural conversion threatens the 16 occurrences (33 percent) there. Dry-land farming there is gradually being replaced by irrigated agriculture; the former apparently is compatible with the persistence of Colusa grass, but the latter is not (Crampton 1959, Crampton 1976).

Other factors that extirpated populations of Colusa grass included surface disturbances and degradation of vernal pool hydrology. At least 9, and possibly 11, occurrences have been extirpated as a result of these factors, although several others most likely were eliminated before being reported (Stone *et al.* 1988). Changes in natural hydrology, such as draining pools or creating reservoirs, could create unsuitable conditions for Colusa grass by decreasing or increasing inundation periods. The two Yolo County occurrences are threatened by herbicide run-off from adjacent agricultural operations (CNDDDB 2002).

Additional factors threaten the survival of Colusa grass, particularly the problem of small population size. Although populations may drop to only a few visible plants in certain years, seven populations consisted of fewer than 100 plants even at their peak (CNDDDB 2002) and thus are likely to be small populations. Non-native plants and invasive native species could invade Colusa grass occurrences and may be particular problems in combination with other factors such as decreased inundation and inappropriate livestock grazing (Stone *et al.* 1988, Witham *in litt.* 2000a). Grasshopper foraging has been observed on Colusa

grass (Stone *et al.* 1988), but the extent of this threat is unknown.

Colusa Grass Unit Review

We conducted a regional review across the range of Colusa grass to evaluate and select areas that are essential to the conservation of the species and that may require special management. Important factors we considered were the presence of the species and the presence of the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Davis Communications Annex and Grasslands Area Unit, Yolo County (192 ha (474 ac))

This unit is proposed as critical for Colusa grass because it contains one of six areas where the species is known to occur (CNDDDB 2002, Yolo County Parks 2001, EIP Associates 2001) within large vernal playa pools of the Pescadero soil series (Holland 1998, USDA 2001, Yolo County 1995).

The unit boundary was drawn to include the vernal pool complex mapped by Holland (1998) and Yolo County Parks (2001) where Colusa grass is known to occur. This vernal pool complex maintains suitable periods of pool inundation, water quality, and soil moisture for Colusa grass germination, growth and reproduction, and dispersal, but not necessarily every year. Colusa grass in this unit is threatened by altered hydrology, contamination, competition with invasive plant species, and surface disturbances such as discing.

This unit is located southeast of the City of Davis and south of the South Fork of Putah Creek. This unit's western boundary coincides with the Solano and Yolo county line. This unit also represents Unit 1 for Solano grass, and is a portion of Unit 10 for vernal pool tadpole shrimp. The unit contains land owned by Yolo County. Approximately 128 ha (322 ac) is owned by the DOD.

Unit 2, Jepson Prairie Unit, Solano County (7,153 ha (17,675 ac))

This unit is proposed as critical for Colusa grass because it supports the species (CNDDDB 2002) within large, alkaline, playa type vernal pools (Holland 1998, USDA 2001, Solano County 2000, Solano County Farmlands and Open Space 2000). These pools occur on Pescadero and Antioch-San Ysidro soil series, and contribute to the diversity of vernal pool types where the species is found. The unit boundary was drawn to include the vernal pool complex where Colusa grass is known to

occur. The pools, swales, and adjacent uplands that comprise this complex are essential to maintain the necessary timing and length of pool inundation for Colusa grass germination, growth, pollination, seed production, and dispersal. This unit includes one of the largest contiguous areas of habitat remaining for the species. The relatively undisturbed, hydrologically intact condition of the vernal pool habitats within this unit increase the likelihood that it will continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for Colusa grass.

This unit includes the Jepson Prairie Preserve (623 ha (1,558 ac)), jointly managed by the Solano County Farmlands and Open Space and the UC Reserve System. Jepson Prairie contains large playa-like vernal pools which may be over several acres in size, including the 32 ha (80 ac) Olcott Lake. These larger pools often occur in complexes with smaller pools and hogwallow depressions. Jepson Prairie has long been recognized as an outstanding example of vernal pool ecosystems. In 1987, the NPS named Jepson Prairie a National Natural Landmark, a designation given to well preserved sites that illustrate a particular type of natural feature and provide high quality habitat for threatened or endangered species. Jepson Prairie is the target of ongoing conservation planning and active management. As part of the UC Reserve System, this area also provides critical research opportunities for scientists to study vernal pool species, including Colusa grass. The unit also contains lands totaling 248 ha (620 ac) owned and approximately 64 ha (161 ac) administered by CDFG. Additional lands are owned by DOD (93 ha (233 ac)), and the State Land Commission (7 ha (17 ac)), with another 436 ha (1,090 ac) of private land protected under WRP easements or agreements. Within the greater Jepson Prairie grassland area, existing vernal pools are threatened by agricultural conversion, landfill expansion, power plant construction, and utility maintenance.

This unit is situated east of the City of Fairfield, south of the City of Dixon, and north of the Montezuma Hills and the confluence of the Sacramento and San Joaquin rivers. This unit is also described as Unit 2 for Solano grass. This unit is encompassed by Unit 3 for Conservancy fairy shrimp, Unit 11 for vernal pool tadpole shrimp, and Unit 16 for vernal pool fairy shrimp. This unit also supports a diverse community of plants and animals, including the only known occurrence of delta green ground beetle, and occurrences of California

tiger salamander, alkali milk-vetch, Bogg's Lake hedge-hyssop, legenere, California linderiella, and midvalley fairy shrimp.

Unit 3, Farmington Unit, Stanislaus County (16,475 ha (40,709 ac))

This unit was identified as critical for Colusa grass because the species is found (CNDDDB 2002) within vernal pools on high terrace landforms and Redding-Pentz-Peters soil complexes (USDA 2001). The impermeable layers underlying these occupied vernal pools are generally iron-silica cemented hardpan. The Farmington Unit contains pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain Colusa grass germination, growth, and reproduction. Habitat in this unit includes deeper pools that are most likely to provide the long inundation period required for germination of Colusa grass (EIP Associates 1999). This unit is isolated from the other Colusa grass units to the north by over 80 km (50 mi).

The Farmington unit is located in northeast Stanislaus County. It is hydrologically separated from units to the south by the Stanislaus River. The eastern boundary generally parallels the Calaveras County Line. Woodward Reservoir and the town of Oakdale are all located outside and to the west of the unit. The unit is generally south of State Highway 4 and north of State Highway 108. The unit boundary was drawn to include these species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. Lands within this unit are privately owned.

Unit 4, Waterford Unit, Stanislaus and Tuolumne Counties (35,134 ha (86,814 ac))

The Waterford Unit was identified as critical habitat for Colusa grass because it contains large occurrences of Colusa grass. Approximately one-fifth of all extant occurrences are found within this unit (CNDDDB 2002). These occurrences are found within vernal pools formed on alluvial terraces and associated Whitney soils, among others. These pool types provide the necessary timing and length of inundation for Colusa grass to germinate, mature, and set seed. The Waterford Unit contains very large vernal pool complexes that will likely continue to support vernal pool ecosystem processes important to the conservation of Colusa grass. This unit contains vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the

adjacent upland margins of these depressions that sustain Colusa grass germination, growth and reproduction, and that typically become inundated during winter rains, including, but not limited to vernal pools formed on acidic soils of alluvial fans and stream terraces along the eastern margin of the San Joaquin Valley and into the adjacent foothills.

Agricultural conversion has resulted in the extirpation of at least two documented Colusa grass occurrences in this unit. Although Colusa grass has the ability to persist with dry-land farming, dry-land farming is gradually being replaced by irrigated agriculture throughout this unit.

The Waterford Unit is bordered by the Stanislaus River to the north and the Tuolumne River to the south. The City of La Grange is located southeast of this unit. County Road J9 runs west of the unit, and Oakdale is located outside of the northwest corner. The eastern boundary extends into the low elevation foothills of the Sierra Nevada. Vernal pools in the Waterford Unit are mainly located in eastern Stanislaus County, but overlap into southwestern Tuolumne county. Approximately 0.8 ha (2 ac) of this unit are lands administered by the CDFG. The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. Watershed boundaries were also used in the determination. This unit coincides with Hoover's spurge Unit 4, San Joaquin Valley Orcutt grass Unit 1, and hairy Orcutt grass Unit 4. It overlaps with Greene's tuctoria Unit 5, succulent owl's-clover Unit 2, and vernal pool tadpole shrimp Unit 13.

Unit 5, Turlock Unit, Stanislaus and Merced Counties (19,850 ha (49,049 ac))

This unit is proposed as critical habitat for Colusa grass because it supports large, playa vernal pools where the species is found (CNDDDB 2002, Holland 1998). The well-known Hickman pools in Stanislaus County are located within this unit. These unusual pools provide a unique habitat for Colusa grass, as well as a number of other vernal pool species. Not only does the Hickman pool complex contain one of the largest vernal lakes in California, occupying more than 121 ha (300 ac), but it also exhibits tremendous biodiversity, including one of the largest concentrations of imperiled amphibians (Medeiros 2000). Other habitat in this unit contains the primary constituent elements essential to the conservation of Colusa grass, including soil type and

deeper pools that are more likely to provide the long inundation period required for germination.

The watershed containing the Hickman Colusa grass occurrences has been breached by hundreds of acres of orchards that have been planted upstream. While most of the watershed has been managed over the years in a trust of the Fred Robinson family, the integrity of the vernal pool ecosystem is threatened by agricultural development and potential biocide pollution (Medeiros 2000). Much of the irrigated farmland habitat adjacent to the western edge of this unit was historically vernal wetlands. Intensive agriculture poses the largest threat to Colusa grass habitat in the Turlock Unit.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. The Turlock Unit is bordered by the Tuolumne River to the north and the Merced River to the south. The unit lies between the towns of La Grange and Snelling. County Road J9 runs west of the unit and the eastern edge is located in the low elevation foothills of the Sierra Nevada. Vernal pools in the Turlock Unit are located in Stanislaus and Merced counties. Approximately 61 ha (24 ac) of lands within this unit are owned by the California State Parks. This unit coincides with hairy Orcutt grass Unit 5. Portions of this unit overlap with Hoover's spurge Unit 5, vernal pool fairy shrimp Unit 21, and succulent owl's-clover Unit 3A.

Unit 6, Merced Unit, Merced and Mariposa Counties (45,641 ha (112,779 ac))

This unit is proposed as critical for Colusa grass because it contains over 40 percent of all known Colusa grass occurrences (CNDDDB 2002). This unit also contains a diversity of habitats for Colusa grass, including the only locations where this species is known to occur on Keyes-Pentz, Redding, and Keyes soils (USDA 2001). Although many populations of Colusa grass have been extirpated in the past two decades, populations in the Merced Unit are among the most robust remaining (Holland 2000). The area within this unit encompasses the largest block of pristine, high density vernal pool grasslands remaining in California (Vollmar 1999). It contains habitat for three listed branchiopods, six listed plants, and a number of rare species.

The majority of the land in this unit is privately owned and is used to graze cattle. TNC is conserving three occurrences of Colusa grass through a

conservation easement on the Flying M Ranch located northeast of the City of Merced. The integrity of the vernal pool complexes in eastern Merced is seriously threatened by irrigated agriculture, upland housing development, and the proposed UC Merced Campus and associated development. Construction of facilities to educate and serve 25,000 UC students as well as faculty, staff, and their families within the vernal pool complexes in eastern Merced County, could have a major impact on these vernal pools. However, the recent draft biological opinion for the UC Merced campus and community developed environmental parameters which should reduce impacts to vernal pool habitats. Indirect and cumulative impacts of the proposed 1,673 ha (4,133 ac) campus and associated community may be minimized with the creation of a 2,036 ha (5,030 ac) preserve intended to protect sensitive vernal pool habitat, to be purchased with money donated by the Packard Foundation.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. A majority of the vernal pool habitat in the Merced Unit is in Merced County, although the eastern edge of the unit overlaps into Mariposa County in the low elevation foothills of the Sierra Nevada. The northern boundary parallels the Merced River, and Bear Creek serves as the southern border. The entire unit is located east of Highway 99. Approximately 419 ha (1,047 ac) of lands within this unit are owned by the USAF, 3 ha (8 ac) by BLM, and 10 ha (26 ac) by the California State Parks. The Merced Unit coincides with San Joaquin Valley Orcutt grass Unit 2, Conservancy fairy shrimp Unit 6, vernal pool fairy shrimp Unit 22, and Hoover's spurge Unit 6. It overlaps with vernal pool tadpole shrimp Unit 15, Greene's tuctoria Unit 6, and succulent owl's-clover Unit 3B.

Unit 7A and B, Grassland Ecological Unit, Madera, Merced and Stanislaus Counties (8,163 ha (20,170 ac))

This unit is proposed as critical habitat for Colusa grass because it contains vernal pools that support numerous occurrences of the species, including the only location where Colusa grass is found on clay or silty clay loam soils in the Landlow and Lewis series (Silveira *in litt.* 2000). The unit boundary was drawn to include these pool types, swales and associated uplands that comprise the vernal pool complexes mapped by Holland (1998)

where Colusa grass is known to occur. These vernal pool complexes maintain suitable periods of pool inundation, water quality, and soil moisture for Colusa grass germination, growth and reproduction, and dispersal, but not necessarily every year (CNDDDB 2001). Remaining vernal pool complexes in this unit, particularly in the eastern subunit, have been fragmented by conversion to agriculture. These areas were historically interconnected vernal pool complexes, and current efforts are underway to restore wetland habitats in this area.

The Grassland Ecological Unit includes Arena Plains and the Merced National Wildlife Refuges. We own and administer approximately 1,406 ha (3,514 ac) within this unit. Our personnel have been monitoring Colusa grass occurrences on National Wildlife Refuge lands within this unit annually since 1993. This Arena Plains and Merced NWR area contains the majority of vernal pool habitats remaining in the San Joaquin Valley and is the only location where Colusa grass occurs on the San Joaquin Valley floor. Threats to the vernal pools in this unit include agricultural conversion, changes in hydrology, invasion by aggressive plants, and inappropriate livestock grazing regimes.

The unit lies north of the City of Los Banos, southwest of the City of Merced, and is bisected by the San Joaquin River. This unit overlaps Unit 23 for vernal pool fairy shrimp and Unit 16 for vernal pool tadpole shrimp. The western half of this unit also represents Unit 6 for Hoover's spurge, and portions of Unit 7 for Conservancy fairy shrimp. In addition to the species mentioned above, vernal pool smallscale, alkali milk-vetch, western spadefoot toad, and California linderiella are present in this unit.

Greene's Tuctoria

In proposing critical habitat units for Greene's tuctoria, we evaluated the life history and current distribution of the species, the primary constituent elements, and the current threats to the species. This information allowed us to determine which areas are most likely to contribute to the conservation of this species and to delineate units so that threats to this species might be minimized.

Since Greene's tuctoria was first described, 19 of the 39 known occurrences (50 percent of all occurrences) have been extirpated. The other 20 occurrences are presumed to be extant, although 6 of those have not been verified for more than a decade (Alexander and Schlinging 1997, CNDDDB

2001). Greene's tuctoria is currently known from the Vina Plains area of Tehama and Butte counties, from portions of eastern Merced County, and from isolated occurrences in Glenn and Shasta counties (CNDDDB 2001). The species is considered possibly extirpated from Fresno, Madera, San Joaquin, Stanislaus, and Tulare counties (Stone *et al.* 1988, Skinner and Pavlik 1994, CNDDDB 2001). The areas that continue to support robust occurrences of the species include the Vina Plains area of Tehama and Butte counties, and an area in eastern Merced County. All other occurrences are considered declining and may require special management actions to ensure their long-term conservation.

One of the primary causes of extirpation for Greene's tuctoria has been conversion to irrigated agriculture; 11 of 19 (57.9 percent) extirpated occurrences were due at least in part to agricultural conversions. Stanislaus and Fresno counties experienced the greatest loss to agricultural conversion, with four and three such extirpations, respectively. Excessive livestock grazing was the sole or partial cause of extirpation for six populations (31.6 percent) (Stone *et al.* 1988, CNDDDB 2002).

Greene's tuctoria is less tolerant of livestock grazing and competition than most of the other Orcuttieae, probably because it occurs in portions of pools that dry early in the spring. Anecdotal evidence of its lower tolerance to grazing is that Greene's tuctoria has disappeared from one grazed site where Hoover's spurge still occurs and from another site where Colusa grass remains (CNDDDB 2002). Fifteen of the 20 remaining populations are subject to cattle grazing and the associated trampling, and at least 4 of those are declining (Stone *et al.* 1988, CNDDDB 2001). Four other occurrences on the Vina Plains Preserve had been declining (Stone *et al.* 1988, CNDDDB 2001), but improved after grazing was discontinued. Invasion from weedy plants, such as cocklebur (*Xanthium* sp.) and other non-native species, apparently is reducing population vigor at six localities in the Sacramento and San Joaquin valleys (Stone *et al.* 1988, Alexander *in litt.* 1998, CNDDDB 2001). Agricultural conversion remains a threat to the Merced County populations, which are the only ones confirmed to be remaining in the San Joaquin Valley. Grasshoppers have been documented to consume entire populations of Greene's tuctoria before they set seed (Griggs 1980, Griggs and Jain 1983, Stone *et al.* 1988).

Finally, small populations of Greene's tuctoria (fewer than 100 plants) may limit persistence of several occurrences. One population in Merced County consisted of only a single plant in 1987, and one in Butte County contained 75 plants (Stone *et al.* 1988, CNDDDB 2001). The Shasta County population also may have declined to the point where it is more vulnerable to extirpation by random events, such as fire, or by other threats as previously discussed; the Shasta County population consisted of 2,500 plants in 1993 and 1994, but declined to 120 in 1996 and 35 in 1998 despite favorable hydrological conditions. However, additional investigation of all four populations is necessary to determine whether or not larger soil seed banks exist.

Greene's Tuctoria Unit Review

We conducted a regional review across the range of Greene's tuctoria to evaluate and select areas that are essential to the conservation of the species and that may require special management. Important factors we considered were the known presence of the species and the presence of the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Modoc Plateau Unit, Lassen, and Shasta Counties (973 ha (2,403 ac))

This unit is proposed as critical habitat for Greene's tuctoria because it contains the species within Northern Basalt Flow vernal pools (CNDDDB 2002) and the vernal pool habitat remains inundated for sufficient periods of time to allow Greene's tuctoria to complete its life cycle. These areas are not threatened by land conversion or development at this time due to their remote location, however, grazing activities may be contributing to the species decline in this area and may require special management actions, such as reduction or elimination of grazing, to prevent further decline and possible extirpation of the occurrence within this unit (CNDDDB 2001).

Greene's tuctoria within this unit are located within an area described as a large vernal pool in an open flat in an eastside pine forest. The occurrence is located at higher elevations and has the coldest climatic conditions of any other occurrences and represents the northern extent of the species range. This unit is over 110 km (68 mi) disjunct from occurrences further south. Isolated and peripheral populations such as this may be essential to the overall long-term conservation of the species (*i.e.*, may be genetically different from other

populations in other parts of its range) (Lesica and Allendorf 1995).

The boundaries of this unit were delineated by using SPOT imagery and elevation contours to include the open flat area associated with the vernal pool including the adjacent uplands that contribute to the filling and drying of the vernal pool where Greene's tuctoria occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Greene's tuctoria to germinate and reproduce. Approximately 892 ha (2,231 ac) of this unit is owned by the USFS. The remaining lands within this unit are privately owned.

This unit for Greene's tuctoria occurs within the volcanic plateau of northeastern California. The unit is located in the area surrounding Murken Lake east of Hat Creek near Cinder Butte. Bidwell Road crosses through the southern boundary. This is the only unit where Greene's tuctoria occupies Northern Basalt Flow vernal pools. Maintaining this ecologically distinct unit is essential to the conservation of the species because it is the northern extent of its range, and is essential to maintain the diversity of habitats in which Greene's tuctoria is known to occur.

Unit 2, Vina Unit, Tehama and Butte Counties (11,673 ha (28,845 ac))

This unit is proposed as critical habitat for Greene's tuctoria because it contains occurrences of the species within vernal pools (CNDDDB 2002) and the vernal pool habitat remains inundated for sufficient periods of time to allow Greene's tuctoria to complete its life cycle. This unit is proposed as critical for Greene's tuctoria because it includes 60 percent of the occurrences that are thought to be extant (CNDDDB 2001). Greene's tuctoria occurs within vernal pools found on Anita and Tuscan soil series within this unit. These pool types maintain the necessary timing and length of inundation for Greene's tuctoria germination, growth, and reproduction (CNDDDB 2002). This unit represents one of only two areas throughout the species range where Greene's tuctoria occurrences are not considered to be declining (CNDDDB 2001).

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Greene's tuctoria germination and reproduction.

The majority of the lands included within this unit are privately owned. This unit contains TNC's 1,862 ha (4,600 ac) Vina Plains preserve. The preserve contains over 300 species of plants, and diverse communities of aquatic invertebrates. Since the 1960's, the Vina Plains area has been the focus of a number of research projects, including long-term adaptive management and monitoring efforts evaluating the effects of grazing and fire on vernal pool plants, including Greene's tuctoria (Griggs 2000). Much of the basic life history information known about Greene's tuctoria was collected at Vina Plains (e.g., Stone *et al.* 1988, Alexander and Schlising 1997). The results of this research have provided crucial information to guide management and monitoring of vernal pool ecosystems and to identify factors which influence population dynamics of a number of endangered species, including Greene's tuctoria. The Vina Plains is open to the public and provides excellent outreach and educational opportunities. In addition to TNC, the importance of vernal pool habitats in this area has been recognized by CDFG, the Service, the EPA, the CNPS, the NRCS's WRP, and by researchers at the CSU at Chico, who have all supported research and conservation efforts for Greene's tuctoria and other vernal pool species within this unit. Urban development north of Chico and the conversion of grazed lands to more intensive agricultural uses threaten vernal pool habitat within this unit. Property ownership and protection within this unit includes CDFG (0.4 ha (1 ac)), CDFG administration (0.4 ha (1 ac)), TNC (2,295 ha (5,738 ac)), TNC easements (4,661 ha (11,653)), and WRP easements and agreements (57 ha, 142 ac)).

This unit for Greene's tuctoria occupies the area south of Toomes Creek, and north of Pine Creek and the Cana Highway. State Route 99 bisects this unit and the western boundary generally parallels the Southern Pacific Railway line. This unit is within Unit 7 for vernal pool fairy shrimp and Unit 3 for vernal pool tadpole shrimp, and encompasses part of Unit 1 for Conservancy fairy shrimp and Unit 1 for Butte County meadowfoam. The unit coincides with Unit 1 for hairy Orcutt grass, and Unit 4 for slender Orcutt grass and portions of Unit 1 for Hoover's spurge. Additional sensitive vernal pool species occurring in this unit include California linderiella and Bogg's Lake hedge-hyssop.

Unit 3, Butte Unit, Butte County (979 ha (2,418 ac))

This unit is proposed as critical habitat for Greene's tuctoria because it supports the species within large vernal pools on Tuscan soils (EPA 1994, Holland 1998, CNDDDB 2002). These pools have the necessary timing and length of inundation for Greene's tuctoria germination, growth, and reproduction that typically become inundated during winter rains, but are dry during the summer. This occurrence may be threatened by overgrazing, and is described as "possibly declining" by CNDDDB (2002).

Vernal pool habitats within this area have become greatly fragmented and isolated from other habitats in the region. This area is one of only four areas occupied by Greene's tuctoria in the Sacramento Valley. This area is important to maintain the geographical distribution of Greene's tuctoria throughout the areas where it occurs. The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Greene's tuctoria germination and reproduction.

This unit for Greene's tuctoria occupies the area north of the intersection of State Route 99 and Route 149 in Butte County. The eastern boundary extends up the watershed of Clear Creek and the western boundary extends south paralleling State Route 99 to Little Dry Creek. This unit is within Unit 9 for vernal pool fairy shrimp and Unit 4 for vernal pool tadpole shrimp, and coincides with Unit 2 for hairy Orcutt grass and Unit 2 for Hoover's spurge. All the property within this unit is privately owned.

Unit 4, Richvale Unit, Butte County (299 ha (738 ac))

This unit is proposed as critical habitat for Greene's tuctoria because it contains occurrences of the species within vernal pools found on Rocklin and San Joaquin soils (CNDDDB 2002) and the vernal pool habitat remains inundated for sufficient periods of time to allow Greene's tuctoria to complete its life cycle. This is the only area where Greene's tuctoria is found in vernal pools formed on these soil types.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of

the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Greene's tuctoria germination and reproduction.

Vernal pool habitats within this area have become greatly fragmented and isolated from other habitats. This unit is over 200 km (120 mi) from the nearest Greene's tuctoria occurrences to the south. This occurrence of Greene's tuctoria helps to maintain the species range in the Sacramento Valley. This unit for Greene's tuctoria occupies the area west of the Thermalito Afterbay near the Richvale Highway and directly west of the Oroville Wildlife Area managed by CDFG (4 ha (9ac)). The remaining property within this unit is privately owned.

Unit 5, Sacramento National Wildlife Refuge Unit, Glenn and Colusa Counties (5,718 ha (14,129 ac))

This unit is proposed as critical for Greene's tuctoria because it contains occurrences of the species within vernal pools that provide the necessary timing and length of inundation essential to the conservation of Greene's tuctoria, including alkaline vernal pools on Willows soils (Silveira 2000). Greene's tuctoria has been declining within this unit and we have taken management actions to prevent extirpation of the species from the refuge lands (Silveira 2000).

This area is one of only four areas occupied by Greene's tuctoria in the Sacramento Valley. This occurrence is important to maintain the geographical distribution of Greene's tuctoria into the unique alkali flat habitats of the Colusa Basin. The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Greene's tuctoria germination and reproduction.

This unit occurs predominantly on the Sacramento National Wildlife Refuge (5,126 ha (12,816 ac)). It is the only known location where Greene's tuctoria occurs on public land. It occurs east of Interstate 5 to the Colusa Trough from Riz Road on the north and Delevan Road on the south. Other rare vernal pool species found in the unit include pappose spikeweed, Fremont's goldfields, alkali goldfields, Scribe's popcorn flower, Hoover's downingia, folded downingia, Heckard's peppergrass, heartscale, brittlescale, San Joaquin spearscale, Ferris' milk-vetch, spike-primrose, sessile mousetail, and

palmate-bracted bird's beak. This unit is also part of vernal pool fairy shrimp Unit 10, and vernal pool tadpole shrimp Unit 5, and coincides with Unit 2 for Conservancy fairy shrimp, Unit 3 for Hairy Orcutt grass, and Unit 3 for Hoover's spurge.

Unit 6, Waterford Unit, Stanislaus and Tuolumne Counties (36,414 ha (89,978 ac))

This unit is proposed as critical habitat for Greene's tuctoria because it supports occurrences of the species within vernal pools and swales that maintain the necessary primary constituent elements essential for its conservation, including the only vernal pools where Greene's tuctoria is known to occur on slightly alkaline soils of the Meikle and Paulsell series (CNDDDB 2002, Holland 1998, USDA 2001). This unit contains numerous pools with occurrences and associated watersheds that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for the germination, growth, reproduction, and dispersal of Greene's tuctoria.

Agricultural conversion presents the greatest threat to habitat for Greene's tuctoria in this unit, and several occurrences within this unit have been extirpated or have severely declined as a result of agricultural conversion and intensive grazing (CNDDDB 2002). This unit is over 200 km (120 mi) from the nearest Greene's tuctoria occurrences to the north. All occurrences in this unit are on private lands.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery, as well as elevation contours in the eastern foothill region and sub-watershed boundaries. The Waterford Unit is bordered by the Stanislaus River to the north and the Tuolumne River to the south. The City of La Grange is located southeast of the unit. County Road J9 runs west of the unit, and the Oakdale Airport is located outside of the northwest corner. The eastern boundary extends into the low elevation foothills of the Sierra Nevada. Vernal pools in the Waterford Unit are located mainly in eastern Stanislaus County, but overlap into southwestern Tuolumne County. This unit overlaps with vernal pool tadpole shrimp Unit 13, San Joaquin Valley Orcutt grass Unit 1, hairy Orcutt grass Unit 4, Colusa grass Unit 5, Hoover's spurge Unit 4, and succulent owl's-clover Unit 2. Other sensitive vernal pool species found within this unit include California tiger

salamander, western spadefoot toad, dwarf downingia, and California linderiella. Approximately 0.8 ha (2 ac) of this unit is administered by the CDFG. The remaining lands within this unit are privately owned.

Unit 7, Merced Unit, Merced, Madera, and Mariposa Counties (73,707 ha (182,127 ac))

This unit is proposed as critical for Greene's tuctoria because it contains numerous occurrences of the species within large, hydrologically intact vernal pool grassland areas (Holland 1998, Vollmar 1999), including pools Northern Hardpan vernal pools on Redding, Raynor, and Bear Creek soils (USDA 2001, EIP 1999). Over 30 percent of the extant occurrences of Greene's tuctoria are in the Merced Unit (CNDDDB 2001). This unit contains the primary constituent elements necessary for conservation of the species including germination, growth, reproduction, and dispersal. This unit represents one of only two areas throughout the species range where Greene's tuctoria occurrences are not considered to be declining (CNDDDB 2001).

Agricultural conversion presents a great threat to habitat for Greene's tuctoria, particularly in areas along the western edge of this unit on the valley floor where irrigated agriculture has encroached on lands adjacent to occupied vernal pool complexes. The proposed UC Merced Campus and associated development will also have a significant impact on the long-term sustainability of vernal pool complexes. Other significant threats to Greene's tuctoria include urban encroachment and competition with non-native plants.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. A majority of the vernal pool habitat in the Merced Unit is in Merced County. The eastern edge of the unit overlaps into Mariposa County and in the south it extends to the Chowchilla River in Madera County. The northern boundary parallels the Merced River. The entire unit is located east of Highway 99. The Merced Unit coincides with vernal pool tadpole shrimp Unit 15 and vernal pool fairy shrimp Unit 22. It also encompasses hairy Orcutt grass Unit 6, succulent owl's-clover units 3B and 4, San Joaquin Valley Orcutt grass units 2 and 3, Colusa grass Unit 7, and Conservancy fairy shrimp Unit 6. Other sensitive vernal pool species found within this unit include the California tiger salamander, shining navarretia, dwarf downingia, Bogg's Lake hedge-hyssop, western

spadefoot toad, and California linderiella. Approximately 419 ha (1,048 ac) is owned by the DOD, 3 ha (4 ac) by BLM, 10 ha (26 ac) by California State Parks. TNC has 4,513 ha (11,283 ac) of easement lands within this unit. The remaining lands within this unit are privately owned.

Unit 8, Madera Unit, Madera County (13,222 ha (32,670 ac))

This unit is proposed as critical habitat for Greene's tuctoria because the area supports occurrences of the species (CNDDDB 2002). This occurrence represents the southern extent of the species currently known range. All other historical or previously documented occurrences to the south in Fresno and Tulare counties are considered extirpated (CNDDDB 2002). Although this site is considered possibly extirpated, it is proposed as critical habitat until a determination of the current status of the occurrence can be made. Greene's tuctoria has a highly persistent soil seed bank, and it is likely that individuals exist in the soil as seeds even if adult plants have not been observed at the site in recent times. This unit contains areas that support vernal pools, swales, or other ephemeral ponds and depressions and their associated uplands. There are numerous wetland features that contain suitable inundation periods for Greene's tuctoria to germinate, grow, and reproduce. Vernal pools and their associated biota, particularly on the western edge of this unit closer to the valley floor, are progressively being degraded and replaced by irrigated agriculture and invasive plant species.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. Located in Madera County, this unit contains vernal pool habitat extending from the Chowchilla River in the north to the Fresno River in the south. All vernal pools in this unit are located east of State Highway 99 and extend into the low elevation foothill region of the Sierra Nevada. The town of Madera borders the unit on its southwest edge, Hensley Lake is east of the unit, and Eastman Lake is northeast of the unit. The Madera Unit overlaps with succulent owl's-clover Unit 4, San Joaquin Valley Orcutt grass units 3 and 4, and hairy Orcutt grass Unit 6, and vernal pool tadpole shrimp Unit 15. Other sensitive vernal pool species found within this unit include California tiger salamander and California linderiella. All the lands within this unit are privately owned.

Hairy Orcutt Grass

In proposing critical habitat units for hairy Orcutt grass, we evaluated the life history and current distribution of the species, the primary constituent elements, and the current threats to the species. This information allowed us to determine which areas are likely to contribute to the conservation of hairy Orcutt grass.

Of the 38 hairy Orcutt grass element occurrences listed by the CNDDDB (2001), not counting the misidentified population of San Joaquin Valley Orcutt grass, 24 are presumed to be extant. Nineteen of those occurrences have been confirmed as extant within the past decade (CNDDDB 2001). Currently, the main area of concentration for hairy Orcutt grass is the Vina Plains area in Tehama County. An isolated occurrence is found nearby in central Butte County. Several other occurrences are found in Madera County between the city of Madera and Millerton Lake. There are several occurrences in eastern Stanislaus County. All four extant occurrences in Glenn County occur on the Sacramento National Wildlife Refuge. Hairy Orcutt grass apparently has been extirpated from Merced County (Stone *et al.* 1988, Keeler-Wolf *et al.* 1998, CNDDDB 2001).

Historically, habitat loss was the primary factor responsible for the decline of hairy Orcutt grass. Of the 11 element occurrences considered by the CNDDDB (2002) to be extirpated, 4 in Stanislaus County were converted to almond orchards or vineyards (Stone *et al.* 1988, CNDDDB 2002). Most of the conversion occurred prior to 1976 (Crampton 1959, Crampton 1976, Medeiros 1976, Reeder 1982). Two other occurrences in Madera County were lost by development for residences and orchards. The other five occurrences, which were in Madera, Merced, and Stanislaus counties, are listed as extirpated because the habitat was being used for irrigated pasture or dry farming or had been disced when they were last visited in 1986 and 1987 (Stone *et al.* 1988). However, continued field visits are advisable because another population reappeared several years after discing (CNDDDB 2001).

Hairy Orcutt grass no longer occurs in the Glenn County pool where it was found in 1937 because the area is now a permanent pond (J. Silveira pers. comm.). Inappropriate hydrology also may be responsible for the loss of one other occurrence at the Sacramento National Wildlife Refuge (Silveira *in litt.* 2000). The population consisted of 20 plants when it was first discovered in 1993, but those plants died before

setting seed due to flooding from a summer rainstorm, and none have been seen since that time (Silveira *in litt.* 2000). The population could reappear in future years if a substantial soil seed bank exists, and thus it is presumed to be extant.

Habitat loss continues to pose a threat to the survival of hairy Orcutt grass. Agricultural and residential development are proceeding in the vicinity of the remaining Stanislaus and Madera county occurrences and may lead to the destruction of additional populations in the foreseeable future (Stone *et al.* 1988). Cattle grazing was an ongoing land use at 20 occurrences when they were last visited, including 6 where this species may already be extirpated (CNDDDB 2002). Three occurrences are believed to have been eliminated by "excessive" livestock grazing, and seven others were damaged by summer grazing or overuse. However, "moderate" grazing in spring likely is compatible (Stone *et al.* 1988) and may be beneficial. Invasion of non-native plants is an increasing problem throughout the range of hairy Orcutt grass (Stone *et al.* 1988). Several researchers (Stone *et al.* 1988, Alexander and Schlising 1997) have suggested that cattle may have carried in seeds of non-native plants, and disturbance from trampling may have facilitated their establishment. Bindweed (*Convolvulus* sp.) has increased in frequency in the Vina Plains since 1984, and cocklebur is still present. Pools where hairy Orcutt grass grows had higher frequencies of these invasive species than did other pools on the Vina Plains Preserve in 1995 and altered hydrology may have contributed to the presence of invasive plants in the pools (Alexander and Schlising 1997).

Hairy Orcutt Grass Unit Review

We conducted a regional review across the range of hairy Orcutt grass to evaluate and select areas that are essential to the conservation of the species and that may require special management. Important factors we considered were the known presence of the species and the presence of the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Vina Plains Unit, Tehama and Butte Counties (8,748 ha (21,617 ac))

This area is proposed as critical habitat for hairy Orcutt grass because it supports over 25 percent of all known occurrences of the species and contains large vernal pools occurring on Tuscan and Anita soils (USDA 2001, CNDDDB

2002). The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for hairy Orcutt grass germination and reproduction. This unit represents the northern extent of the species range, and is over 40 km (25 mi) from the nearest occurrence to the south. This area represents one of only two areas where large hairy Orcutt populations are protected, and where long-term monitoring of the species status has occurred.

Hairy Orcutt grass may be threatened by invasive species within this unit (Alexander and Schlising 1997). In some areas special management actions have been taken to counteract the negative effects of invasive species on hairy Orcutt grass. For example, cocklebur, an aggressive native plant, has been removed by hand from some of the Vina Plains pools (Alexander and Schlising 1997), an effort that began in 1991 using funds from the California Endangered Species Tax Check-Off Fund (CDFG 1991).

The majority of the lands included within this unit are privately owned. This unit contains TNC's 1862-ha (4,600-ac) Vina Plains preserve. The preserve contains over 300 species of plants, and diverse communities of aquatic invertebrates. Since the 1960's, the Vina Plains area has been the focus of a number of research projects, including long-term adaptive management and monitoring efforts evaluating the effects of grazing and fire on vernal pool plants, including hairy Orcutt grass (Griggs 2000). Much of the basic life history information known about hairy Orcutt grass was collected at Vina Plains (*e.g.*, Stone *et al.* 1988, Alexander and Schlising 1997). The results of this research have provided crucial information to guide management and monitoring of vernal pool ecosystems and to identify factors which influence population dynamics of a number of endangered species, including hairy Orcutt grass.

The Vina Plains is open to the public and provides excellent outreach and educational opportunities. In addition to TNC, the importance of vernal pool habitats in this area has been recognized by the CDFG, the Service, the EPA, the CNPS, the NRCS's WRP, and by researchers at the CSU at Chico, who have all supported research and conservation efforts for hairy Orcutt grass and other vernal pool species within this unit. Urban development

north of Chico and the conversion of grazed lands to more intensive agricultural uses threaten vernal pool habitat within this unit.

This unit for hairy Orcutt grass occupies the area south of Deer Creek and north of Pine Creek to near Cana Highway. State Route 99 bisects this unit and the western boundary generally parallels the Southern Pacific Railway line. This unit is included within Unit 7 for vernal pool fairy shrimp, Unit 3 for vernal pool tadpole shrimp, Unit 1 for Conservancy fairy shrimp, Unit 2 for Greene's tuctoria, Unit 1 for Hoover's spurge, and Unit 4 for slender Orcutt grass. Additional sensitive vernal pool species occurring in this unit include California linderiella and Bogg's Lake hedge-hyssop. Land ownership within this unit includes 2,264 ha (5,660 ac) by TNC and 57 ha (142 ac) of private land protected by conservation easement or agreement under the WRP. TNC has an additional 3,826 ha (9,564 ac) of conservation easements within this unit.

Unit 2, Butte Unit, Butte County, California (979 ha (2,418 ac))

This unit is proposed as critical for hairy Orcutt grass because it supports the species within vernal pools on Tuscan soils (Holland 1998, USDA 1994, 1999, CNDDDB 2002). These pool types remain inundated for sufficient periods of time to allow hairy Orcutt grass to complete its life cycle. This area and Unit 1 are the only locations where hairy Orcutt grass is found on the Tuscan soil types. This area comprises one of only three areas where this species occurs in the Sacramento Valley, and is important to maintain the species range and distribution. The northern occurrences of hairy Orcutt grass are isolated from occurrences in the southern part of the species range. This unit is over 40 km (25 mi) from the nearest units to the north and west, and over 225 km (140 mi) from the nearest unit to the south and is one of seven known occurrences of the species. This unit represents some of the last remaining lower elevation vernal pool habitats in Tehama and Butte counties.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) and EPA (1994) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for hairy Orcutt grass germination and reproduction.

This unit for hairy Orcutt grass occupies the area north of the intersection of State Route 99 and Route

149 in Butte County. The eastern boundary extends up the watershed of Clear Creek and the western boundary extends south paralleling State Route 99 to Little Dry Creek. This unit is within Unit 9 for vernal pool fairy shrimp and Unit 4 for vernal pool tadpole shrimp, and coincides with Unit 3 for Greene's tuctoria and Unit 2 for Hoover's spurge. All the lands within this unit are privately owned.

Unit 3, Sacramento Refuge Unit, Glenn and Colusa Counties (5,718 ha (14,129 ac))

This unit is proposed as critical for hairy Orcutt grass because it contains multiple occurrences of the species within alkaline vernal pools on the Willows and Riz soil series (CNDDDB 2002) and the vernal pool habitat remains inundated for sufficient periods of time to allow hairy Orcutt grass to complete its life cycle. This area is one of only three locations where hairy Orcutt grass is found in the Sacramento Valley. This area represents one of only two areas where large hairy Orcutt populations are protected, and where long-term monitoring of the species status has occurred.

Habitat for hairy Orcutt grass is greatly fragmented in this portion of its range, and this unit is over 40 km (25 mi) from the nearest unit to the east, and over 225 km (140 mi) from the nearest unit to the south. Hairy Orcutt grass is known from only 7 general areas across its entire range, and each of these locations is essential to the conservation of this species.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for hairy Orcutt grass germination and reproduction.

This unit for hairy Orcutt grass occupies the vernal pool habitat east of Interstate 5 to the Colusa Trough from Riz Road on the north and Delevan Road on the south. The area encompasses the Sacramento National Wildlife Refuge 5,126 ha (12,816 ac). This unit is also part of vernal pool fairy shrimp Unit 10, and vernal pool tadpole shrimp Unit 5, and coincides with Unit 2 for Conservancy fairy shrimp, Unit 5 for Greene's tuctoria, and Unit 3 for Hoover's spurge. Other rare vernal pool species found in the unit include pappose spikeweed, Fremont's goldfields, alkali goldfields, Scribe's popcorn flower, Hoover's downingia, folded downingia, Heckard's

peppergrass, heartscale, brittlescale, San Joaquin spearscale, Ferris' milk-vetch, spike-primrose, sessile mouse-tail, and palmate-bracted bird's beak. The remaining land within this unit is privately owned.

Unit 4, Turlock Unit, Stanislaus and Merced Counties (25,318 ha (62,560 ac))

The Turlock Unit is proposed as critical habitat for hairy Orcutt grass because it contains occurrences of the species within large vernal pools on Whitney and Meikle soils that provide the necessary timing and length of inundation essential to the conservation of this species (CNDDDB 2001, Holland 1998, USDA 2001). This unit contains the well known Hickman pools in Stanislaus County, and a high concentration of hairy Orcutt grass occurrences (CNDDDB 2001). The Hickman pool complex contains one of the largest vernal lakes in California at more than 121 ha (300 ac) and represents a unique habitat for hairy Orcutt grass. This unit contains numerous vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths to sustain hairy Orcutt grass germination, growth, and reproduction.

This unit contains large, intact vernal pool grasslands that help maintain the distribution of the species over its entire range. In vernal pool grasslands south of this unit, two hairy Orcutt grass occurrences are presumed extirpated as a result of agricultural conversion and intensive cattle grazing. Extant hairy Orcutt grass occurrences within this unit are threatened by altered hydrology, overgrazing, and competition with invasive species (CNDDDB 2002). The watershed containing the Hickman vernal pools has been breached by hundreds of acres of orchards that have been planted upstream. The integrity of the vernal pool complexes in eastern Stanislaus and Merced counties is seriously threatened by irrigated agriculture, upland housing development, and the proposed UC Merced Campus and associated development.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. The Turlock Unit is bordered by the Tuolumne River to the north and the Merced River to the south. The unit lies between the towns of La Grange and Snelling. County Road J9 runs west of the unit and the eastern edge is located in the low elevation foothills of the Sierra Nevada. Vernal pools in the Turlock Unit are located in eastern

Stanislaus and Merced counties. This unit coincides with Hoover's spurge Unit 5, Colusa grass Unit 7, Greene's tuctoria Unit 9 and succulent owl's-clover Unit 3A. It overlaps vernal pool fairy shrimp Unit 21. Land ownership within this unit includes BLM (7 ha (17 ac)) and California State Parks (25 ha (61 ac)). The remaining land within this unit is privately owned.

Unit 5, Madera Unit, Madera County (9,085 ha (22,448 ac))

This unit is proposed as critical habitat for hairy Orcutt grass because it contains occurrences of the species within vernal pools formed on Greenfield and Hanford soil series (Holland 1998, CNDDDB 2002). These soils support vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths to sustain germination, growth and reproduction of hairy Orcutt grass. To maintain the full range of ecological conditions in which this species occurs, conservation of hairy Orcutt grass populations and vernal pool habitat in the Madera Unit is important.

The Madera Unit contains a California Department of Transportation mitigation site which protects a small occurrence of hairy Orcutt grass, and is the only conservation area for this species in the Southern Sierra Foothills. However, vernal pool habitat in and adjacent to this unit is progressively being eliminated and modified. An occurrence of hairy Orcutt grass approximately 11 km (7 mi) east of Madera has been extirpated due to residential development. The development of ranch-style homes, small horse pastures, orchards and new roads poses a serious threat to at least five other occurrences in or adjacent to this unit. However, hairy Orcutt grass has successfully been introduced into created vernal pools in this unit.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. Located in Madera County, this unit contains vernal pool habitat extending from the Chowchilla River in the north to the Fresno River in the south. The Fresno River separates this unit from the Cottonwood Creek Unit to the south. All vernal pools in this unit are located east of the Atchison, Topeka, and Santa Fe Railroad and extend into the low elevation foothill region of the Sierra Nevada. Berenda Creek bisects the unit. The town of Madera is located southwest of the unit, Hensley Lake is east of the unit, and Eastman Lake is northeast of the unit. The Madera Unit

coincides with San Joaquin Valley Orcutt grass Unit 4, succulent owl's-clover Unit 4, and overlaps vernal pool fairy shrimp Unit 24A. Other sensitive vernal pool species found within this unit include California tiger salamander and California linderiella. All the land within this unit is privately owned.

Unit 6, Cottonwood Creek Unit, Madera County (15,824 ha (39,100 ac))

This area is proposed as critical habitat for hairy Orcutt grass because it supports over 15 percent of the known occurrences of the species within Northern Claypan vernal pools formed on Cometa, Greenfield, Hanford soil series (CNDDDB 2001, USDA 1994, Holland 1998). These pool types provide the necessary timing, length of inundation, water quality, and soil moisture for hairy Orcutt grass germination, growth and reproduction. The Cottonwood Creek Unit represents the southern extent of hairy Orcutt grass range. This unit contains large intact and contiguous vernal pool grassland areas that help maintain the distribution of the species through out its range.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery, as well as elevation contours in the eastern foothill region and sub-watershed boundaries. Located in Madera County, this unit contains vernal pool habitat extending from the Fresno River in the north to the San Joaquin River in the south. The Fresno River separates this unit from the Madera Unit to the north. All vernal pools in this unit are located east of the Atchison, Topeka, and Santa Fe Railroad, extending east into the low elevation foothill region of the Sierra Nevada. Highway 41 bisects the eastern portion of the unit. The Cottonwood Creek Unit overlaps succulent owl's-clover Unit 4, San Joaquin Valley Orcutt grass Unit 4, and vernal pool fairy shrimp Unit 24A. Other sensitive vernal pool species found within this unit include California linderiella, spiny-sealed button-celery, California tiger salamander, and western spadefoot toad. Approximately 4 ha (10 ac) are owned by the CDFG.

Sacramento Orcutt Grass Criteria

In proposing critical habitat units for Sacramento Orcutt grass we evaluated the life history and current distribution of the species, the primary constituent elements, and the current threats to the species. This information allowed us to determine which areas are likely to contribute to the conservation of Sacramento Orcutt grass.

Sacramento Orcutt grass is found only in Sacramento County. The species was historically known from nine occurrences. However, one entire occurrence and a portion of another have been extirpated. Thus, eight of the nine occurrences are extant. Five occurrences, comprising more than 70 percent of the occupied habitat, are concentrated into a single area of approximately 6 sq km (2.3 sq mi) east of Mather Field. Two other occurrences are adjacent to each other—Phoenix Field Ecological Reserve and the introduced population at Phoenix Park. The eighth extant occurrence is near Rancho Seco Lake (Stone *et al.* 1988, Cochrane *in litt.* 1995a, Morey *in litt.* 1996, CNDDDB 2002).

Sacramento Orcutt grass was extirpated from its historic occurrence between Orangevale and Folsom by urban development. The species was extirpated from one pool near Grant Line Road by changes in hydrology—pool depth was increased artificially to provide a longer-lasting water source for livestock, which created conditions unsuitable for persistence of Sacramento Orcutt grass (Stone *et al.* 1988, CNDDDB 2002). Even though they have not been extirpated, extant occurrences at the Phoenix Field Ecological Reserve and the Phoenix Park Vernal Pool Preserve have been degraded by off-road vehicles and alterations to natural drainage patterns (Clark *et al.* 1998).

The remaining pools where Sacramento Orcutt grass grows are subject to a wide variety of factors that threaten the species survival. Urban encroachment and the associated increase in human activities, is the primary factor. One occurrence in the primary area of concentration could be destroyed by expansion of the county landfill (Cochrane *in litt.* 1995a); the precise area of expansion has yet to be determined. At present, trash from the landfill frequently blows into the pools (Cochrane *in litt.* 1995b). An industrial park and road widening threaten another one of the occurrences in the same area (Stone *et al.* 1988, Cochrane *in litt.* 1995a).

Competition from native plants such as pale spikerush (*Heleocharis* sp.) and manna grass (*Glyceria* sp.) could displace Sacramento Orcutt grass (Stone *et al.* 1988, Cochrane *in litt.* 1995a, Cochrane *in litt.* 1995b, Clark *et al.* 1998). Livestock grazing during the growing season, or overstocking during winter grazing, may degrade habitat for Sacramento Orcutt grass; however, grazing may be useful in providing control of competing plants if appropriate timing and stocking rates

can be determined (Griggs 1977, Stone *et al.* 1988, Cochrane *in litt.* 1995b).

Sacramento Orcutt Grass Unit Review

We conducted a regional review across the range of Sacramento Orcutt grass to evaluate and select areas that are essential to the conservation of the species and that may require special management. Important factors we considered were the known presence of the species and the presence of the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Phoenix Field and Phoenix Park Unit, Sacramento County (29 ha (72 ac))

This unit is proposed as critical habitat for Sacramento Orcutt grass because it supports 25 percent of the known occurrences (2 of 8), including occurrences found within vernal pools on Red Bluff and Redding soils (CNDDDB 2002). These pool types provide the necessary timing and frequency of inundation for Sacramento Orcutt grass germination, growth, and reproduction. The unit boundary was drawn to include Sacramento Orcutt grass and the vernal pool complexes in which it occurs (Holland 1998, Sacramento County 1999). SPOT imagery was used to exclude urban and developed areas, however, the resolution of this imagery did not permit us to exclude all developed areas. This unit represents the northern extent of the species range, and one of only three areas where Sacramento Orcutt grass is known to occur.

The Phoenix Field Ecological Reserve and Phoenix Park occurrences are affected by excess runoff from lawns, baseball fields, and roads; by herbicide and fertilizer applied in adjacent areas (Griggs and Jain 1983, Holland *in litt.* 1986, Stone *et al.* 1988, Cochrane *in litt.* 1995a, Morey *in litt.* 1996, Clark *et al.* 1998); and by dumping of landscape waste (Clark *et al.* 1998). Another threat at the Phoenix Field Ecological Reserve is invasion of garden plants (Clark *et al.* 1998). Recreational activities such as rollerblading (Witham *in litt.* 2000a), biking, and horseback riding (Cochrane *in litt.* 1995a, Cochrane *in litt.* 1995b, Clark *et al.* 1998) also are damaging the Phoenix Park occurrence.

This unit is situated within the City of Fair Oaks, and lies east of Hazel Avenue and northwest of Lake Natoma. This unit is bounded by urban development except for the east side, which is adjacent to Folsom Lake State Recreation Area. The City of Fair Oak's Phoenix Park, Phoenix Field, and Jim David Park are included within the

boundaries of this unit. The unit consists primarily of public land and is frequently visited by the public. Although surrounded by development, this unit represents an important urban preserve for the species.

Unit 2, Southeast Sacramento Valley Unit, Rancho Cordova, Sacramento County (8,853 ha (21,875 ac))

This unit is proposed as critical habitat for Sacramento Orcutt grass because it contains over 50 percent of the known occurrences (4 of 8) of the species within vernal pools on Redding and Redbluff soils that contain the primary constituent elements essential for the conservation of the species (USDA 2001, Holland 1998, Sacramento County 1999, CNDDDB 2002). This unit also represents one of only three units for the species across its entire range. This unit includes relatively undisturbed, hydrologically intact vernal pool habitats as mapped by Holland (1998), that may continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for Sacramento Orcutt grass to complete germination and reproduction.

The Southeastern Sacramento Valley Unit for Sacramento Orcutt grass occupies the area south and east of Mather Airport and Regional Park. The Cosumnes River forms part of the southern and eastern boundary of the unit. Urban areas in the cities of Sacramento and Rosemont form the western boundary. Mather Airport and the dredge tailings northeast of the airport form the northern boundary. The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for Sacramento Orcutt grass germination and reproduction.

The majority of the lands included within this unit are privately owned, including the Sunrise Douglas mitigation area, where several occurrences of Sacramento Orcutt grass are known to occur. Other vernal pool habitats in this area have been identified by the Sacramento Valley Open Space Conservancy, the CNPS, and TNC as excellent examples of vernal pool grasslands, supporting a rich and diverse community of vernal pool endemic plants and animals within Sacramento County. Vernal pool habitats in this unit are threatened by urbanization from the expanding cities of Sacramento and Elk Grove.

Conversion to intensive agriculture, particularly vineyards, is also a significant threat to Sacramento Orcutt grass habitat in this unit. The unit is bisected by the Folsom South Canal and State Highway 16. This unit is included in Unit 8 for vernal pool tadpole shrimp and Unit 13 for vernal pool fairy shrimp and coincides with Unit 6 for slender Orcutt grass. Other sensitive vernal pool species located within this unit include California linderiella, legenera, Bogg's Lake hedge-hyssop, Ahart's dwarf rush, and western spadefoot toad.

Unit 3, Rancho Seco Unit, Sacramento and Amador Counties (15,750 ha (38,918 ac))

This unit is proposed as critical habitat for Sacramento Orcutt grass because it supports occurrences of the species within high terrace vernal pools on Corning soils that contain the primary constituent elements and provide the necessary timing and frequency of ponding that allow the species to germinate and reproduce (Holland 1998, USDA 2001, Sacramento County 1999, CNDDDB 2002). This unit represents one of only three areas where this species is known to occur, and is the southern extent of the species range. All of these areas are essential to the species by improving its chances of surviving natural and environmental changes, as well as random or stochastic events. This unit includes relatively undisturbed, hydrologically intact vernal pool habitats, that may continue to support natural vernal pool ecosystem processes and maintain suitable habitat conditions for the species.

The western boundary of the unit was defined by the extent of high terrace soils in the region, including Corning and Redding soils, which generally comprise the extent of Sacramento Orcutt grass habitat. The northern and southern boundaries of this unit were delineated to exclude urban and agricultural areas. The majority of land within this unit is privately owned. Some vernal pool areas are protected in this unit on TNC's Howard Ranch Preserve and Schnider property near Meiss Road. The Clay Station Mitigation Bank and the Borden Ranch mitigation site are located within this unit, as well as a number of smaller conservation areas including the Rancho Seco Preserve and the L.V. Island Preserve. Approximately 247 ha (610 ac) is owned by the CDFG, and 3,094 ha (7,736 ac) by TNC. An additional 5 ha (11 ac) of private land is protected by WRP easements or agreements. Urban expansion and conversion to vineyards

threaten existing vernal pool habitats throughout this unit.

This unit occupies the area south of Laguna Creek and north of the Sacramento and San Joaquin county line along Dry Creek. The eastern boundary is the low elevation foothills of western Amador County. The western limit is bounded by urban and agricultural areas near the cities of Galt and Elk Grove and along the foothill region of the southeastern Sacramento Valley. This unit is a portion of Unit 13 for vernal pool tadpole shrimp and Unit 19 for vernal pool fairy shrimp. Other sensitive species found within this unit include Bogg's Lake hedge-hyssop, Ahart's dwarf rush, Henderson's bent grass, legenera, Sanford's arrowhead, pincushion navarretia, dwarf downingia, California tiger salamander, western spadefoot toad, and California linderiella.

San Joaquin Valley Orcutt Grass Criteria

In proposing critical habitat units for San Joaquin Valley Orcutt grass we evaluated the life history and current distribution of the species, the primary constituent elements, and the current threats to the species. This information allowed us to determine which areas are most likely to contribute to the conservation of this species.

San Joaquin Valley Orcutt grass is restricted to the foothills of the southern Sierra foothill region of the San Joaquin Valley. Of the 47 occurrences of San Joaquin Valley Orcutt grass ever reported, 27 are presumed to be extant; 17 are certainly extirpated and 3 others are possibly extirpated because the habitat has been modified (CNDDDB 2001). However, only 12 of the occurrences presumed extant have been revisited within the past decade, so even the most recent information is outdated. This species has been completely extirpated from Stanislaus County but remains in Fresno, Madera, Merced, and Tulare counties (Stone *et al.* 1988, CNDDDB 2001).

San Joaquin Valley Orcutt grass does not occur outside of the Southern Sierra Foothills Vernal Pool Region (Keeler-Wolf *et al.* 1998). The primary area of concentration is northeast of Merced in Merced County, with 14 occurrences (52 percent) on the Flying M Ranch and adjacent lands (EIP Associates 1999, Witham *in litt.* 2000b, CNDDDB 2001). The Lanes Bridge area of Madera and Fresno counties has the second highest concentration of San Joaquin Valley Orcutt grass, with seven occurrences (26 percent), including the introduced population. The remaining six occurrences include three in the Le

Grand area of Merced County, two on the tabletops near the San Joaquin River in Madera and Fresno counties, and one in northwestern Tulare County (Stone *et al.* 1988, Stebbins *et al.* 1995, CNDDDB 2001).

All of the habitat of San Joaquin Valley Orcutt grass in Stanislaus County and much of that in Madera and Fresno counties has been converted to irrigated agriculture, especially to almond orchards and vineyards (Stone *et al.* 1988, CNDDDB 2001). The majority of sites were converted by the late 1970's (Griggs 1980, Griggs and Jain 1983). Altered hydrology and development (residential, commercial, and recreational) eliminated several other populations (Stone *et al.* 1988, CNDDDB 2001). Dryland grain farming has modified vernal pool habitats of San Joaquin Valley Orcutt grass in Madera and Merced counties, and the species is presumed to be extirpated from those occurrences (CNDDDB 2001). However, Crampton (1959, 1976) indicated that San Joaquin Valley Orcutt grass could persist despite dryland farming, and the species was rediscovered at one such site after having been absent for several years (CNDDDB 2001). Summer livestock grazing or heavy use by cattle damaged two populations each in Madera and Merced counties (Stone *et al.* 1988, CNDDDB 2001); their current status is not known.

The primary threats facing the remaining occurrences of San Joaquin Valley Orcutt grass are altered livestock grazing regimes, agricultural conversion, and small population size (Stone *et al.* 1988, CNDDDB 2001). Most extant populations are grazed currently. According to Stone *et al.* (1988), moderate cattle grazing in spring is compatible with persistence of San Joaquin Valley Orcutt grass, and possibly beneficial, but increased stocking rates or summer or year-round grazing would be detrimental. Conversion to irrigated agriculture is most likely at sites that currently are dry-farmed. Small populations are at risk of extirpation due to chance events (Menges 1991), particularly those that fluctuate greatly from year to year (Thomas 1990). Omitting those described only as "abundant," population size has been estimated for 14 occurrences of San Joaquin Valley Orcutt grass. Three numbered fewer than 10 plants each, even in favorable years (Stone *in litt.* 1992, Stebbins *et al.* 1995, CNDDDB 2001).

Additional threats to San Joaquin Valley Orcutt grass are varied. Four of the extant occurrences in Madera County are in the path of the proposed extension of State Highway 41 (Stone *in*

litt. 1992). Three other occurrences in Madera and Fresno counties are threatened by a proposed residential development (Stone *et al.* 1988, Stebbins *et al.* 1995, CNDDDB 2001). One occurrence could be destroyed by construction of the proposed UC campus in Merced County (EIP Associates 1999). Altered hydrology, competition from other plants, and off-road vehicles are potential threats at a few sites (Stone *et al.* 1988). Foraging by grasshoppers (family Acrididae) and mice (order Rodentia) occasionally poses problems (Stebbins *et al.* 1995, CNDDDB 2001). In some years, grasshoppers (family Acrididae) consumed entire populations of San Joaquin Valley Orcutt grass before they set seed (Griggs and Jain 1983, Stone *et al.* 1988).

San Joaquin Valley Orcutt Grass Unit Review

We conducted a regional review of the known range of San Joaquin Valley Orcutt grass to evaluate and select areas that are essential to the conservation of San Joaquin Valley Orcutt grass and that may require special management. Important factors we considered were the presence of the species and the presence of the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Merced Unit, Merced and Mariposa Counties (45,643 ha (112,783 ac))

This unit is proposed as critical habitat for San Joaquin Valley Orcutt grass because it supports over half of the known occurrences of the species (CNDDDB 2001). This unit contains the only area where San Joaquin Valley Orcutt grass is found on vernal pools formed upon Corning and Greenfield soils, and one of only two sites where it is found on San Joaquin soils (Holland 1998, USDA 2001, EIP 1999). These pool types maintain the timing and length of inundation necessary for San Joaquin Orcutt grass germination, growth, and reproduction, and provide a diversity of habitats for the species. This unit supports some of the largest, most robust occurrences of the species (Holland 2000). The area within this unit encompasses the largest block of pristine, high density vernal pool grasslands remaining in California (Vollmar 1999).

A majority of the land in the Merced Unit is privately owned and is used to graze cattle. Two occurrences on the Flying M Ranch are protected under a conservation easement with TNC. The integrity of the vernal pool complexes in

eastern Merced is seriously threatened by irrigated agriculture, upland housing development, and the proposed UC Merced Campus and associated development. Construction of facilities to educate and serve twenty-five thousand UC students as well as faculty, staff, and their families within what is now high quality vernal pool habitat in eastern Merced County could have a major impact on species endemic to vernal pools. However, the recent draft biological opinion for the UC Merced campus and community developed environmental parameters which should reduce impacts to vernal pool habitats. Indirect and cumulative impacts of the proposed 1,673 ha (4,133 ac) campus and associated community may be minimized with the creation of a 2,036 ha (5,030 ac) preserve intended to protect sensitive vernal pool habitat, to be purchased with money donated by the Packard Foundation. Approximately 419 ha (1,048 ac) of this unit is owned by the DOD, 4 ha (8 ac) by BLM, 10 ha (26 ac) by California State Parks. TNC has 3,424 ha (8,559 ac) of easement lands within this unit. The remaining lands within this unit are privately owned.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. A majority of the vernal pool habitat in the Merced Unit is in Merced County, although the eastern edge of the unit overlaps into Mariposa County in the low elevation foothills of the Sierra Nevada. The northern boundary parallels the Merced River, and Bear Creek serves as the southern border. The entire unit is located east of State Highway 99. The Merced Unit coincides with vernal pool tadpole shrimp Unit 15 and vernal pool fairy shrimp Unit 22. It also overlaps hairy Orcutt grass Unit 6, Greene's tuctoria Unit 7, succulent owl's-clover Unit 3B, Colusa grass Unit 6, and Conservancy fairy shrimp Unit 6. Other sensitive vernal pool species found within this unit include the California tiger salamander, shining navaretia, dwarf downingia, Bogg's Lake hedge-hyssop, western spadefoot toad, and California linderiella.

Unit 2, Le Grand Unit, Merced, Mariposa, and Madera Counties (21,495 ha (53,114 ac))

This unit is proposed as critical habitat for San Joaquin Valley Orcutt grass because it supports occurrences of the species within vernal pools formed on alluvial terraces on Raynor clay soils (CNDDDB 2001). The Le Grand Unit is essential for the conservation of San

Joaquin Valley Orcutt grass because it contains large intact and contiguous vernal pool grassland areas that provide connectivity between units to the north and south. This unit contains vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain San Joaquin Orcutt grass germination, growth, reproduction, and dispersal. This unit is important to maintain the range of habitats in which the species is known to occur.

This unit contains an area where San Joaquin Valley Orcutt grass was introduced into six created pools; it germinated and flowered in five of them during the 2 years following its introduction (Durgarian 1995, Stebbins *et al.* 1995) and was still present in 2000 (Faubion *in litt.* 2000). This site is now treated as an occurrence by the CNDDDB (2001). The Madera Irrigation District manages the property, which is owned by the BOR (Stebbins *et al.* 1995). The integrity of vernal pool complexes and their associated watersheds in the Le Grand Unit is threatened by altered hydrology, competition from other plants, irrigated agricultural conversion, particularly orchards and vineyards, and urban encroachment. Several occurrences in this unit have been extirpated as a result of intensive agriculture.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. A majority of the vernal pool habitat in the Le Grand Unit is in Merced County. The eastern edge of the unit overlaps into Mariposa County and in the south it extends to the Madera County line. Bear Creek serves as the northern boundary. The entire unit is located east of State Highway 99. The towns of Le Grand and Planada are adjacent to the western edge of the unit. The Le Grand Unit overlaps with vernal pool tadpole shrimp Unit 15, Greene's tuctoria Unit 6, Conservancy fairy shrimp Unit 6, and succulent owl's-clover Unit 6. Other sensitive vernal pool species found within this unit include California tiger salamander, shining navaretia, and western spadefoot toad. TNC has 428 ha (1,070 ac) of easement lands within this unit. The remaining lands within this unit are privately owned.

Unit 3, Madera Unit, Madera County (20,937 ha (51,733 ac))

This unit is proposed as critical habitat for San Joaquin Valley Orcutt grass because it supports occurrences of the species within alluvial terrace

vernal pools that provide the necessary timing and length of inundation for San Joaquin Valley Orcutt grass germination, growth, and reproduction (CNDDDB 2001). This area is the only location where the species is found on Cometa and San Joaquin soils (USDA 2001).

San Joaquin Valley Orcutt grass is known from only eight general areas along the eastern margin of the San Joaquin Valley. Historically, vernal pools spanned from the low elevation Sierra Nevada foothills to the valley floor where they connected with other large vernal pool complexes. Today, only a fraction of the vernal pool habitat that was historically in the greater watershed area remains. The integrity of vernal pool complexes and their associated watersheds in the Madera Unit is threatened by altered hydrology, competition from other plants, irrigated agricultural conversion, particularly orchards and vineyards, and urban encroachment.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. Located in Madera County, this unit contains vernal pool habitat south of the Chowchilla River and abutting the Fresno River. Berenda Creek is located northwest of the unit. Habitat within this unit is located east of the Atchison, Topeka, and Santa Fe Railroad and extends into the low elevation foothill region of the Sierra Nevada. The town of Madera borders the unit on its southwest edge, Hensley Lake is east of the unit, and Eastman Lake is northeast of the unit. The Madera Unit coincides with hairy Orcutt grass Unit 7, Greene's tuctoria Unit 7, succulent owl's-clover Unit 4 and vernal pool fairy shrimp Unit 24A. Other sensitive vernal pool species found within this unit include California tiger salamander and California linderiella. All the land within this unit is privately owned.

Unit 4, Fresno Unit, Fresno County (3,233 ha (7,990 ac))

This unit is proposed as critical habitat for San Joaquin Valley Orcutt grass because it contains occurrences of the species growing within vernal pools formed on Fallbrook, Ramona, San Joaquin, Vista, and Pollasky soil series (CNDDDB 2002). This unit contains vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain San Joaquin Orcutt grass germination, growth, and reproduction. This unit is significant geographically, as it may contribute to

dispersal to vernal pool habitats north and south of it. The diversity of vernal pool types found within the Fresno Unit contributes to the range of ecological conditions in which San Joaquin Valley Orcutt grass occurs.

Due to edaphic variation, vernal pool habitat in this unit is less dense than habitat in units further north. Vernal pools within this unit have been destroyed by conversion to irrigated agriculture, as well as urban encroachment from the cities of Fresno and Clovis. Several known occurrences of San Joaquin Valley Orcutt grass within this unit have been extirpated due to either hydrologic modifications off-site, or land use modifications such as leveling of "hog wallows" for urban development such as near State Route 41 near Woodward Park in Fresno.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery. Located in Fresno County, this unit contains vernal pool habitat south of Millerton Lake and east of the San Joaquin River. The unit is located north of Copper Road and the city of Fresno is southwest of the unit. The eastern boundary parallels the low elevation foothill region of the Sierra Nevada. Auberry Road is east of the northern portion of the unit and passes through the southern portion of the unit. CDFG has approximately 0.4 ha (1 ac) of land within this unit. The Fresno Unit overlaps San Joaquin Valley Orcutt grass Unit 5 and vernal pool fairy shrimp Unit 24B. Other sensitive vernal pool species found within this unit include California linderiella, California tiger salamander, and western spadefoot toad.

Unit 5 A and B, Table Mountain Unit, Fresno and Madera Counties, (1,723 ha (4,258ac))

This area is proposed as critical habitat for San Joaquin Valley Orcutt grass because it supports occurrences of the species within Northern Basalt Flow vernal pools (Holland 1998, Keeler-Wolf *et al.* 1998, CNDDDB 2002). This is the only area where San Joaquin Valley Orcutt grass is known to occur within these pool types (CNDDDB 2001). Northern Basalt Flow vernal pool complexes are an extremely rare vernal pool habitat occurring only on ancient terraces and hilltops above the surrounding low-lying terrain. They typically contain small, irregularly clustered pools with "flashy hydrology" (Keeler-Wolf *et al.* 1998). The Kennedy Table occurrence of San Joaquin Valley Orcutt grass was described as containing

millions of plants in 1995 (CNDDDB 2001).

This unit contains protected lands at the Big Table Mountain Ecological Reserve. A cooperative group consisting of CDFG, California Department of Parks and Recreation, Sierra Foothill Conservancy, BLM, and BOR has developed a management and monitoring plan for Big Table Mountain. BLM owns approximately 15 ha (370 ac) of land and TNC has 260 ha (650 ac) of conservation easements within this unit. Initial efforts will focus on grazing as a means to control non-native grasses while comparing population trends of threatened and endangered species in grazed and ungrazed portions of the tableland (Griggs *in litt.* 2000a). This unit also contains an occurrence of San Joaquin Valley Orcutt grass that is partially on public land administered by the BLM. The pool supports the second-largest population of the species known to be extant. The BLM and conservation groups are hoping to acquire the adjacent land to protect the entire pool (CNDDDB 2001).

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery, as well as elevation contours in the eastern foothill region and sub-watershed boundaries. Unit 5 for San Joaquin Orcutt grass is comprised of two subunits. Both subunits are located east of Millerton Lake on basalt mesas above the San Joaquin River. Subunit 5B is located on Kennedy Table in Madera County, and Subunit 5A is directly south of this unit across the San Joaquin River on Table Mountain in Fresno County. The Table Mountain Rancheria is south of this unit. Unit 5 coincides with vernal pool fairy shrimp Unit 25, vernal pool tadpole shrimp Unit 17, and succulent owl's-clover units 6A and 6B. Other sensitive vernal pool species found within this unit include Bogg's lake hedge-hyssop and California linderiella.

Unit 6A and B, Tulare Unit, Tulare County (8,028 ha (19,836 ac))

This unit is proposed as critical for San Joaquin Valley Orcutt grass because it contains occurrences of the species within vernal pools on Madera and Greenfield soils that provide the primary constituent elements essential to the conservation of the species (USDA 2001, CNDDDB 2001). This unit represents the southern extent of San Joaquin Valley Orcutt grass range. San Joaquin Valley Orcutt grass occurs on CDFG land at Sequoia Fields Ecological Reserve (199 ha, (491 ac)); however, most of the area within this unit is

privately owned. This unit contains vernal pools and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain San Joaquin Valley Orcutt grass germination, growth and reproduction. Agricultural conversion of range or barren land and urban development have greatly reduced the amount of vernal pool habitat in this area.

The unit boundary was drawn to include species occurrences and the vernal pool complexes in which they occur as mapped by Holland (1998) and as visible on SPOT imagery, as well as elevation contours in the eastern foothill region and sub-watershed boundaries. There are two subunits within the Tulare Unit. This westernmost subunit, subunit A, is located east of J19. Road 63 cuts through its eastern edge. St. Johns River is south of the subunit and the Southern Pacific Railroad runs northeast of the unit. Subunit B is located east of Road 63 and Road 201 passes through it. It extends into the low elevation foothills of the Sierra Nevada. Colvin Mountain is located within the southwest boundary. Road 245 bisects subunit B and the south side of Red Mountain is within the northeast boundary of this unit. The Tulare Unit coincides with Hoover's spurge Unit 7, and it overlaps with vernal pool tadpole shrimp Unit 18 and vernal pool fairy shrimp Unit 26. Other sensitive vernal pool species found within this unit include California tiger salamander, spiny-sepal button-celery, and the western spadefoot toad.

Slender Orcutt Grass Criteria

In proposing critical habitat units for slender Orcutt Grass we evaluated the life history and current distribution of the species described in the background section of this rule, the primary constituent elements described in the primary constituent element section of this rule, and the current threats to the species described below. This information allowed us to determine which areas are likely to contribute to the conservation of this species and to delineate units so that threats to this species might be minimized.

Slender Orcutt grass is currently known from 79 occurrences, of which 73 are presumed to be extant (Corbin *in litt.* 1999, CNDDDB 2001); occurrences are presumed to be extant until the CNDDDB receives documentation that they have been extirpated. The primary area of concentration for slender Orcutt grass is in the vicinity of Dales, Tehama County. A secondary area of concentration for slender Orcutt grass is

the Modoc Plateau Vernal Pool Region in Lassen, Plumas, Shasta, and Siskiyou counties. Additional occurrences of the species are found in Shasta, Lake, and Sacramento counties.

Urban development in the vicinity of Redding has extirpated or caused the severe decline of five slender Orcutt grass occurrences through construction activities and hydrological alterations (Griggs and Jain 1983, CNDDDB 2001). Agricultural conversion apparently eliminated the species from the type locality. Although the exact location of the type collection is not known, the general area was being used for crop fields and both irrigated and dry pastures as of 1987 (Stone *et al.* 1988). Urban development is continuing in the vicinity of Redding and could eliminate the remaining populations in that area.

A variety of other factors are contributing to the continued decline of slender Orcutt grass including off-road vehicle use, inappropriate livestock grazing, altered hydrology, and competition from other plants (Stone *et al.* 1988, Corbin and Schoolcraft 1989). Off-road vehicle use is a particular problem near Redding and in forested areas of the Modoc Plateau. According to Stone *et al.* (1988), "moderate" livestock grazing in spring is compatible with slender Orcutt grass but overstocking, summer grazing, and trampling pose threats to several occurrences. However, grazing may be necessary to control aggressive competitors such as the native species, pale spikerush (Witham *in litt.* 2000a). Altered hydrology contributes to the decline of slender Orcutt grass by creating conditions unsuitable for its germination, growth, or reproduction, and by promoting the growth of competing plant species.

Slender Orcutt Grass Unit Review

We conducted a regional review across the range of slender Orcutt grass to evaluate and select areas that are essential to the conservation of the species and that may require special management. Important factors we considered were the known presence of the species and the presence of the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1 A, B, C, D, E, F, G, H, and I, Modoc Plateau Unit, Plumas, Lassen, Shasta, Modoc, and Siskiyou Counties (23,266 ha (57,490 ac))

This unit is proposed as critical habitat for slender Orcutt grass because it contains almost 25 percent of all known occurrences of the species and

the vernal pool habitat remains inundated for sufficient periods of time to allow slender Orcutt grass to complete its life cycle. The species is found growing within Northern Basalt Flow vernal pools occurring on Gooval, Lasvar, Lasvar-Pitvar, and Nosoni soils that provide the primary constituent elements essential to the conservation of the species (CNDDDB 2002). These occurrences are all found on the Modoc Plateau, where they are located at higher elevations, and experience the coldest climatic conditions of any other areas throughout the species range. The occurrences are on Northern Basalt Flow vernal pools (CNDDDB 2002). This area represents the northern-most extent of the range of slender Orcutt grass, and is over 50 km (32 mi) from the nearest occupied areas to the south.

The boundaries of this unit were delineated by using SPOT imagery and elevation contours to include the open flat area associated with the vernal pool including the adjacent uplands that contribute to the filling and drying of the vernal pool where slender Orcutt grass occurs. The unit designates an area sufficient to maintain suitable periods of pool inundation, water quality, and soil moisture for slender Orcutt grass to germinate, grow, and reproduce.

The Modoc Plateau area is not threatened by urban development at this time due to its remote location, however off-road vehicle use and overgrazing may threaten some occurrences in this area (CNDDDB 2001). Additional sensitive species found within this unit include Bogg's Lake hedge-hyssop, and profuse flowered pogogyne (*Pogogyne floribunda*). Although the majority of land within this unit is located either on USFS (15,500 ha (38,750 ac)), NPS (58 ha (144 ac)), or BLM lands (2,754 ha (6,886 ac)). The California State Parks also has land within this unit (37 ha (92 ac)).

This unit for slender Orcutt grass consists of nine subunits largely within the volcanic plateau of northeastern California. The nine subunits are identified as the Lake Almanor, Crater Lake Mountain, Poison Lake, Badger Mountain, Lost Creek, Goose Valley, Long Valley, Cayton Creek, and Timbered Crater subunits. The Lake Almanor subunit is located in Plumas County, on the southwestern part of Lake Almanor along Humbug Humboldt Cross Road and State Route 89. The area extends from near the shoreline upslope to the watershed boundary. The land is owned by the USDA and managed by the USFS. The Crater Lake Mountain subunit is located along Route 44 and encompasses the northwestern portion of Crater Lake Mountain as well as

Grays and Harvey valleys. The watershed boundary was used to determine the extent of this subregion. The Poison Lake subunit north of State Route 44 near Pittville Road adjacent to South Cabin Reservoir and Ebey Lake. The western boundary is near Halls Flat Road. The Badger Mountain subunit is located north of Badger Mountain and east of State Route 89 and South of Potato Butte. Little Bunch Grass Meadow is included in this unit. The Lost Creek subunit is located south of Cinder Butte and west of the Hat Creek Rim. Lost Creek near Wilcox Road is within this subunit. The Goose Valley subunit is located in Shasta County northwest of the intersection of State Route 299 and Route 89 in Goose Valley north of Burney, California. The Long Valley subunit is located in Long Valley west of Black Ranch Road south of Long Valley Mountain and east of Lookout Mountain. The Cayton Creek subunit is located in Shasta County north of Cayton Valley and Lake Britton east of Route 89. The area includes the northwestern portion of the watershed boundary for Fort Mountain along Red Mountain Road. The subunit is located in the Shasta National Forest. The Timbered Crater subunit is located on the Shasta/Modoc/Siskiyou county border near Little Hot Springs Valley. The subunit includes the area adjacent to Timbered Crater up to the Whitehorse Mountains and Day Road. The Timbered Crater subunit includes an area which has been proposed to be designated by the BLM as a Research Natural Area for vernal pools.

Unit 2 A, B, and C, Stillwater Plains Unit, Shasta County (5,100 ha (12,601 ac))

This unit is proposed as critical habitat because it contains many occurrences of slender Orcutt grass (CNDDDB 2001) living within large vernal pool grassland areas that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units (EPA 1994, Holland 1998, Shasta County 2001).

This area is comprised of old alluvial terraces above the Sacramento River associated with Igo, Tuscan, Moda, and Redding soils (CNDDDB 2001), which provide vernal pool habitat for the species. These pool types provide the necessary timing and duration of inundation necessary for slender Orcutt grass growth, germination, and reproduction. This unit represents the northern extent of the species range in

the Sacramento Valley. The majority of the lands included within this unit are privately owned. Urban expansion from the city of Redding has greatly affected existing vernal pool habitats throughout this unit.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for slender Orcutt grass germination and reproduction. The BLM owns 33 ha (81 ac) in the unit, while the NRCS holds conservation easements or agreements on an additional 52 ha (130 ac) through its WRP program.

The Stillwater Plains Unit 2 contains three subunits. These are located in the area east and south of the city of Redding near the Redding Municipal Airport encompassing Stillwater Plains to the confluence of the Sacramento River and Cow Creek. This unit is also part of vernal pool fairy shrimp Unit 5 and vernal pool tadpole shrimp Unit 1. Other sensitive species occurring within this unit include Red Bluff dwarf rush, California linderiella, and Henderson's bent grass.

Unit 3, Inskip Hill, Tehama and Shasta Counties (20,446 ha (50,522 ac))

This unit is proposed as critical habitat for slender Orcutt grass because it supports occurrences of the species within vernal pools on Guenon, Inskip, Inks, and Toomes soils (CNDDDB 2002). The vernal pool habitats remain inundated for sufficient periods of time to allow the species to germinate, grow, and produce seed. The area supports over 40 percent of the known occurrences the species (CNDDDB 2002) and is important in maintaining a diversity of habitats for slender Orcutt grass. This unit contains large vernal pool complexes that represent some of the last remaining lower elevation vernal pool habitats in the northern Sacramento Valley. These habitats are important to maintain the geographical distribution of slender Orcutt grass in the area.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for slender Orcutt grass germination and reproduction.

Land ownership within this unit includes BLM (6,226 (15,384 ac)), CDFG

(52 ha (130 ac)), State Land Commission (380 ha (950 ac)). The CDFG administers approximately 17 ha (42 ac) and the TNC has conservation easements on 6,230 (15,575 ac) within this unit. The remaining lands included within this unit are privately owned and urban development east of Redding threatens the vernal pool habitats within this area. This unit occupies the area south of the Tehama/Shasta county line south to Sevenmile Creek near the Tuscan Buttes. The eastern boundary encompasses the vernal pool habitats along the lower elevation bordering the Sacramento River. The western boundary roughly follows the Sacramento River. Table Mountain west of the Sacramento River north of Paynes Creek and Red Bluff is included in this unit. This unit coincides within Unit 2 for vernal pool tadpole shrimp.

Unit 4, Vina Plains Unit, Tehama and Butte Counties (11,673 ha (28,845 ac))

This unit is proposed as critical habitat for slender Orcutt grass because it supports occurrences of the species within vernal pools on Tuscan loam and Inks soils (CNDDDB 2002) and the vernal pool habitats provide the necessary timing and length of inundation for slender Orcutt grass germination, growth, and reproduction. This area is over 160 km (100 mi) from the nearest area occupied by slender Orcutt grass to the south.

The boundaries of this unit were delineated by using SPOT imagery and elevation contours to include the open flat area associated with the vernal pool including the adjacent uplands that contribute to the filling and drying of the vernal pools where slender Orcutt grass occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for slender Orcutt grass to germinate and reproduce.

The majority of the lands included within this unit are privately owned. This unit contains TNC's 1862 ha (4,600 ac) Vina Plains preserve. The preserve contains over 300 species of plants, and diverse communities of aquatic invertebrates. Since the 1960s, the Vina Plains area has been the focus of a number of research projects, including long-term adaptive management and monitoring efforts evaluating the effects of grazing and fire on vernal pool plants (Griggs 2000). Much of the basic life history information known about slender Orcutt grass was collected at Vina Plains (e.g., Stone *et al.* 1988, Alexander and Schlising 1997). The results of this research have provided crucial information to guide management and monitoring of vernal

pool ecosystems and to identify factors which influence population dynamics of a number of endangered species, including slender Orcutt grass. In addition to TNC, the importance of vernal pool habitats in this area has been recognized by the CDFG, the Service, the EPA, the CNPS, the NRCS's WRP, and by researchers at the CSU at Chico, who have all supported research and conservation efforts for slender Orcutt grass and other vernal pool species within this unit. Property ownership and protection within this unit includes CDFG (0.4 ha (1 ac)), CDFG administered land (0.4 ha (1 ac)), TNC (77 ha (192 ac)), TNC easements (4,661 ha (11,653)), and private land under WRP easements or agreements (57 ha, 142 ac)).

This unit for slender Orcutt grass occupies the area south of Toomes Creek, and north of Pine Creek and the Cana Highway. State Route 99 bisects this unit and the western boundary generally parallels the Southern Pacific Railway line. This unit is within Unit 7 for vernal pool fairy shrimp and Unit 3 for vernal pool tadpole shrimp, and includes part of Unit 1 for Conservancy fairy shrimp and Unit 1 for Hoover's spurge. The unit coincides with Unit 1 for hairy Orcutt grass and Unit 2 for Greene's tuctoria. Additional sensitive vernal pool species occurring in this unit include California linderiella, and Bogg's Lake hedge-hyssop.

Unit 5A and B, Bogg's Lake Unit, Clear Lake Area, Lake County (1,696 ha (4,191 ac))

This unit is proposed as critical habitat for slender Orcutt grass because it supports occurrences of the species within Northern Volcanic Ashflow vernal pools (Keeler-Wolf *et al.* 1998, CNDDDB 2002). This area represents the western extent of the slender Orcutt grass's range, and some of the last remaining vernal pool habitats in Lake County. This unit is over 135 km (84 mi) from the nearest units to the north and west. Isolated and peripheral populations such as this may have genetic characteristics essential to the overall long-term conservation of the species (*i.e.*, they may be different from other populations in other parts of its range) (Lesica and Allendorf 1995). This is the only unit which contains examples of Northern Volcanic Ash Flow vernal pools and has occurrences of slender Orcutt grass.

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species

occur, and maintain suitable periods of pool inundation, water quality, and soil moisture for slender Orcutt grass germination and reproduction.

The majority of lands within this unit are privately owned. TNC has protected the area around Bogg's Lake south of Clear Lake, but most of the area is not protected. Property ownership and protection within this unit includes CDFG (5 ha (13 ac)) and TNC (77 ha (192 ac)) lands. Threats to these subunits include conversion of rangeland to vineyards, overgrazing, erosion, draining, and urban expansion.

This unit consists of two subunits that are both located south of Clear Lake. The southernmost subunit includes Little High Valley. Other sensitive species found within this unit include Loch Lomond button-celery (*Eryngium constancei*), Burke's goldfields (*Lasthenia burkei*), Bogg's Lake hedge-hyssop, many-flowered navarretia (*Navarretia leucocephala* ssp. *pliantha*), few-flowered navarretia, and legeneere.

Unit 6, Southeast Sacramento Valley Unit, Rancho Cordova, Sacramento County (8,853 ha (21,875 ac))

This unit is proposed as critical habitat for slender Orcutt grass because it supports occurrences of the species within vernal pools on Redding soils and is the southern extent of the species range (CNDDDB 2001, Holland 1998). This unit is over 170 km (105 mi) from the nearest units to the north, and 100 km (62 mi) from the nearest unit to the west. Isolated and peripheral populations such as this may have genetic characteristics essential to the overall long-term conservation of the species (*i.e.*, they may be different from more central populations) (Lesica and Allendorf 1995).

The boundaries of this unit were delineated to include the interconnected pools, swales, and associated uplands mapped by Holland (1998) that contribute to the filling and drying of the vernal pools where the species occur, and to maintain suitable periods of pool inundation, water quality, and soil moisture for slender Orcutt grass germination and reproduction.

This unit occupies the area southeast of Mather Field of Laguna Creek and north of the Sacramento and San Joaquin county line along Dry Creek. The eastern boundary is near Scott Road. The western limit is bounded by urban and agricultural areas near the cities of Galt and Elk Grove. This unit also is included in Unit 8 for vernal pool tadpole shrimp and Unit 13 for vernal pool fairy shrimp and coincides with Unit 2 for Sacramento Orcutt grass.

Other sensitive vernal pool species located within this unit include California linderiella, legeneere, Bogg's Lake hedge-hyssop, Ahart's dwarf rush, and western spadefoot toad. All the lands within this unit are privately owned.

Solano Grass Criteria

In proposing critical habitat units for Solano Grass we evaluated the life history and current distribution of the species, the primary constituent elements, and the current threats to the species. This information allowed us to determine which areas are likely to contribute to the conservation Solano grass.

Solano grass is only known from two locations, Jepson Prairie in Solano County, (consisting of two CNDDDB occurrences, including the type locality) and the Davis Communications Annex in Yolo County. Solano grass is presumed to remain extant at the type locality, although only four individual plants have been found within the last decade, all in 1993 (CNDDDB 2001). The decline of this species at Olcott Lake is attributed to two primary causes—hydrological alterations (Griggs *in litt.* 2000) and over collection (K. Fuller USFWS pers. comm. 1998). Competition, livestock grazing, and off-road vehicle activity may have contributed to its decline (Service 1985c, Witham *in litt.* 1992, CNDDDB 2001). The hydrology has been affected by the nearby road, Cook Lane, which functions like a dam to hold water in the lake, artificially increasing the water level and duration of inundation (Griggs *in litt.* 2000). The Yolo County habitat has been damaged by application of herbicides and salt (Witham *in litt.* 2000a). An undetermined number of Solano grass occurrences are presumed to have been extirpated by agricultural conversion before they were documented (Service 1985c, CDFG 1991).

Competition from aggressive plants poses a potential threat to Solano grass at all three known sites. The primary competitors are lippia at Olcott Lake (Witham *in litt.* 2000a), alkali mallow and swamp grass at the other site in Solano County (CNDDDB 2001), and broad-leaved pepper-weed (*Lepidium latifolium*) in Yolo County (K. Fuller 2002 pers. comm.). Grazing apparently is detrimental to Solano grass but likely depends on the number and type of livestock and the season of use. Exclusion of horses from the Olcott Lake site was followed by an increase in population size (Service 1985c). At last report, sheep still grazed the other Solano County population (CNDDDB 2001).

A number of factors threaten the Yolo County population in addition to competition, including herbicide runoff and soil disturbance from the creation and maintenance of fire breaks and borrow pits (CNDDDB 2001, Witham *in litt.* 2000a). The site is not protected but does occur on DOD land.

Solano Grass Unit Review

We conducted a regional review across the range of Solano grass to evaluate and select areas that are essential to the conservation of the species and that may require special management. Important factors we considered were the known presence of the species and the presence of the primary constituent elements essential to the conservation of the species. A specific description of each area is outlined below.

Unit 1, Davis Communications Annex and Grasslands Area Unit, Yolo County (192 ha (474 ac))

This unit is proposed as critical habitat for Solano grass because it supports the largest extant occurrence of the species within Northern Claypan vernal pools on Pescadero soils (CNDDDB 2002). The unit boundary was drawn to include the vernal pool complex mapped by Holland (1998) and Yolo County Parks (2001) where Solano grass is known to occur. This vernal pool complex maintains suitable periods of pool inundation, water quality, and soil moisture for Solano grass germination, growth and reproduction, and dispersal, but not necessarily every year. This unit represents the northern extent of the range of Solano grass, and is one of only two areas where the species is known to occur. Solano grass in this unit is threatened by altered hydrology, contamination, competition with invasive plant species, and surface disturbances such as discing. This unit is designated to encourage that special management actions be taken, such as grazing, fencing, and the implementation of a targeted management and monitoring plan be implemented to prevent the decline of Solano grass at this location (Yolo County Parks 2001).

This unit is located southeast of the City of Davis and south of the South Fork of Putah Creek. This unit's western boundary lies along the border between Solano and Yolo counties. This unit represents Unit 2 for Colusa grass and Unit 10 for vernal pool tadpole shrimp. Other rare vernal pool species found in this unit include alkali milk-vetch. This area is currently being addressed by local conservation planning efforts and

contains land owned by Yolo County and the DOD (130 ha (321 ac)).

Unit 2, Jepson Prairie Unit, Solano County (7,153 ha (17,675 ac))

This unit is designated as critical habitat for Solano grass because it supports occurrences of the species within large playa vernal pools on the Pescadero soil series which provide habitat for Solano grass (USDA 2001, Holland 1998, Solano County Water Agency 2000, Solano County Farmlands and Open Space 2000, CNDDDB 2002). This area represents the largest contiguous area of habitat remaining for the species, and contains two of the three known occurrences of Solano grass, although one of these occurrences has not been observed since 1993. Vernal pool habitats within the greater Jepson Prairie grassland area that are not likely to support Solano grass occurrences were not included within this unit. This unit represents the southern extent of Solano grass range.

The Jepson Prairie Unit for Solano grass is a portion of the greater Jepson Prairie grassland area, one of the most pristine, intact vernal pool ecosystems remaining in the State of California. Jepson Prairie contains large, playa-like vernal pools which may be over several acres in size, including the 32 ha (80 ac) Olcott Lake. These larger pools often occur in complexes with smaller pools and hogwallow depressions. This unit includes the Jepson Prairie Preserve, jointly managed by the Solano County Farmlands and Open Space Foundation and the UC Reserve System. Jepson Prairie is the target of ongoing conservation planning and active management. As part of the UC Reserve System, this area also provides critical research opportunities for scientists to study vernal pool species, including Solano grass. Solano grass has experienced unexplained declines at Olcott Lake in Jepson Prairie, and research investigating the cause of this decline is essential to ensure the recovery of Solano grass. The unit also contains Ecological Reserves totaling 248 ha (620 ac) owned and approximately 64 ha (161 ac) administered by CDFG. Additional lands are owned by the Travis Air Force Base (93 ha (233 ac)), and the State Land Commission (7 ha (17 ac)). NRCS also holds conservation easements or agreements on 436 ha (1,090 ac) of private land in the unit through the WRP program. Within the greater Jepson Prairie grassland area, existing vernal pools are threatened by agricultural conversion, landfill expansion, power plant construction, and utility maintenance.

This unit is situated east of the City of Fairfield, south of the City of Dixon, and north of the Montezuma Hills and the confluence of the Sacramento and San Joaquin rivers. This unit coincides with Unit 2 for Colusa grass. This unit is encompassed by Unit 3 for Conservancy fairy shrimp, Unit 11 for vernal pool tadpole shrimp and Unit 16 for vernal pool fairy shrimp. This unit also supports a diverse community of plants and animals, including the only known occurrence of delta green ground beetle, and occurrences of California tiger salamander, alkali milk-vetch, Bogg's Lake hedge-hyssop, legenerie, California linderiella, and midvalley fairy shrimp.

Additional Considerations

In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similarly developed lands, and intensively farmed lands that are unlikely to contribute to conservation of the species. However, the resolution of the SPOT imagery and the vernal pool and species occurrence information we used did not allow us to identify these areas at a sufficiently fine scale to exclude all developed areas, such as towns, housing developments, or other lands unlikely to contain the primary constituent elements. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, railroads, airport runways, other paved areas, lawns, landscaped areas, and most intensively farmed areas, and other urban areas, will not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit,

license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and

technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species, or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modification to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained, or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultations have been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may jeopardize vernal pool crustaceans or vernal pool plants or adversely modify their critical habitat will require section 7 consultation. Activities on private lands that require a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), a section 10(a)(1)(B) of the Act permit from the Service, or any other activity requiring Federal action (*i.e.*, funding or authorization from the Federal Highways Administration or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation. Not all of the areas within these units are capable of supporting vernal pool crustaceans or vernal pool plants or their primary constituent elements, and such areas would not be subject to section 7 consultation.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species, or destroy or adversely modify the listed species' critical habitat. Actions likely to jeopardize the continued existence of a species are those that would

appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on the recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the species is present in the area of the proposed action. When the species is present in an area, designation of critical habitat for vernal pool crustaceans or vernal pool plants is not likely to result in regulatory requirements above those already in place due to the presence of the listed species. When the species is not present in an area, designation of critical habitat for vernal pool crustaceans or vernal pool plants may result in an additional regulatory burden when a Federal nexus exists.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of vernal pool crustaceans or vernal pool plants is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency may directly or indirectly destroy or adversely modify critical habitat for vernal pool crustaceans or vernal pool plants include, but are not limited to—

(1) Any activity, including the regulation of activities by the Corps under section 404 of the Clean Water Act or activities carried out by or authorized by the EPA, that could alter the suitability of the watershed or water quality or quantity to support vernal pool crustaceans or vernal pool plants, or any activity that adversely affects the natural hydrologic function of the vernal pool system and/or ephemeral pond or depression;

(2) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities, or any activity funded or carried out by

the Department of Transportation or Department of Agriculture that results in discharge of dredged or fill material, excavation, or mechanized land clearing of ephemeral and/or vernal pool basins;

(3) Sale or exchange of lands by a Federal agency to a non-Federal entity which could foreseeably impact the primary constituent elements of critical habitat;

(4) Regulation, relicensing, and operation of damming or other water impoundments by the BOR, Corps, or Federal Energy Regulatory Commission (FERC) that inundate critical habitat for vernal pool crustaceans;

(5) Regulation by the Federal Aviation Administration (FAA) of airport improvement or maintenance activities that could foreseeably impact the primary constituent elements of critical habitat;

(6) Licensing of construction of communication sites by the Federal Communications Commission (FCC) on lands containing critical habitat;

(7) Funding of construction or development activities by the Department of Housing and Urban Development (HUD) or other agencies that destroy, fragment, or degrade suitable critical habitat;

(8) Military training and maneuvers on applicable DOD lands which could foreseeably impact the primary constituent elements of critical habitat;

(9) Signing of contracts to deliver water by the BOR in situations where those deliveries could foreseeably impact the primary constituent elements of critical habitat; and

(10) Promulgation of a land use plan by a Federal agency such as the BLM, USFS, or DOD that may alter management practices for critical habitat.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat in California, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). If the critical habitat occurs in Oregon, contact the Field Supervisor, Oregon Fish and Wildlife Office, 2600 S.E. 98th Avenue, Portland, OR 97266. Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231-2063; facsimile 503/231-6243).

Section 3(5)(A) Special Management Considerations

Section 3(5)(A) of the Act defines critical habitat to be (among other

things) areas within the current range of the species "which may require special management considerations".

Accordingly, areas which will not require such special considerations are not critical habitat. For areas in the current range of the species, we first determine whether the area contains the physical and biological features essential to the conservation of the species and then determine whether the area has or needs special management or protection. Additional special management is not required if adequate management or protection is already in place. Adequate special management or protection is provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species, and manages for the long-term conservation of the species. We use the following three criteria to determine if a plan provides adequate special management or protection: (1) A current plan or agreement must be complete and provide sufficient conservation benefit to the species, (2) the plan or agreement must provide assurances that the conservation management strategies will be implemented, and (3) the plan or agreement must provide assurances that the conservation management strategies will be effective, *i.e.*, provide for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would no longer meet the definition of critical habitat.

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe military bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of

critical habitat discussed above, as they require no additional special management or protection.

We evaluated the status of INRMPs on DOD lands that were within the proposed critical habitat to determine whether any INRMPs met the special management criteria. To date, no DOD installation has completed a final INRMP that provides for sufficient conservation management and protection for the vernal pool crustaceans and plants. All DOD lands that contain the physical and biological features essential for the conservation of one of the vernal pool species have been included in the proposed designation of critical habitat for that species. Although no INRMPs for the vernal pool crustaceans and plants are currently in place on DOD lands within the proposed critical habitat, we will continue to work with the military bases to develop INRMPs to meet the special management criteria to preclude the final designation of critical habitat on their lands.

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. However, prior to excluding these areas from critical habitat, we believe that it is best to fully and specifically describe the areas in the proposed designation, discuss our intent and rationale as to why we believe the areas should be excluded from designated critical habitat, and solicit public comment on the exclusion of these areas.

We believe the proposed Skunk Hollow critical habitat (Unit 35) in Riverside County may warrant exclusion from the final designation of critical habitat under section 4(b)(2) of the Act based on the special management considerations and protections afforded the vernal pool habitat through several approved and legally operative HCPs. We believe that in most instances the benefits of excluding legally operative HCPs from the critical habitat designations will outweigh the benefits of including them. The following represents our rationale for proposing to exclude the Skunk Hollow critical habitat unit (Unit 35) from the final designated critical habitat.

(1) Benefits of Exclusion

The benefits of excluding HCPs include relieving landowners, communities and counties of any

additional regulatory burden that might be imposed by critical habitat. This benefit is particularly compelling given the past representations on the part of the Service that once an HCP is negotiated and approved by us after public comment, activities consistent with the plan will satisfy the requirements of the Endangered Species Act. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides the Service an opportunity to streamline regulatory compliance, and provides regulatory certainty for HCP participants.

Another critical benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including states, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish. By excluding areas covered by HCPs from critical habitat designation, we clearly maintain our commitments, preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

(2) Benefits of Inclusion

The benefits of including HCPs in critical habitat are normally small. The principal benefit of any designated critical habitat is that activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs and their Implementing Agreements. These HCPs and Implementing Agreements include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification of critical habitat, unless critical habitat has already been designated within the proposed plan area, it will look at the very similar concept of jeopardy to the listed species in the plan area. Because HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and through the consultation on the HCP. Our experience is also that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Implementing regulations (50 CFR 402.02) define "jeopardize the continued existence of" and "destruction or adverse modification of" in virtually identical terms. "Jeopardize the continued existence of" means to engage in an action "that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat, by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Additional measures to protect the habitat from adverse modification are not likely to be required.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides. The

development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery, and the creation of innovative solutions to conserve species while allowing for development. The education benefits of critical habitat, including informing the public of areas that are important for long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe, that designation of critical habitat has little benefit in areas covered by HCPs, provided that the HCP and its associated Implementing Agreement are legally operative, and that the HCP specifically and adequately covers the species for which critical habitat is being designated.

We have reviewed and evaluated HCPs currently approved and being properly and legally implemented within the areas being proposed for critical habitat for the vernal pool crustaceans and plants. Based on this evaluation, we find that the benefits of exclusion outweigh the benefits of designating the Skunk Hollow vernal pool (Unit 35) as critical habitat. The Skunk Hollow vernal pool basin consists of a single, large vernal pool and its essential associated watershed in western Riverside County. Several federally listed species have been documented from the Skunk Hollow vernal pool basin. These include the threatened vernal pool fairy shrimp (*Simovich in litt* 2001), the endangered Riverside fairy shrimp (*Streptocephalus woottoni*) (Service 2001), the threatened spreading navarretia (*Navarretia fossalis*), and the endangered California Orcutt grass (*Orcuttia californica*) (Service 1998). The vernal pool complex and watershed is currently protected as part of a reserve established within an approved mitigation bank in the Rancho Bella Vista HCP area and as part of the conservation measures contained in the Assessment District 161 Subregional HCP. While neither HCP include vernal pool fairy shrimp as a covered species, both HCPs provide protection for the vernal pool complex and its associated watershed in perpetuity. Further, the HCPs address the endangered Riverside fairy shrimp as a covered species. We believe that the management and protections afforded the vernal pool complex and the Riverside fairy shrimp

are adequate for the long-term conservation of this complex and this species, and to preserve the partnerships that we have developed with the local jurisdiction and project proponents in the development of these HCPs, we excluded the Skunk Hollow vernal pool complex from critical habitat for the Riverside fairy shrimp. We did not and still do not believe that this exclusion from critical habitat will result in the extinction of this Riverside fairy shrimp.

Even though the two HCPs do not have vernal pool fairy shrimp listed as a covered species, we believe that the protections and management afforded the Skunk Hollow vernal pool complex and the other listed vernal pool species through the terms and conditions of those HCPs are adequate to ensure the long-term conservation of vernal pool fairy shrimp as well. Therefore, as with the Riverside fairy shrimp, we believe that the benefits of the exclusion of the Skunk Hollow vernal pool complex from critical habitat for vernal pool fairy shrimp outweighs the benefit of its inclusion. Additionally, we do not believe that this exclusion would result in the extinction of vernal pool fairy shrimp.

Several HCP efforts are now under way that will address the conservation needs of the vernal pool crustaceans and plants in areas we propose as critical habitat. We have worked and continue to work closely with the HCP proponents to adequately address the conservation needs of these species within the boundaries of the HCPs. In the event that future HCPs, covering any of the vernal pool crustaceans or plants are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of those species by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not destroy or adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by vernal pool crustaceans and plants. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of these species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.*, counties, cities)

and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 of the Act will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat. We will provide technical assistance and work closely with applicants with respect to HCPs currently under development and future HCPs to identify lands essential for the long-term conservation of the vernal pool crustaceans and plants and appropriate management for those lands. The minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands proposed as critical habitat in this rule. If an HCP that addresses any vernal pool crustacean or plant as a covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We intend to undertake this review when the HCP is approved, but funding and priority constraints may influence the timing of such a review. Should additional information become available that changes our analysis of the benefits of excluding any of these (or other) areas compared to the benefits of including them in the critical habitat designation, we may revise this proposed designation accordingly. Similarly, if new information indicates any areas we are proposing now should not be included in the critical habitat designation because they no longer meet the definition of critical habitat, we may revise this proposed critical habitat designation.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the

draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis and re-open the comment period on the proposed rule at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation and whether areas under consideration require additional special management;

(2) Specific information on the amount and distribution of any of the vernal pool crustaceans or vernal pool plants and what habitat is essential to the conservation of these species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat; in particular, in Oregon, we seek information related to potential of selected parcels to contribute to the species recovery, considering their zoning, adjacent land uses, watershed integrity, and potential for edge effects (related to shape of parcel);

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for vernal pool crustaceans and vernal pool plants such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs);

(6) Whether any areas should be excluded pursuant to section 4(b)(2); and

(7) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment on this proposed rule, you may submit your comments and materials by any one of several methods (see **ADDRESSES**). Please submit electronic mail comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [RIN number]" and your name and return address in your electronic message. Please note that the electronic address fw1_vernalpool@fws.gov will be closed out at the termination of the public comment period. If you do not receive a confirmation from the system that we have received your electronic message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number 916/414-6600.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be made available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 120-day public comment period on this proposed rule during preparation of a

final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days before the first hearing is held.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: Exsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the ESA to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of any of the vernal pool species included in this rule. This analysis will be available for public comment before finalizing this

designation. The availability of the draft economic analysis will be announced in the **Federal Register**.

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

This discussion is based upon the information regarding potential economic impact that is available to the Service at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the economic analysis being prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect the position of the Service on the type of economic analysis required by *New Mexico Cattle Growers Assn. v. U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this proposed rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale for making this assertion.

According to the Small Business Administration (<http://www.sba.gov/size/>), small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service

businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

In determining whether this rule could "significantly affect a substantial number of small entities", the economic analysis first determines whether critical habitat could potentially affect a "substantial number" of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define "substantial number," the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species are present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect vernal pool crustaceans and plants for whom designation of critical habitat is proposed. If this critical habitat designation is finalized, Federal agencies also must ensure, also through consultation with us, that their activities do not destroy or adversely modify designated critical habitat. However, for the reasons discussed above, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants.

In areas that we are proposing to designate as critical habitat where occupancy status is currently unknown, but is presumed to be likely, a potential does exist that designation as critical habitat would trigger additional Federal review for activities having a Federal nexus (*e.g.*, funded, permitted, authorized, *etc.*). We base this determination upon the present and ongoing regulatory framework in which the Corps consults with us under section 7 of the Act in the vast majority of cases where their actions may affect vernal pools. These section 7 consultations are currently precipitated by either the known or presumed occupancy of one or more of the vernal pool crustaceans or plants addressed in this rule. In those rare circumstances where the Corps does not consult with us under section 7 of the Act, we believe that an HCP would still be required, based on known or a high likelihood of occupancy. Any change or deviation in the present regulatory climate is purely speculative at this time. Therefore, we do not expect the final designation of critical habitat as proposed in this rule to substantially increase the regulatory or economic burden on project proponents beyond that which is presently required through the likely presence of one or more listed species, where the necessary primary constituent elements are present. As a result of this minimal increase in the regulatory or economic burdens on any project proponents, we do not believe that this proposed designation of critical habitat for the vernal pool crustaceans and plants will cause a significant economic impact on a substantial number of small entities.

We note that for actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and that this proposed rule will place no additional restrictions on such activities.

Therefore, based on the above evaluation, we are certifying that this proposed designation of critical habitat for the vernal pool crustaceans and plants is not expected to have a significant economic impact on a substantial number of small entities, and that an initial regulatory flexibility analysis is not required. However, should the economic analysis of this proposed rule indicate that there may be significant economic impacts on a substantial number of small entities, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (EO 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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

The Service will use the economic analysis to evaluate consistency with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Takings

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 these 15 vernal pool species in a preliminary takings implications assessment. This preliminary assessment concludes that this proposed rule does not pose significant takings implications. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. We will continue to coordinate any future designation of critical habitat for the vernal pool crustaceans and vernal pool plants with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the vernal pool crustaceans and vernal pool plants 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 in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat

necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case by case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the vernal pool crustaceans or vernal pool plants.

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. This rule will not impose new record keeping 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

We have determined that an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human government.

Government to Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 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. We have determined that there are no Tribal lands essential for the conservation of the vernal pool crustaceans and plants addressed in this proposed rule because they do not support populations or suitable habitat. Therefore, critical habitat for these species has not been proposed for designation on Tribal lands.

References Cited

A complete list of all references cited herein, as well as others, is available

upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the staff of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

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. In § 17.11(h) revise the entry for "Fairy shrimp, Conservancy," "Fairy shrimp, longhorn," "Fairy shrimp, vernal pool," and "Tadpole shrimp, vernal pool" under "CRUSTACEANS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * *							
CRUSTACEANS							
* * * * *							
Fairy shrimp, Conservancy.	<i>Branchinecta conservatio.</i>	U.S.A. (CA)	Entire	E	552	17.95(h)	NA
Fairy shrimp, longhorn.	<i>Branchinecta longiantenna.</i>	U.S.A. (CA)	Entire	E	552	17.95(h)	NA
* * * * *							
Fairy shrimp, vernal pool.	<i>Branchinecta lynchi</i>	U.S.A. (CA, OR)	Entire	T	552	17.95(h)	NA
Tadpole shrimp, vernal pool.	<i>Lepidurus packardii</i>	U.S.A. (CA)	Entire	E	552	17.95(h)	NA
* * * * *							

3. In § 17.12(h) revise the entry for *Castilleja campestris* ssp. *succulenta* (succulent (or fleshy) owl's-clover), *Chamaesyce hooveri* (Hoover's spurge),

Lasthenia conjugens (Contra Costa goldfields), *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam), *Neostapfia colusana* (Colusa grass),

Orcuttia inaequalis (San Joaquin Valley Orcutt grass), *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia tenuis* (slender Orcutt grass), *Orcuttia viscida*

(Sacramento Orcutt grass), *Tuctoria greenei* (Greene's tuctoria), and *Tuctoria mucronata* (Solano grass) under "FLOWERING PLANTS" to read as follows—

§ 17.12 Endangered and threatened plants.
* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* <i>Castilleja campestris</i> ssp. <i>succulenta</i> .	* Fleshy owl's clover	* U.S.A. (CA)	* Scrophulariaceae	* T	* 611	* 17.96(a)	* NA
* <i>Chamaesyce hooveri</i>	* Hoover's spurge	* U.S.A. (CA)	* Euphorbiaceae	* T	* 611	* 17.96(a)	* NA
* <i>Lasthenia conjugens</i>	* Contra Costa gold-fields.	* U.S.A. (CA)	* Asteraceae	* E	* 619	* 17.96(a)	* NA
* <i>Limnanthes floccosa</i> ssp. <i>californica</i> .	* Butte County meadowfoam.	* U.S.A. (CA)	* Limnanthaceae	* E	* 471	* 17.96(a)	* NA
* <i>Neostapfia colusana</i>	* Colusa grass	* U.S.A. (CA)	* Poaceae	* T	* 611	* 17.96(a)	* NA
* <i>Orcuttia inaequalis</i> ...	* San Joaquin Valley Orcutt grass.	* U.S.A. (CA)	* Poaceae	* T	* 611	* 17.96(a)	* NA
* <i>Orcuttia pilosa</i>	* Hairy Orcutt grass ..	* U.S.A. (CA)	* Poaceae	* E	* 611	* 17.96(a)	* NA
* <i>Orcuttia tenuis</i>	* Slender Orcutt grass.	* U.S.A. (CA)	* Poaceae	* T	* 611	* 17.96(a)	* NA
* <i>Orcuttia viscida</i>	* Sacramento Orcutt grass.	* U.S.A. (CA)	* Poaceae	* E	* 611	* 17.96(a)	* NA
* <i>Tuctoria greenei</i>	* Greene's tuctoria	* U.S.A. (CA)	* Poaceae	* E	* 611	* 17.96(a)	* NA
* <i>Tuctoria mucronata</i>	* Solano grass	* U.S.A. (CA)	* Poaceae	* E	* 44	* 17.96(a)	* NA

4. In § 17.95 add critical habitat for Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and vernal pool tadpole shrimp (*Lepidurus packardii*) under paragraph (h) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
(h) *Crustaceans.*
* * * * *

Conservancy fairy shrimp (*Branchinecta conservatio*)

(1) Critical habitat units are depicted for Tehama, Butte, Glenn, Colusa, Solano, Stanislaus, Merced, Mariposa and Ventura counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Branchinecta conservatio* are the habitat components that provide—

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for conservancy fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to large, playa vernal pools often on basin rim landforms and alkaline soils, but which are dry during the summer and do not necessarily fill with water every year; and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean

hatching, growth and reproduction, and dispersal, but not necessarily every year.

(3) Existing man-made features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) *Unit 1:* Butte and Tehama Counties, California.

(i) From USGS 1:24,000 quadrangle maps Acorn Hollow, Campbell Mound, Foster Island, Nord, Richardson Springs, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 595500, 4408200; 594300, 4408200; 594100, 4408300; 594000, 4408400; 593600, 4408500; 593400, 4408200; 592600, 4408200; 592500, 4408700; 592100, 4408500; 592000, 4408700; 591400, 4408700; 590700,

4408700; 590400, 4408300; 589900, 4408300; 589000, 4408600; 589000, 4409300; 589100, 4409900; 588900, 4410200; 588200, 4410300; 588200, 4411000; 587900, 4411400; 587900, 4412000; 587900, 4412400; 587600, 4412700; 587600, 4413400; 584200, 4413400; 583100, 4413100; 582900, 4413400; 582900, 4415900; 582000, 4418300; 581800, 4419200; 582000, 4419500; 581400, 4420000; 581400, 4420400; 581800, 4420700; 581600, 4421000; 583200, 4422600; 583500, 4423600; 585200, 4424500; 586000, 4424500; 587500, 4426100; 588200, 4426500; 588600, 4429100; 588800, 4430200; 589500, 4429500; 589500, 4428600; 591400, 4425800; 592600, 4424100; 593400, 4422300; 594200, 4421100; 595900, 4417800; 595800, 4417300; 595800, 4416600; 596100, 4416600; 596400, 4416800; 596600, 4416800; 597100, 4416400; 597100, 4415600; 596800, 4415200; 597100, 4415000; 597800, 4415500; 598100, 4415200; 597600, 4414600; 597600, 4414400; 597300, 4413800; 597300, 4413300; 598200, 4413900; 598400, 4413900; 598400, 4413600; 597400, 4411900; 597600, 4411900; 598300, 4412700; 598500, 4413300; 598900, 4413300; 598900, 4411800; 599400, 4411700; 599800, 4411700; 599800, 4411000; 597700, 4409400; 596200, 4408600; 595900, 4408800; 595700, 4408800; returning to 595500, 4408200.

(5) *Unit 2: Colusa and Glenn Counties, California.*

(i) From USGS 1:24,000 quadrangle maps Logandale, Maxwell, Moulton Weir, and Princeton, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 572900, 4357400; 571200, 4357400; 571200, 4358200; 570400, 4358200; 570400, 4359000; 569600, 4359000; 569500, 4360500; 569300, 4362200; 569500, 4363300; 569500, 4367200; 570000, 4367200; 569900, 4368400; 570300, 4368400; 571000, 4367600; 571000, 4367800; 570700, 4368500; 570900, 4368800; 571500, 4368800; 571900, 4368300; 571900, 4367600; 572100, 4367600; 572400, 4368100; 572400, 4368400; 572600, 4368900; 572800, 4368900; 573000, 4368100; 573400, 4368000; 573800, 4367600; 574100, 4367300; 574400, 4367200; 574500, 4366400; 574900, 4366400; 574900, 4365600; 574700, 4365500; 574400, 4364100; 575200, 4363900; 575600, 4363600; 575100, 4362400; 575600, 4361400; 575100, 4360700; 576000, 4359600; 575500, 4358900; 575700, 4358300; 575900, 4357700; 575300, 4357800; 575000, 4357700; 574700, 4357700; 573600, 4357800; 573500, 4358200; 572900, 4358200; returning to 572900, 4357400.

(6) *Unit 3: Solano County, California.*
 (i) From USGS 1:24,000 quadrangle maps Birds Landing, Denverton, Dozier, and Elmira, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 596700, 4230400; 596200, 4230400; 595900, 4230500; 595700, 4230600; 594500, 4231200; 593800, 4231200; 593600, 4230500; 589300, 4230700; 589000, 4231200; 589100, 4231300; 589100, 4231700; 588900, 4232300; 588900, 4233000; 590200, 4233600; 590500, 4233700; 591000, 4233700; 590900, 4233200; 591100, 4233100; 591300, 4233100; 592000, 4233700; 592500, 4233900; 593500, 4234200; 594800, 4235500; 594900, 4235800; 595600, 4236300; 595600, 4236800; 596500, 4237600; 596300, 4237700; 595500, 4237100; 595200, 4237700; 595200, 4238200; 598800, 4238200; 598500, 4239100; 598000, 4239700; 598000, 4241000; 598800, 4241000; 598800, 4240600; 600400, 4240600; 602800, 4240600; 604300, 4239400; 605200, 4240600; 605300, 4239700; 605500, 4239000; 605400, 4238300; 604500, 4238100; 604500, 4237500; 605200, 4237200; 605700, 4235200; 605400, 4234900; 605000, 4233900; 604600, 4233700; 604200, 4233300; 604100, 4232500; 603800, 4231500; 602300, 4230800; 601400, 4230700; 600700, 4230600; 600400, 4230900; 600400, 4231700; 601100, 4232300; 601200, 4233200; 598400, 4233200; 598200, 4232100; 597800, 4231800; 597400, 4230900; returning to 596700, 4230400.

(7) *Unit 4: Solano County, California.*

(i) From USGS 1:24,000 quadrangle maps Antioch North and Honker Bay, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 600900, 4215500; 599300, 4215500; 598400, 4216900; 598316, 6875000, 4217900; 598400, 4217900; 598800, 4218100; 598800, 4218600; 599000, 4219000; 599200, 4219300; 599400, 4219500; 600600, 4216900; returning to 600900, 4215500.

(8) *Unit 5: Stanislaus County, California.*

(i) From USGS 1:24,000 quadrangle map Ripon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 660800, 4167200; 660000, 4167200; 659500, 4168800; 661600, 4168800; 661600, 4169400; 662400, 4169400; 662400, 4168300; 661600, 4168000; 661600, 4168300; 660300, 4167800; 660600, 4167500; returning to 660800, 4167200.

(9) *Unit 6: Mariposa and Merced Counties, California.*

(i) From USGS 1:24,000 quadrangle maps Atwater, Haystack Mtn., Illinois Hill, Indian Gulch, Le Grand, Merced, Merced Falls, Owens Reservoir,

Plainsburg, Planada, Raynor Creek, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 750200, 4121400; 747800, 4121400; 747800, 4121900; 747500, 4122400; 747500, 4123900; 747000, 4124700; 746900, 4125100; 743600, 4125000; 743600, 4127000; 742700, 4127000; 742600, 4126600; 742300, 4126300; 741700, 4126300; 741200, 4126800; 741200, 4128600; 740400, 4128600; 740400, 4130300; 739000, 4130300; 739000, 4130600; 738400, 4131100; 737500, 4131200; 737800, 4131700; 737700, 4132600; 737700, 4132900; 737100, 4132900; 737100, 4134200; 736700, 4134200; 736100, 4133900; 735600, 4133300; 734700, 4133300; 734700, 4133700; 734100, 4133900; 733100, 4133900; 733100, 4134600; 732700, 4134600; 732600, 4135000; 732300, 4135500; 730300, 4135400; 729900, 4135700; 729900, 4136500; 726500, 4136500; 726400, 4136100; 725900, 4136100; 725900, 4135300; 725600, 4135100; 725500, 4135100; 725300, 4135500; 725100, 4135400; 725000, 4135400; 725000, 4135600; 724800, 4135700; 724600, 4135700; 724600, 4134700; 724200, 4134700; 724200, 4135500; 723400, 4135500; 723400, 4135600; 722800, 4135600; 722800, 4135000; 722600, 4135000; 722500, 4134700; 722200, 4137900; 722800, 4137900; 722800, 4139300; 721900, 4139300; 721900, 4140200; 721000, 4140200; 721000, 4140900; 717800, 4140900; 717800, 4137700; 717100, 4137700; 717000, 4138200; 714500, 4140900; 714100, 4141300; 714100, 4142200; 713600, 4142400; 713200, 4143000; 713000, 4143900; 713100, 4144300; 713700, 4144600; 714500, 4145300; 714500, 4145700; 715800, 4145800; 717000, 4145800; 718000, 4145400; 718200, 4145900; 718200, 4147600; 719700, 4148400; 720600, 4148600; 720600, 4149200; 719600, 4149200; 719600, 4149800; 720300, 4149800; 721300, 4150700; 721700, 4150700; 724400, 4153300; 725000, 4153500; 725500, 4154200; 725800, 4154800; 727200, 4155900; 727800, 4155900; 728500, 4155600; 730200, 4155600; 731600, 4155500; 732400, 4155400; 732600, 4155200; 733200, 4154700; 734100, 4154900; 734600, 4154800; 735600, 4156000; 735900, 4156000; 737100, 4155400; 737800, 4155000; 738200, 4154200; 738300, 4153300; 739000, 4152800; 739100, 4152200; 740200, 4151800; 740800, 4151500; 740800, 4150300; 741100, 4149900; 741700, 4149400; 742100, 4148500; 742100, 4147100; 743400, 4146100; 744000, 4145600; 744400,

4144600; 744300, 4143900; 743900, 4142700; 744000, 4142000; 744200, 4141700; 745500, 4140300; 746100, 4139500; 746800, 4138500; 747700, 4137700; 748500, 4135800; 748700, 4135100; 749500, 4134000; 750100, 4132800; 750700, 4131700; 751600, 4130500; 752000, 4130200; 752800, 4130100; 753300, 4130400; 753500, 4130400; 753900, 4130200; 754000, 4129300; 753400, 4128400; 753900, 4127700; 754400, 4127700; 754600, 4127400; 755300, 4128400; 755400, 4128400; 755600, 4127700; 756900, 4126400; 757800, 4125800; 758400, 4126300; 758500, 4126300; 758600, 4126000; 757900, 4125100; 757400, 4125100; 756500, 4123700; 753500, 4122400; 750200, 4122400; returning to 750200, 4121400.

(10) *Unit 7*: Merced County, California.

(i) From USGS 1:24,000 quadrangle maps Arena, Atwater, Gustine, Ingomar, Los Banos, San Luis Ranch, Sandy Mush, Stevinson, and Turner Ranch, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 697300, 4104500; 696100, 4104500; 695700, 4105000; 695700, 4106600; 694700, 4107900; 693500, 4107900; 693700, 4109100; 692900, 4109100; 692900, 4109800; 693100, 4110200; 693800, 4110200; 693800, 4111800; 692500, 4111800; 692400, 4110600; 691800, 4110600; 691600, 4110200; 690800, 4110300; 690000, 4110300; 690000, 4111400; 689700, 4111800; 689200, 4111800; 689200, 4111300; 688400, 4111300; 688400, 4112100; 686700, 4112100; 686500, 4112900; 686500, 4113700; 686000, 4113700; 686000, 4116100; 684500, 4116100; 684400, 4114200; 682200, 4114200; 682100, 4113000; 681100, 4113000; 681100, 4111800; 680600, 4111700; 679600, 4110900; 678800, 4110900; 678200, 4111800; 678300, 4113600; 677900, 4114400; 679400, 4114400; 679400, 4115200; 680000, 4115200; 680300, 4116000; 681800, 4116100; 682800, 4116600; 683600,

4116500; 683600, 4117100; 681200, 4117100; 681000, 4124500; 680800, 4124900; 679800, 4124900; 679800, 4125700; 680700, 4125700; 680600, 4126400; 680300, 4126700; 680300, 4127200; 678900, 4127800; 679000, 4129000; 679300, 4129200; 680100, 4129400; 679700, 4130700; 679400, 4130200; 678600, 4130200; 678000, 4131200; 678500, 4132100; 678800, 4132400; 679000, 4131800; 679200, 4131800; 680200, 4132200; 680700, 4131700; 681600, 4132800; 681200, 4133100; 681200, 4133600; 681600, 4134100; 681700, 4134200; 681900, 4134200; 682300, 4134000; 682700, 4133800; 683400, 4133100; 683600, 4132600; 683600, 4132300; 683100, 4131800; 683100, 4131500; 683400, 4131500; 684300, 4130400; 684700, 4130000; 685500, 4130700; 686000, 4130700; 686200, 4130900; 686400, 4130900; 688800, 4131400; 690300, 4131400; 690500, 4130600; 691600, 4130600; 691600, 4130000; 692900, 4130000; 692800, 4131700; 692400, 4131800; 692400, 4133500; 693000, 4133000; 694400, 4133100; 694400, 4132000; 693700, 4132000; 693700, 4129800; 693700, 4127500; 694500, 4127000; 694800, 4127000; 695200, 4127700; 695200, 4129800; 695200, 4130300; 695700, 4130300; 695900, 4130000; 696100, 4129500; 696100, 4129100; 696900, 4129100; 696900, 4130200; 697200, 4130200; 698300, 4128600; 698600, 4128200; 700100, 4127600; 700500, 4129200; 700500, 4130600; 701700, 4130600; 701800, 4129200; 703300, 4129200; 703300, 4128800; 703900, 4128800; 703900, 4129000; 704200, 4129000; 705600, 4128500; 705600, 4127800; 705300, 4127000; 705400, 4126200; 705900, 4125700; 706800, 4125400; 707200, 4125400; 707900, 4126100; 708300, 4126100; 708300, 4125400; 709100, 4125400; 709900, 4125700; 709900, 4126000; 710200, 4126200; 711500, 4126200; 711500, 4124600; 708000, 4124500; 706700, 4124500; 706700, 4122100; 711500, 4122200; 711500,

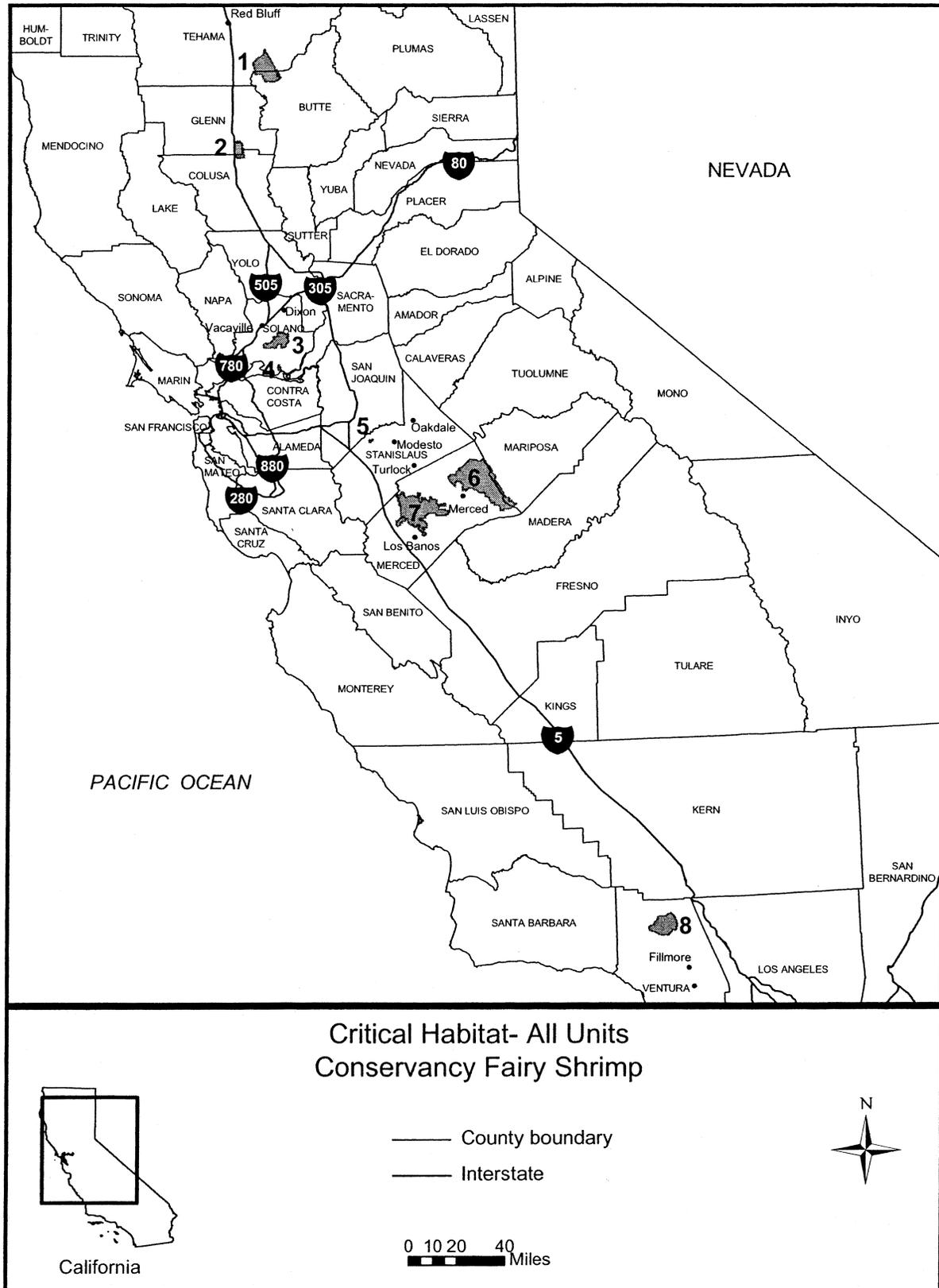
4121700; 712100, 4121400; 713200, 4121400; 713200, 4118700; 711600, 4118700; 711600, 4118100; 707300, 4118100; 705000, 4118100; 704500, 4119600; 699400, 4119500; 699300, 4118700; 698800, 4118700; 698500, 4118500; 698200, 4117700; 697600, 4117700; 697800, 4116500; 693700, 4116200; 694200, 4115100; 694400, 4114600; 694800, 4114600; 695000, 4115100; 695800, 4115100; 696300, 4114300; 697600, 4114200; 697900, 4113900; 697900, 4113100; 698900, 4112500; 698800, 4109800; 695700, 4109800; 695700, 4109000; 697300, 4109000; 697300, 4108100; 696400, 4108100; 696400, 4107300; 696700, 4106600; 697600, 4106600; 698200, 4105800; 698200, 4105300; returning to 697300, 4104500.

(11) *Unit 8*: Ventura County, California.

(i) From USGS 1:24,000 quadrangle maps Alamo Mountain, Lion Canyon, Lockwood Valley, San Guillermo, and Topatopa Mountains, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 310100, 3830500; 309400, 3831000; 308400, 3830900; 307200, 3830600; 306000, 3831200; 304700, 3831300; 303400, 3832100; 302100, 3832600; 301600, 3833600; 300400, 3833600; 299200, 3834000; 298200, 3834400; 297700, 3835300; 297900, 3837300; 299500, 3837500; 301200, 3838400; 301500, 3839300; 303400, 3841000; 303800, 3842700; 304900, 3843600; 305800, 3843600; 307700, 3843400; 309500, 3843400; 310500, 3844200; 311900, 3844600; 313400, 3845400; 314500, 3844100; 315200, 3843800; 315700, 3842400; 316500, 3841100; 317200, 3838100; 317200, 3837000; 316500, 3833900; 315700, 3833300; 315200, 3834100; 314000, 3834100; 313100, 3832200; 311500, 3830800; returning to 310100, 3830500.

(12) Map follows of all critical habitat units for Conservancy fairy shrimp (*Branchinecta conservatio*).

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

Longhorn Fairy Shrimp (*Branchinecta longiantenna*)

(1) Critical habitat units are depicted for Alameda, Contra Costa, Merced and San Luis Obispo counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Branchinecta longiantenna* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for Longhorn fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to large, playa vernal pools often on basin rim landforms and alkaline soils, but which are dry during the summer and do not necessarily fill with water every year; and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

(3) Existing man-made features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) *Subunit 1A*: Contra Costa County, California.

(i) From USGS 1:24,000 quadrangle map Byron Hot Springs, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 614700, 4184000; 614600, 4184000; 614600, 4184500; 614900, 4185000; 614600, 4185300; 614600, 4185900; 614700, 4185900; 614800, 4185400; 615100, 4185200; 615100, 4185500; 615400, 4185200; 615600, 4184900; 615800, 4184900; 616000, 4184800; 616000, 4184700; 615800, 4184500; 615700, 4184500; 615500, 4184200; 615100, 4184200; 614800, 4184200; returning to 614700, 4184000.

(5) *Subunit 1B*: Alameda County, California.

(i) From USGS 1:24,000 quadrangle map Byron Hot Springs, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 616200, 4179000; 616100, 4179000; 615900, 4179200; 615900, 4179400; 615700, 4179600; 615500, 4180100; 615100, 4180500; 614800, 4180800; 614400, 4180900; 614100, 4181100; 614600, 4181500; 614700, 4181500; 614700, 4181700; 614900, 4181700; 615200, 4181400; 615400, 4181300; 615500, 4181200; 615500, 4181100; 615600, 4181100; 615700, 4181300; 615800, 4181200; 616000, 4180600; 616000, 4180500; 616200, 4180200; 616300, 4180000; 616200, 4179900; 615900, 4179900; 615900, 4179700; 616200, 4179500; returning to 616200, 4179000.

(6) *Unit 2*: Merced County, California.

(i) From USGS 1:24,000 quadrangle maps Gustine, Ingomar, Los Banos, San Luis Ranch, and Stevinson, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 681200, 4117100; 681000, 4124500; 680800, 4124900; 679800, 4124900; 679800, 4125700; 680700, 4125700; 680600, 4126400; 680300, 4126700; 680300, 4127200; 678900, 4127800; 679000, 4129000; 679300, 4129200; 680100, 4129400; 679700, 4130700; 679400, 4130200; 678600, 4130200; 678000, 4131200; 678500, 4132100; 678800, 4132400; 679000, 4131800; 679200, 4131800; 680200, 4132200; 680700, 4131700; 681600, 4132800; 681200, 4133100; 681200, 4133600; 681600, 4134100; 681700, 4134200; 681900, 4134200; 682300, 4134000; 682700, 4133800; 683400, 4133100; 683600, 4132600; 683600, 4132300; 683100, 4131800; thence south to x-coordinate 683100 on the San Joaquin River; thence southeast along to San Joaquin River to y-coordinate 4118400; thence west to 698400, 4118400; 698200, 4117700; 697600, 4117700; 697800, 4116500; 693700, 4116200; 694200, 4115100; 694400, 4114600; 694800, 4114600; 695000, 4115100; 695800, 4115100; 696300, 4114300; 697600, 4114200; 697900, 4113900; 697900, 4113100; 698900, 4112500; 698800, 4109800; 695700, 4109800; 695700, 4109000; 697300, 4109000; 697300, 4108100; 696400, 4108100; 696400, 4107300; 696700, 4106600; 697600, 4106600; 698200, 4105800; 698200, 4105300; 697300, 4104500; 696100, 4104500;

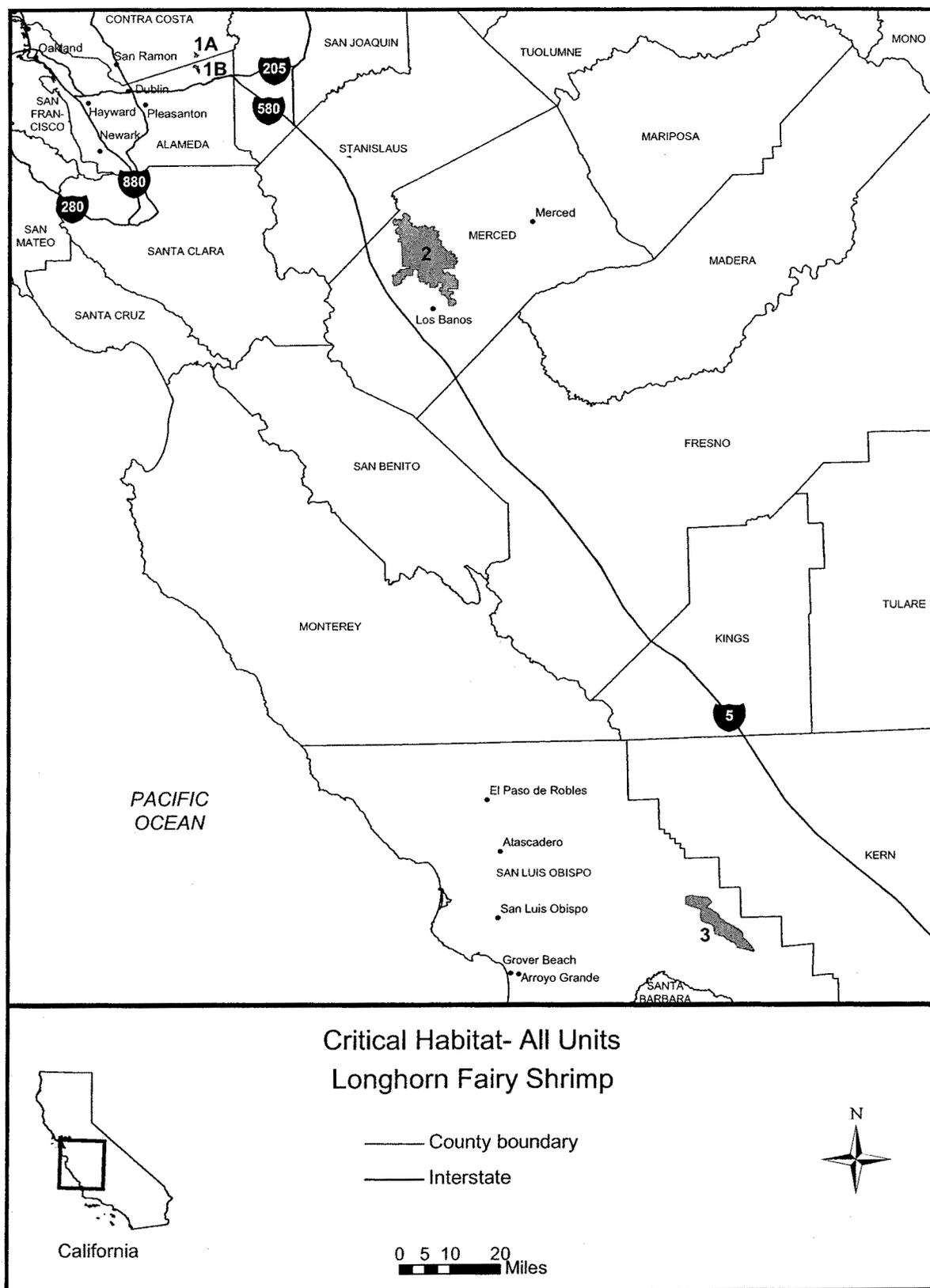
695700, 4105000; 695700, 4106600; 694700, 4107900; 693500, 4107900; 693700, 4109100; 692900, 4109100; 692900, 4109800; 693100, 4110200; 693800, 4110200; 693800, 4111800; 692500, 4111800; 692400, 4110600; 691800, 4110600; 691600, 4110200; 690800, 4110300; 690000, 4110300; 690000, 4111400; 689700, 4111800; 689200, 4111800; 689200, 4111300; 688400, 4111300; 688400, 4112100; 686700, 4112100; 686500, 4112900; 686500, 4113700; 686000, 4113700; 686000, 4116100; 684500, 4116100; 684400, 4114200; 682200, 4114200; 682100, 4113000; 681100, 4113000; 681100, 4111800; 680600, 4111700; 679600, 4110900; 678800, 4110900; 678200, 4111800; 678300, 4113600; 677900, 4114400; 679400, 4114400; 679400, 4115200; 680000, 4115200; 680300, 4116000; 681800, 4116100; 682800, 4116600; 683600, 4116500; 683600, 4117100; returning to 681200, 4117100.

(7) *Unit 3*: San Luis Obispo County, California.

(i) From USGS 1:24,000 quadrangle map Byron Hot Springs, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 247900, 3894600; 245800, 3895500; 243500, 3896000; 242700, 3896400; 242200, 3897600; 240100, 3898900; 239500, 3899300; 239300, 3899600; 238300, 3900400; 237900, 3900300; 236100, 3901000; 235800, 3901300; 235800, 3902300; 235500, 3903500; 234800, 3904400; 233000, 3904900; 231800, 3905800; 231600, 3907000; 231900, 3908800; 231800, 3909400; 229400, 3910200; 227200, 3911200; 227300, 3913400; 228100, 3913800; 229000, 3913900; 231900, 3913200; 233300, 3913200; 234300, 3912900; 235100, 3912100; 235300, 3911200; 233900, 3910100; 233700, 3909700; 235300, 3909000; 235700, 3908500; 237200, 3907500; 237700, 3906300; 238200, 3905800; 239100, 3905200; 239100, 3904900; 242800, 3902600; 244400, 3901300; 244400, 3901000; 244700, 3900700; 244800, 3899100; 245400, 3898800; 247200, 3896600; 248200, 3895000; returning to 247900, 3894600.

(8) Map follows of all critical habitat units for longhorn fairy shrimp (*Branchinecta longiantenna*):

BILLING CODE 4310-55-P



BILLING CODE 4310-55-P

Vernal Pool Fairy Shrimp (*Branchinecta lynchi*)

(1) Critical habitat units are depicted for Jackson County, Oregon; Shasta, Butte, Tehama, Glenn, Colusa, Placer, Sacramento, Solano, Napa, Contra

Costa, Alameda, Amador, San Joaquin, Stanislaus, Merced, Mariposa, Madera, Fresno, Tulare, Kings, San Benito, Monterey, San Luis Obispo, Santa

Barbara, Ventura and Riverside counties, California on the map below:

(2) The primary constituent elements of critical habitat for *Branchinecta lynchi* are the habitat components that provide—

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for vernal pool fairy shrimp incubation, reproduction, dispersal, feeding, and sheltering, including but not limited to Northern Hardpan, Northern Claypan, Northern Volcanic Mud Flow, and Northern Basalt Flow vernal pools formed on a variety of geologic formations and soil types, but which are dry during the summer and do not necessarily fill with water every year; and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

(3) Existing man-made features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) *Subunit 1A*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 513900, 4709700; 513600, 4709700; 513600, 4709800; 513500, 4709800; 513500, 4710000; 513700, 4710000; 513700, 4710300; 513200, 4710300; 513200, 4710600; 513100, 4710600; 513100, 4710800; 514300, 4710800; 514300, 4710300; 514100, 4710300; 514100, 4709900; 513900, 4709900; returning to 513900, 4709700.

(5) *Subunit 1B*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 513900, 4707000; 513600, 4707000; 513600, 4707300; 513700, 4707300; 513700, 4707400; 513800, 4707400; 513800, 4707500; 513400, 4707500; 513400, 4708000; 514700, 4708000; 514700, 4707700; 514600, 4707700; 514600, 4707600; 514200, 4707600; 514200, 4707500; 514100, 4707500; 514100, 4707300; 514000, 4707300; 514000, 4707200; 513900, 4707200; returning to 513900, 4707000.

(6) *Subunit 1C*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 512000, 4706600; 511800, 4706600; 511800, 4706700; 511300, 4706700; 511300, 4706800; 511200, 4706800; 511200, 4706900; 511100, 4706900; 511100, 4707000; 511000, 4707000; 511000, 4707200; 511100, 4707200; 511100, 4707300; 511200, 4707300; 511200, 4707400; 511100, 4707400; 511100, 4707500; 511200, 4707500; 511200, 4707600; 511400, 4707600; 511400, 4707700; 511600, 4707700; 511600, 4707800; 511800, 4707800; 511800, 4707300; 511900, 4707300; 511900, 4706800; 512000, 4706800; returning to 512000, 4706600.

(7) *Subunit 1D*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle maps Eagle Point and Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 515900, 4706700; 515900, 4707000; 516200, 4707000; 516200, 4706900; 516300, 4706900; 516300, 4706700; 516400, 4706700; 516400, 4706800; 516500, 4706800; 516500, 4707000; 516700, 4707000; 516700, 4706900; 516900, 4706900; 516900, 4707000; 517000, 4707000; 517000, 4707100; 517100, 4707100; 517100, 4706900; 517400, 4706900; 517400, 4706700; 517300, 4706700; 517300, 4706500; 517200, 4706500; 517200, 4706400; 517100, 4706400; 517100, 4706300; 516700, 4706300; 516700, 4705600; 516500, 4705600; 516500, 4705500; 516600, 4705500; 516600, 4705400; 516700, 4705400; 516700, 4704800; 516600, 4704800; 516600, 4704600; 516300, 4704600; 516300, 4704500; 516400, 4704500; 516400, 4704400; 516500, 4704400; 516500, 4704300; 515800, 4704300; 515800, 4704600; 516000, 4704600; 516000, 4704700; 515500, 4704700; 515500, 4704800; 515400, 4704800; 515400, 4705100; 515500, 4705100; 515500, 4705200; 515700, 4705200; 515700, 4705300;

515800, 4705300; 515800, 4705900; 515700, 4705900; 515700, 4706200; 515600, 4706200; 515600, 4706400; 515500, 4706400; 515500, 4706500; 515100, 4706500; 515100, 4706700; 515000, 4706700; 515000, 4706900; 514700, 4706900; 514700, 4707000; 514600, 4707000; 514600, 4707200; 514700, 4707200; 514700, 4707300; 515000, 4707300; 515000, 4707200; 515100, 4707200; 515100, 4707100; 515200, 4707100; 515200, 4707000; 515300, 4707000; 515300, 4706800; 515400, 4706800; 515400, 4706700; 515500, 4706700; 515500, 4706600; 515600, 4706600; 515600, 4706700; returning to 515900, 4706700; excluding land bounded by 515900, 4706700; 515900, 4706500; 516000, 4706500; 516000, 4706400; 516100, 4706400; 516000, 4706600; 516000, 4706700; 515900, 4706700.

(8) *Subunit 1E*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle maps Boswell Mountain and Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 510500, 4706000; 510400, 4706000; 510400, 4706100; 510300, 4706100; 510300, 4706300; 510100, 4706300; 510100, 4706400; 510000, 4706400; 510000, 4706500; 509800, 4706500; 509800, 4706700; 510000, 4706700; 510000, 4706900; 510100, 4706900; 510100, 4707000; 510200, 4707000; 510200, 4706900; 510500, 4706900; 510500, 4707000; 510600, 4707000; 510600, 4707100; 510800, 4707100; 510800, 4706900; 511000, 4706900; 511000, 4706500; 510700, 4706500; 510700, 4706300; 510500, 4706300; returning to 510500, 4706000.

(9) *Subunit 1F*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle maps Eagle Point and Shady Cove, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 511400, 4704800; 511200, 4704800; 511200, 4705000; 511000, 4705000; 511000, 4705200; 510900, 4705200; 510900, 4705300; 510800, 4705300; 510800, 4705900; 511000, 4705900; 511000, 4706000; 511300, 4706000; 511300, 4705900; 511500, 4705900; 511500, 4705100; 511400, 4705100; returning to 511400, 4704800; excluding land bounded by 511300, 4705300; 511300, 4705500; 511200, 4705500; 511200, 4705300; 511300, 4705300.

(10) *Subunit 1G*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 517700, 4704000; 517200, 4704000; 517200, 4704100; 517100, 4704100; 517100, 4704300;

517000, 4704300; 517000, 4704700;
516900, 4704700; 516900, 4704900;
517000, 4704900; 517000, 4705000;
517100, 4705000; 517100, 4705100;
517600, 4705100; 517600, 4705000;
517800, 4705000; 517800, 4704900;
517900, 4704900; 517900, 4704800;
519100, 4704800; 519100, 4704700;
519300, 4704700; 519300, 4704600;
519400, 4704600; 519400, 4704300;
519100, 4704300; 519100, 4704200;
518600, 4704200; 518600, 4704100;
517900, 4704100; 517900, 4704200;
517700, 4704200; returning to 517700,
4704000.

(11) *Unit 2A*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 514300, 4698400; 513400, 4698400; 513400, 4698500; 513300, 4698500; 513300, 4698600; 513400, 4698600; 513400, 4698700; 513500, 4698700; 513500, 4698800; 513700, 4698800; 513700, 4699000; 513800, 4699000; 513800, 4699100; 513900, 4699100; 513900, 4699200; 514200, 4699200; 514200, 4698800; 514300, 4698800; 514300, 4698900; 514400, 4698900; 514400, 4699000; 514900, 4699000; 514900, 4698800; 515100, 4698900; 515100, 4699100; 515200, 4699100; 515200, 4699000; 515500, 4699000; 515500, 4698800; 515600, 4698800; 515600, 4699000; 515700, 4699000; 515700, 4698900; 515800, 4698900; 515800, 4698500; 515500, 4698500; 515500, 4698700; 515400, 4698700; 515400, 4698600; 515300, 4698600; 515300, 4698500; 515100, 4698500; 515100, 4698600; 514900, 4698600; 514900, 4698500; 514400, 4698500; 514400, 4698600; 514300, 4698600; returning to 514300, 4698400.

(12) *Subunit 2B*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle maps Brownsboro and Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 520800, 4694400; 520700, 4694400; 520700, 4694500; 520500, 4694500; 520500, 4694600; 520400, 4694600; 520400, 4694700; 520300, 4694700; 520300, 4694800; 519900, 4694800; 519900, 4694900; 519500, 4694900; 519500, 4695200; 519400, 4695200; 519400, 4695600; 519300, 4695600; 519200, 4695800; 519200, 4695900; 519100, 4695900; 519100, 4696000; 519000, 4696000; 519000, 4696200; 519300, 4696200; 519300, 4696300; 519100, 4696300; 519100, 4696400; 518900, 4696400; 518900, 4696500; 518800, 4696500; 518800, 4696400; 518600, 4696400; 518600, 4696700; 518500, 4696700; 518500, 4696800; 518400, 4696800;

518400, 4696900; 518300, 4696900;
518300, 4697000; 518200, 4697000;
518200, 4697100; 518100, 4697100;
518100, 4697200; 517600, 4697200;
517600, 4697300; 517300, 4697300;
517300, 4697400; 517100, 4697400;
517100, 4697600; 517000, 4697600;
517000, 4697800; 516900, 4697800;
516900, 4698400; 517300, 4698400;
517300, 4698300; 517500, 4698300;
517500, 4698200; 517600, 4698200;
517600, 4698300; 517900, 4698300;
517900, 4697800; 518500, 4697800;
518500, 4697700; 518600, 4697700;
518600, 4697600; 518800, 4697600;
518800, 4697700; 519100, 4697700;
519100, 4697600; 519300, 4697600;
519300, 4697500; 519400, 4697500;
519400, 4697400; 519500, 4697400;
519500, 4697300; 519700, 4697300;
519700, 4697200; 519800, 4697200;
519800, 4697100; 520000, 4697100;
520000, 4696800; 519900, 4696800;
519900, 4696700; 520400, 4696700;
520400, 4696600; 520500, 4696600;
520500, 4696300; 520400, 4696300;
520400, 4696100; 520500, 4696100;
520500, 4696200; 520600, 4696200;
520600, 4696100; 520700, 4696100;
520700, 4695900; 520600, 4695900;
520600, 4695800; 520500, 4695800;
520500, 4695500; 520700, 4695500;
520700, 4695400; 520800, 4695400;
returning to 520800, 4694400.

(13) *Subunit 2C*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 516100, 4697400; 515000, 4697400; 515000, 4697800; 515200, 4697800; 515200, 4697700; 515300, 4697700; 515300, 4697800; 516100, 4697800; returning to 516100, 4697400.

(14) *Subunit 2D*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 516200, 4696200; 515900, 4696200; 515900, 4696900; 516100, 4696900; 516100, 4697000; 516500, 4697000; 516500, 4697100; 516800, 4697100; 516800, 4697200; 517000, 4697200; 517000, 4697100; 517200, 4697100; 517200, 4697000; 517300, 4697000; 517300, 4696900; 517400, 4696900; 517400, 4696600; 517200, 4696600; 517200, 4696700; 516800, 4696700; 516800, 4696600; 516300, 4696600; 516300, 4696500; 516200, 4696500; returning to 516200, 4696200.

(15) *Subunit 2E*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83

coordinates (E, N): 515200, 4695800; 515000, 4695800; 515000, 4695900; 514500, 4695900; 514500, 4695800; 514300, 4695800; 514300, 4695900; 514200, 4695900; 514200, 4696000; 514100, 4696000; 514100, 4695900; 514000, 4695900; 514000, 4695800; 513900, 4695800; 513900, 4695900; 513800, 4695900; 513800, 4696600; 513500, 4696600; 513500, 4696800; 515600, 4696800; 515600, 4696600; 515500, 4696600; 515500, 4696400; 515100, 4696400; 515100, 4696300; 515200, 4696300; returning to 515200, 4695800; excluding land bounded by 514700, 4696300; 514700, 4696500; 514500, 4696500; 514500, 4696400; 514300, 4696400; 514300, 4696500; 514200, 4696500; 514200, 4696400; 514100, 4696400; 514100, 4696300; 514700, 4696300.

(16) *Subunit 3A*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Eagle Point, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 511600, 4698900; 511600, 4699000; 511400, 4699000; 511400, 4699100; 511100, 4699100; 511100, 4699200; 510700, 4699200; 510700, 4699300; 510600, 4699300; 510600, 4699500; 510900, 4699500; 510900, 4699600; 511200, 4699600; 511200, 4699700; 511300, 4699700; 511300, 4699900; 511400, 4699900; 511400, 4700000; 511500, 4700000; 511500, 4699900; 511600, 4699900; 511600, 4699800; 511700, 4699800; 511700, 4699900; 511900, 4699900; 511900, 4698900; returning to 511600, 4698900.

(17) *Subunit 3B*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle maps Eagle Point and Sams Valley, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 511600, 4698900; 511600, 4698600; 511300, 4698600; 511300, 4698700; 511200, 4698700; 511200, 4698600; 511000, 4698600; 511000, 4698500; 510700, 4698500; 510700, 4698600; 510500, 4698600; 510500, 4698500; 509600, 4698500; 509600, 4698100; 509400, 4698100; 509400, 4698000; 509200, 4698000; 509200, 4697800; 509300, 4697800; 509300, 4697600; 509400, 4697600; 509400, 4697200; 509500, 4697200; 509500, 4697000; 510100, 4697000; 510100, 4697100; 511700, 4697100; 511700, 4697000; 511900, 4697000; 511900, 4696400; 510800, 4696400; 510800, 4696300; 510600, 4696300; 510600, 4696400; 510300, 4696400; 510300, 4696500; 509700, 4696500; 509700, 4696600; 509600, 4696600; 509600, 4696500; 508900, 4696500; 508900, 4696600; 508600, 4696600; 508600, 4696700;

508400, 4696700; 508400, 4696800;
 508300, 4696800; 508300, 4696900;
 508200, 4696900; 508200, 4697000;
 508100, 4697000; 508100, 4697100;
 508000, 4697100; 508000, 4697300;
 508100, 4697300; 508100, 4697600;
 508400, 4697600; 508400, 4697700;
 508600, 4697700; 508600, 4697800;
 508500, 4697800; 508500, 4698000;
 508400, 4698000; 508400, 4698400;
 508500, 4698400; 508500, 4698500;
 508800, 4698500; 508800, 4698600;
 508900, 4698600; 508900, 4698300;
 509000, 4698300; 509000, 4698400;
 509100, 4698400; 509100, 4698600;
 509200, 4698600; 509200, 4698700;
 509500, 4698700; 509500, 4698900;
 509800, 4698900; 509800, 4699000;
 510100, 4699000; 510100, 4699100;
 511000, 4699100; 511000, 4699000;
 511300, 4699000; 511300, 4698900;
 returning to 511600, 4698900; excluding
 land bounded by 508600, 4697100;
 508600, 4697300; 508500, 4697300;
 508500, 4697100; 508600, 4697100; and
 land bounded by 509100, 4697700;
 509100, 4697800; 508800, 4697800;
 508800, 4697700; 509100, 4697700.

(18) *Subunit 3C*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Sams Valley, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 508300, 4695000; 507800, 4695000; 507800, 4695200; 507400, 4695200; 507400, 4695400; 506900, 4695400; 506900, 4695800; 506800, 4695800; 506800, 4695900; 506400, 4695900; 506400, 4695800; 505600, 4695800; 505600, 4696000; 505800, 4696000; 505800, 4696700; 506200, 4696700; 506200, 4696800; 506100, 4696800; 506100, 4697300; 506200, 4697300; 506200, 4697600; 506800, 4697600; 506800, 4697500; 506900, 4697500; 506900, 4697300; 506800, 4697300; 506800, 4697200; 506700, 4697200; 506700, 4697000; 507000, 4697000; 506900, 4697200; 507000, 4697200; 507000, 4697400; 507100, 4697400; 507100, 4697500; 507200, 4697500; 507200, 4697400; 507300, 4697400; 507300, 4697300; 507400, 4697300; 507400, 4697100; 507500, 4697100; 507500, 4697000; 507600, 4697000; 507600, 4696900; 507700, 4696900; 507700, 4696700; 507900, 4696700; 507900, 4696000; 508300, 4696000; returning to 508300, 4695000.

(19) *Subunit 4A*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Sams Valley, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 508600, 4701300; 508400, 4701300; 508400, 4701500; 508300, 4701500; 508300, 4701900;

508200, 4701900; 508200, 4702000;
 508100, 4702000; 508100, 4702100;
 508000, 4702100; 508000, 4702200;
 507900, 4702200; 507900, 4702300;
 507800, 4702300; 507800, 4702400;
 507700, 4702400; 507700, 4702500;
 507600, 4702500; 507600, 4702400;
 507500, 4702400; 507500, 4702300;
 507300, 4702300; 507300, 4702200;
 507400, 4702200; 507400, 4702100;
 507600, 4702100; 507600, 4702000;
 507700, 4702000; 507700, 4701800;
 507800, 4701800; 507800, 4701700;
 507900, 4701700; 507900, 4701400;
 507700, 4701400; 507700, 4701500;
 507600, 4701500; 507600, 4701600;
 507300, 4701600; 507300, 4701700;
 507100, 4701700; 507100, 4701800;
 507000, 4701800; 507000, 4701900;
 506900, 4701900; 506900, 4702000;
 506800, 4702000; 506800, 4702200;
 506700, 4702200; 506700, 4702400;
 506600, 4702400; 506600, 4702500;
 506500, 4702500; 506500, 4702700;
 506600, 4702700; 506600, 4702900;
 506700, 4702900; 506700, 4703100;
 506800, 4703100; 506800, 4703400;
 507000, 4703400; 507000, 4703500;
 507200, 4703500; 507200, 4703400;
 507300, 4703400; 507300, 4703300;
 507800, 4703300; 507800, 4703200;
 507900, 4703200; 507900, 4703100;
 508000, 4703100; 508000, 4703000;
 508100, 4703000; 508100, 4702900;
 508200, 4702900; 508200, 4702800;
 508300, 4702800; 508300, 4702700;
 508400, 4702700; 508400, 4702500;
 508500, 4702500; 508500, 4702300;
 508600, 4702300; 508600, 4701900;
 508800, 4701900; 508800, 4701500;
 508700, 4701500; 508700, 4701400;
 508600, 4701400; returning to 508600, 4701300.

(20) *Subunit 4B*: Jackson County, Oregon.

(i) From USGS 1:24,000 quadrangle map Sams Valley, Oregon, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 504000, 4698900; 503800, 4698900; 503800, 4699000; 503700, 4699000; 503700, 4699400; 503800, 4699400; 503800, 4699800; 503800, 4699800; 503700, 4699800; 503700, 4700900; 503800, 4700900; 503800, 4700800; 503900, 4700800; 503900, 4700700; 504000, 4700700; 504000, 4700600; 504300, 4700600; 504300, 4700500; 504400, 4700500; 504400, 4699500; 504200, 4699500; 504200, 4699200; 504100, 4699200; 504100, 4699100; 504000, 4699100; returning to 504000, 4698900.

(21) *Unit 5*: Shasta County, California.

(i) From USGS 1:24,000 quadrangle maps Balls Ferry, Cottonwood, Enterprise, and Palo Cedro, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 564200, 4480800; 564000, 4480800; 563600,

4480900; 563300, 4481000; 563100, 4480900; 562900, 4480900; 562500, 4481200; 562400, 4481500; 562400, 4481700; 562300, 4482400; 562000, 4482500; 561900, 4482800; 561800, 4483300; 561500, 4483700; 561000, 4484000; 560700, 4485400; 560700, 4486500; 560800, 4486700; 561000, 4486900; 561200, 4487000; 561300, 4487600; 561600, 4487900; 562000, 4487900; 562500, 4487400; 562700, 4487100; 562900, 4487200; 563200, 4487200; 563300, 4487000; 563300, 4486700; 563800, 4486400; 564300, 4484700; 564300, 4484400; 564700, 4483800; 564900, 4483600; 564900, 4483400; 564500, 4483000; 564500, 4482800; 564600, 4482700; 564600, 4482400; 564400, 4482100; 564500, 4481700; 564500, 4481000; returning to 564200, 4480800.

(22) *Unit 6*: Tehama County, California.

(i) From USGS 1:24,000 quadrangle maps Corning, Gerber, Henleyville, Red Bluff East, Red Bluff West, and West of Gerber, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 555600, 4423000; 555100, 4423000; 554600, 4424900; 555100, 4425600; 557200, 4426300; 557800, 4426800; 558300, 4426500; 559500, 4428300; 558200, 4428200; 557800, 4428500; 557400, 4429300; 558000, 4429900; 558600, 4430000; 558600, 4431100; 560000, 4431600; 559200, 4431900; 558300, 4432000; 557400, 4432200; 557400, 4432600; 558400, 4433100; 558400, 4433600; 557800, 4433600; 557500, 4433800; 557300, 4434400; 555100, 4434800; 555100, 4435400; 557000, 4436200; 557900, 4439000; 557000, 4439000; 554600, 4437400; 553200, 4437000; 553200, 4437600; 554500, 4438100; 555400, 4439700; 556500, 4439800; 556500, 4441800; 558500, 4442600; 558500, 4443000; 557400, 4442900; 557000, 4443000; 556800, 4443400; 557500, 4444300; 558000, 4443700; 558400, 4443700; 559900, 4444000; 559900, 4444700; 559800, 4444700; 559800, 4445400; 560900, 4446100; 562200, 4445400; 563000, 4445800; 563300, 4445800; 563500, 4444400; 564400, 4444400; 565300, 4443400; 566400, 4443200; 566500, 4442400; 566000, 4441500; 565400, 4441200; 565500, 4441000; 566000, 4440600; 567500, 4441200; 567900, 4441200; 568900, 4440400; 568400, 4440200; 568800, 4439400; 569400, 4439600; 570300, 4437900; 569300, 4438000; 568100, 4438300; 567000, 4438000; 566800, 4437300; 566200, 4437200; 566200, 4438200; 565900, 4438400; 565400, 4438000; 564200, 4438000; 564200, 4437300; 563700, 4436700; 564800, 4436800; 565100, 4435800; 563900,

4434600; 563900, 4432900; 563500, 4432100; 567300, 4431600; 567900, 4427300; 566300, 4426600; 565000, 4425900; 563700, 4425800; 562000, 4424700; 560400, 4424700; 558600, 4423800; returning to 555600, 4423000.

(23) *Unit 7: Butte and Tehama counties, California.*

(i) From USGS 1:24,000 quadrangle maps Balls Ferry, Cottonwood, Enterprise, and Palo Cedro, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 602400, 4401600; 601900, 4401800; 601800, 4402000; 601500, 4401900; 601000, 4401900; 600400, 4402100; 599600, 4402100; 599400, 4403400; 599100, 4403200; 598300, 4403400; 597100, 4403700; 596400, 4404200; 596300, 4404800; 595100, 4405000; 595100, 4405600; 595400, 4406000; 595400, 4407100; 595500, 4407100; 595700, 4407300; 595700, 4407400; 596100, 4407400; 596400, 4408000; 596400, 4408100; 596100, 4408200; 596100, 4408400; 596200, 4408600; 595900, 4408800; 595700, 4408800; 595500, 4408200; 594300, 4408200; 594100, 4408300; 594000, 4408400; 593600, 4408500; 593400, 4408200; 592600, 4408200; 592500, 4408700; 592100, 4408500; 592000, 4408700; 591400, 4408700; 590700, 4408700; 590400, 4408300; 589900, 4408300; 589000, 4408600; 589000, 4409300; 589100, 4409900; 588900, 4410200; 588200, 4410300; 588200, 4411000; 587900, 4411400; 587900, 4412000; 587900, 4412400; 587600, 4412700; 587600, 4413400; 584200, 4413400; 583100, 4413100; 582900, 4413400; 582900, 4415900; 582000, 4418300; 581800, 4419200; 582000, 4419500; 581400, 4420000; 581400, 4420400; 581800, 4420700; 581600, 4421000; 583200, 4422600; 583500, 4423600; 585200, 4424500; 586000, 4424500; 587500, 4426100; 588200, 4426500; 588600, 4429100; 588800, 4430200; 589500, 4429500; 589500, 4428600; 591400, 4425800; 592600, 4424100; 593400, 4422300; 594200, 4421100; 595900, 4417800; 595800, 4417300; 595800, 4416600; 596100, 4416600; 596400, 4416800; 596600, 4416800; 597100, 4416400; 597100, 4415600; 596800, 4415200; 597100, 4415000; 597800, 4415500; 598100, 4415200; 597600, 4414600; 597600, 4414400; 597300, 4413800; 597300, 4413300; 598200, 4413900; 598400, 4413900; 598400, 4413600; 597400, 4411900; 597600, 4411900; 598300, 4412700; 598500, 4413300; 598900, 4413300; 598900, 4411800; 599400, 4411700; 599800, 4411700; 599800, 4411000; 597700, 4409400; 597000, 4408500; 596800, 4408300; 596800, 4407500; 597300, 4407500; 597300, 4408000; 597900,

4407500; 598100, 4407500; 598100, 4407100; 597700, 4406800; 597800, 4406700; 597500, 4406500; 597300, 4406700; 597100, 4406600; 597500, 4406100; 597100, 4405900; 597600, 4405100; 598000, 4405300; 598400, 4404700; 598500, 4404800; 598200, 4405300; 599000, 4405800; 598900, 4406100; 598700, 4406000; 598500, 4406000; 598500, 4407200; 598300, 4407200; 598300, 4407500; 598200, 4407800; 598700, 4408400; 599900, 4409000; 600100, 4409000; 600300, 4408800; 600300, 4408400; 600000, 4408100; 600400, 4407600; 599500, 4406700; 599500, 4406200; 600300, 4406000; 601200, 4405600; 601800, 4405600; 602000, 4405500; 602200, 4405200; 602500, 4405200; 602700, 4404900; 603300, 4404700; 604500, 4404200; 605200, 4404200; 605600, 4404000; 605600, 4403600; 605100, 4403300; 604700, 4403400; 604500, 4403300; 604400, 4402800; 603600, 4402100; 602900, 4402100; returning to 602400, 4401600.

(24) *Unit 8: Glenn and Tehama counties, California.*

(i) From USGS 1:24,000 quadrangle maps Black Butte Dam and Kirkwood, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 560000, 4405200; 559200, 4405700; 558600, 4405800; 558600, 4406400; 558600, 4408000; 558900, 4408700; 559100, 4408700; 559400, 4407000; 560600, 4407400; 561000, 4407400; 561000, 4411400; 561800, 4411400; 565600, 4411400; 565600, 4410600; 568400, 4410600; 568400, 4411400; 570500, 4411400; 570800, 4411700; 571400, 4411500; 571500, 4411000; 572100, 4410900; 572100, 4410100; 571800, 4409600; 570500, 4409000; 570200, 4409000; 570200, 4409300; 569700, 4409300; 569700, 4409000; 569800, 4407700; 569900, 4407000; 569800, 4406100; 569800, 4405500; 569400, 4405500; 568600, 4405900; 568300, 4405900; 567500, 4405500; 567200, 4405500; 565000, 4405500; 564600, 4405800; 564100, 4405800; 563700, 4405600; 563400, 4405400; 562000, 4405700; 561100, 4405900; 560300, 4405900; 560200, 4405300; returning to 560000, 4405200.

(25) *Unit 9: Butte County, California.*

(i) From USGS 1:24,000 quadrangle maps Chico and Hamlin Canyon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 604600, 4395600; 604000, 4395700; 603900, 4396700; 603600, 4396800; 603600, 4398000; 602900, 4398200; 603000, 4398800; 603100, 4399000; 602600, 4399400; 602600, 4399600; 603500, 4399800; 604700, 4400200; 605100, 4399600; 606500,

4399500; 607200, 4399100; 607400, 4399100; 607700, 4398100; 607700, 4397800; 606200, 4396500; 606200, 4395800; returning to 604600, 4395600.

(26) *Unit 10: Colusa and Glenn counties, California.*

(i) From USGS 1:24,000 quadrangle maps Logandale, Maxwell, Moulton Weir, and Princeton, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 572900, 4357400; 571200, 4357400; 571200, 4358200; 570400, 4358200; 570400, 4359000; 569600, 4359000; 569500, 4360500; 569300, 4362200; 569500, 4363300; 569500, 4367200; 570000, 4367200; 569900, 4368400; 570300, 4368400; 571000, 4367600; 571000, 4367800; 570700, 4368500; 570900, 4368800; 571500, 4368800; 571900, 4368300; 571900, 4367600; 572100, 4367600; 572400, 4368100; 572400, 4368400; 572600, 4368900; 572800, 4368900; 573000, 4368100; 573400, 4368000; 573800, 4367600; 574100, 4367300; 574400, 4367200; 574500, 4366400; 574900, 4366400; 574900, 4365600; 574700, 4365500; 574400, 4364100; 575200, 4363900; 575600, 4363600; 575100, 4362400; 575600, 4361400; 575100, 4360700; 576000, 4359600; 575500, 4358900; 575700, 4358300; 575900, 4357700; 575300, 4357800; 575000, 4357700; 574700, 4357700; 573600, 4357800; 573500, 4358200; 572900, 4358200; returning to 572900, 4357400.

(27) *Unit 11: Yuba County, California.*

(i) From USGS 1:24,000 quadrangle maps Browns Valley and Wheatland, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 636300, 4327700; 635600, 4327700; 635300, 4327800; 635300, 4328800; 634800, 4329000; 634800, 4329700; 634600, 4329900; 633800, 4329900; 633600, 4330100; 633500, 4330100; 632800, 4329700; 632700, 4328800; 631300, 4328800; 631300, 4329300; 631400, 4329300; 631400, 4330600; 632400, 4330700; 632800, 4330700; 633000, 4330900; 633000, 4331300; 633100, 4331500; 633500, 4331700; 633800, 4331500; 633800, 4332300; 631500, 4332200; 631500, 4333900; 632400, 4333900; 632400, 4335400; 633300, 4335800; 633700, 4336300; 634100, 4336400; 634900, 4336700; 635100, 4336600; 635200, 4336400; 635700, 4336400; 636000, 4336400; 636100, 4335900; 635900, 4335800; 636000, 4335200; 636500, 4335100; 637100, 4335300; 637400, 4334700; 637800, 4334700; 637700, 4333600; 638200, 4333400; 638200, 4332600; 637600, 4332600; 637600, 4331900; 636900, 4332100; 636700, 4332300; 636600, 4332500; 636100, 4334000; 636700, 4334300; 636600,

4334500; 636000, 4334200; 635400, 4336000; 634500, 4336000; 634500, 4335100; 634400, 4334700; 635100, 4332600; 636000, 4330500; 636400, 4330300; 636500, 4329300; 637100, 4328800; 636900, 4327900; returning to 636300, 4327700.

(28) *Unit 12*: Placer and Sacramento counties, California.

(i) From USGS 1:24,000 quadrangle maps Citrus Heights, Gold Hill, Lincoln, Pleasant Grove, Rio Linda, Rocklin, Roseville, and Sheridan, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 636500, 4287700; 635700, 4287700; 635100, 4288300; 634500, 4288300; 634100, 4288500; 633600, 4288700; 632800, 4288700; 632800, 4289200; 633100, 4289200; 634100, 4289900; 634100, 4290500; 634400, 4290600; 634100, 4290800; 633700, 4290800; 633500, 4291200; 633700, 4291500; 634600, 4291400; 634900, 4291200; 634900, 4290500; 635700, 4290400; 637100, 4290400; 638100, 4290700; 637900, 4292300; 638300, 4293000; 638800, 4293000; 638900, 4294200; 637100, 4294200; 637100, 4295500; 638100, 4295500; 638300, 4295900; 638900, 4295900; 639100, 4295400; 640000, 4295800; 639300, 4296200; 639200, 4296700; 639100, 4296900; 639000, 4298300; 638600, 4297500; 637500, 4297400; 636900, 4297100; 636300, 4296900; 635600, 4297200; 635100, 4297200; 634300, 4297100; 633500, 4297100; 633500, 4297800; 635100, 4297900; 635100, 4298400; 635800, 4298600; 635800, 4300000; 636000, 4300100; 636000, 4301000; 637800, 4300900; 637800, 4300300; 639200, 4300300; 639200, 4301000; 639800, 4301000; 639800, 4301500; 637600, 4301500; 637600, 4301900; 638400, 4302200; 639100, 4302300; 639900, 4302200; 640000, 4301800; 640800, 4301800; 640800, 4302500; 641200, 4302700; 641500, 4302700; 641600, 4302200; 641900, 4301900; 642200, 4302300; 642800, 4301900; 643400, 4301400; 643700, 4302100; 644300, 4302300; 644400, 4302600; 644400, 4302800; 643400, 4302800; 642600, 4303500; 642800, 4304000; 643500, 4304400; 644000, 4304700; 644000, 4306700; 642400, 4306700; 642800, 4306900; 643600, 4307100; 643900, 4307100; 644100, 4307100; 644100, 4307000; 644500, 4307000; 644800, 4306800; 645000, 4306800; 645400, 4307100; 645500, 4307100; 645500, 4307300; 645500, 4308300; 643900, 4308300; 643900, 4307400; 643700, 4307400; 643300, 4308900; 643100, 4308400; 642800, 4308100; 642600, 4307500; 642300, 4307400; 642000, 4307000; 641500, 4307000; 641500, 4307600; 642300, 4307600;

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(29) *Unit 13*: Sacramento County, California.

(i) From USGS 1:24,000 quadrangle maps Buffalo Creek, Carmichael, Elk Grove, Folsom SE and Sloughhouse, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 650400, 4257200; 650200, 4257200; 650200, 4258300; 649600, 4258300; 649600, 4257400; 649400, 4257400; 649400, 4259000; 649100, 4259000; 649100, 4258500; 648500, 4258500; 648500, 4257400; 648200, 4257400; 648100, 4258300; 647700, 4258600; 647700, 4258900; 648000, 4259300; 647700, 4259600; 646800, 4259200; 646500, 4258800; 646500, 4258700; 645800, 4258700; 646100, 4259000; 646100, 4260000; 646400, 4260100; 646600, 4260400; 646100, 4260800; 645300, 4261200; 645000, 4260700; 644800, 4260700; 644400, 4261400; 644400, 4262400; 643800, 4262400; 643600, 4262800; 643200, 4262800; 643200, 4263300; 643500, 4263300; 643700, 4263200; 643700, 4263800; 645200, 4263800; 645200, 4262800; 644800, 4262700; 644800, 4262300; 645300, 4262300; 645300, 4261900; 645000, 4261700; 645300, 4261500; 645400, 4261700; 646000, 4262100; 645800, 4262400; 646000, 4262700; 646400, 4262600; 646700, 4262700; 646600, 4263900; 647400, 4263900; 647600, 4263700; 647800, 4264300; 648100, 4264300; 648300,

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 4262100; 650700, 4262100; 650700,
 4261800; 651100, 4261700; 651200,
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 4259300; 651600, 4259300; 651500,
 4260900; 652000, 4260900; 652100,
 4260300; 653000, 4260400; 653200,
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 4258600; 653000, 4259300; 652200,
 4259800; 652100, 4259600; 652800,
 4259100; 652800, 4258600; 652400,
 4258200; 652300, 4258100; 652000,
 4258100; 651400, 4258400; 650700,
 4257600; returning to 650400, 4257200.

(30) *Unit 14: Amador, Sacramento, and San Joaquin counties, California.*
 (i) From USGS 1:24,000 quadrangle maps Carbondale, Clay, Galt, Goose Creek, Irish Hill, and Sloughhouse, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 660400, 4236800; 660300, 4236800; 660100, 4237500; 659700, 4237700; 659700, 4238100; 660200, 4238400; 659700, 4238900; 659500, 4238900; 659300, 4238100; 659000, 4238300; 658800, 4238400; 658300, 4238400; 658200, 4238300; 657800, 4238300; 657100, 4239000; 657200, 4239400; 657400, 4239700; 658000, 4239900; 661500, 4239900; 661500, 4241900; 661900, 4242100; 661600, 4242400; 661000, 4242500; 660700, 4241900; 660400, 4241500; 659400, 4241500; 659400, 4241800; 659200, 4241800; 659200, 4241700; 659000, 4241600; 658700, 4241700; 658500, 4241700; 658500, 4240500; 657800, 4240400; 657000, 4240400; 657000, 4241300; 656500, 4241300; 655900, 4241600; 655100, 4241200; 654900, 4241900; 655800, 4242400; 655800, 4243100; 656200, 4243100; 656600, 4242600; 657100, 4242700; 658600, 4244000; 658600, 4244700; 659100, 4244800; 659100, 4245600; 659700, 4245600; 659800, 4245100; 659400, 4244900; 659700, 4244500; 660000, 4244500; 660100, 4243100; 661700, 4243100; 662600, 4243000; 663300, 4243300; 663000, 4243900; 662500, 4243900; 662700, 4244700; 663000, 4244900; 663100, 4245400; 664200, 4245600; 664500, 4245600; 664600, 4245200; 665000, 4245300; 664800, 4246100; 664600, 4246300; 663700, 4246500; 662500, 4246100; 662100,

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 4254700; 660000, 4255100; 660200,
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 4256800; 660500, 4257100; 660700,
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 4258400; 659700, 4258500; 659500,
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 4259300; 662100, 4259600; 662400,
 4259600; 662700, 4259100; 662900,
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4258700; 665900, 4258800; 666500, 4258800; 666700, 4258600; 666600, 4258200; 666300, 4258000; 666100, 4257400; 666000, 4257300; 666000, 4257000; 666400, 4257000; 666500, 4257600; 666800, 4257600; 666900, 4257400; 666900, 4257100; 666700, 4256900; 666800, 4256700; 666700, 4256300; 666600, 4256100; 667200, 4256100; 667400, 4256300; 667600, 4256300; 667800, 4256100; 667900, 4256300; 668100, 4256300; 668400, 4255900; 668600, 4255900; 668800, 4256200; 669100, 4256400; 669400, 4256600; 669500, 4256800; 669200, 4257300; 669200, 4257900; 668800, 4258100; 668700, 4258600; 668500, 4258600; 668000, 4258700; 667900, 4258900; 668100, 4259200; 668500, 4259200; 668800, 4258900; 669700, 4259700; 670000, 4259800; 669700, 4260200; 669800, 4260400; 670000, 4260500; 670200, 4260400; 670700, 4260600; 671200, 4260500; 671500, 4260700; 671700, 4260700; 671800, 4260200; 671700, 4259800; 671400, 4259800; 671200, 4260200; 670900, 4259900; 671000, 4259600; 671000, 4259200; 670700, 4259000; 670700, 4258800; 670800, 4258600; 670600, 4258300; 669500, 4258000; 669700, 4257800; 670000, 4257400; 670100, 4257200; 670300, 4257200; 670400, 4257000; 670300, 4256600; 670400, 4256500; 671000, 4256800; 671500, 4256800; 671700, 4256900; 672000, 4256900; 672200, 4256600; 672200, 4256400; 673000, 4256700; 673400, 4256600; 673600, 4256500; 673700, 4256200; 673600, 4255800; 673400, 4255400; 673300, 4255100; 673800, 4255100; 674000, 4255000; 674200, 4254700; 674300, 4254400; 674700, 4254100; 674800, 4253800; 674700, 4253600; 674300, 4253300; 674600, 4252200; 674700, 4251800; 674600, 4251500; 674100, 4251300; 673700, 4251300; 674100, 4251000; 674200, 4250400; 674500, 4250000; 674400, 4249600; 674100, 4249500; 673700, 4249600; 673400, 4249700; 673100, 4249600; 672300, 4249800; 672000, 4250000; 671500, 4249700; 671200, 4249700; 670800, 4249300; 670800, 4249000; 671100, 4248800; 671100, 4248500; 670800, 4248200; 670400, 4248100; 670400, 4247700; 671200, 4247700; 671600, 4247900; 671900, 4247800; 672000, 4247600; 672500, 4247600; 672500, 4247200; 672000, 4246600; 671600, 4246600; 671800, 4246000; 671200, 4245300; 672200, 4245100; 672400, 4244600; 672600, 4244300; 672600, 4244100; 672000, 4243900; 671600, 4243700; 670900, 4243600; 671100, 4243200; 671700, 4243100; 671700, 4242700; 670700, 4242100; 669800, 4242100; 669300,

4241800; 668800, 4241800; 668600, 4241500; 668200, 4241700; 668000, 4242000; 667000, 4241300; 666800, 4240700; 666500, 4240100; 666200, 4239900; 664700, 4239800; 664600, 4239600; 664600, 4238900; 663900, 4238500; 663800, 4238500; 662800, 4237400; 662400, 4237500; 662000, 4237900; 661900, 4237900; 661800, 4237400; 661500, 4237200; 660900, 4237200; returning to 660400, 4236800.

(31) *Unit 15: Solano County, California.*

(i) From USGS 1:24,000 quadrangle maps Allendale and Elmira, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 589700, 4246500; 589500, 4246500; 589500, 4247000; 589300, 4247200; 589400, 4247700; 589600, 4248200; 589800, 4248900; 590100, 4249700; 590500, 4249900; 590800, 4250200; 591300, 4250100; 591500, 4250300; 591500, 4250800; 591900, 4250800; 592100, 4252300; 591600, 4252300; 591300, 4251400; 590500, 4251400; 590600, 4251700; 590900, 4252600; 592900, 4252600; 593900, 4252600; 593900, 4252300; 594700, 4252300; 594700, 4252600; 595500, 4252600; 595900, 4252300; 593500, 4249900; 592300, 4248700; 590500, 4246800; 590200, 4247100; returning to 589700, 4246500.

(32) *Unit 16: Solano County, California.*

(i) From USGS 1:24,000 quadrangle maps Birds Landing, Denverton, Dozier, Elmira, Fairfield North, Fairfield South, Liberty Island, and Rio Vista, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 596500, 4224300; 596200, 4224400; 595700, 4224600; 595700, 4224800; 596000, 4225800; 596300, 4226800; 596200, 4227000; 596100, 4227600; 595800, 4227700; 595600, 4228300; 595400, 4228700; 595500, 4229200; 595500, 4229600; 595700, 4229900; 595700, 4230600; 594500, 4231200; 593800, 4231200; 593600, 4230500; 594200, 4230100; 594400, 4228900; 594400, 4228400; 594000, 4228200; 593400, 4227700; 592600, 4227700; 591400, 4226900; 590900, 4226800; 590300, 4227100; 589500, 4227200; 589000, 4227100; 587500, 4227700; 586800, 4228000; 586400, 4228800; 586000, 4229000; 585700, 4229300; 584900, 4229300; 584700, 4229500; 584600, 4230300; 584800, 4230700; 585200, 4230800; 585600, 4231400; 587400, 4231300; 587600, 4231500; 587800, 4231500; 589000, 4231200; 589100, 4231300; 589100, 4231700; 588600, 4231600; 588200, 4231800; 587800, 4231700; 587100, 4231900; 586600, 4232600; 586300, 4232600; 586000, 4232200; 585600, 4232200; 585000, 4232500; 584900, 4233000; 584500,

4233000; 584500, 4233400; 584000, 4233300; 584200, 4233700; 584500, 4233900; 584500, 4233800; 584600, 4233800; 584700, 4233700; 584700, 4233600; 584900, 4233600; 584900, 4233400; 585700, 4233300; 585700, 4233000; 586100, 4233000; 586200, 4233100; 586400, 4233100; 586500, 4233000; 586800, 4233000; 586900, 4233000; 587100, 4232900; 587100, 4232800; 587300, 4232700; 587600, 4232500; 588600, 4232500; 588600, 4232800; 588400, 4233000; 588600, 4233300; 588700, 4233500; 589300, 4233500; 591000, 4233500; 591100, 4233400; 591000, 4233200; 591100, 4233000; 593900, 4235300; 594000, 4235000; 594300, 4235000; 594800, 4235400; 594000, 4236200; 594500, 4236700; 594000, 4237400; 593500, 4237400; 593500, 4238200; 592500, 4238200; 592500, 4237600; 590400, 4237600; 590200, 4237300; 590200, 4236900; 590400, 4236900; 590400, 4235900; 590900, 4235900; 591700, 4235100; 591000, 4234200; 591000, 4234000; 589400, 4234000; 589000, 4234400; 588500, 4234400, 4236400; 588400, 4236400; 588400, 4236300; 588200, 4236200; 588000, 4236400; 587700, 4236500; 586900, 4236500; 586900, 4237200; 587000, 4237300; 586800, 4237300; 586800, 4238100; 586100, 4238700; 585600, 4238700; 585600, 4238800; 586100, 4239100; 586100, 4239200; 587800, 4239200; 588100, 4239600; 588300, 4239600; 588700, 4239800; 589200, 4240000; 589500, 4240600; 589500, 4240900; 589100, 4241400; 590100, 4241400; 590600, 4241400; 590800, 4241600; 591100, 4241600; 591100, 4241300; 591600, 4241300; 591600, 4242600; 591700, 4242900; 592200, 4242900; 592200, 4243100; 592400, 4243200; 592700, 4243200; 592700, 4243600; 592900, 4243600; 593300, 4243800; 593700, 4243000; 595000, 4243000; 595400, 4242100; 595400, 4241600; 598600, 4241600; 598600, 4242500; 599400, 4242500; 599200, 4244200; 599500, 4244500; 600400, 4244500; 600700, 4244300; 600700, 4244000; 603400, 4244000; 603500, 4244000; 603900, 4243300; 604000, 4243200; 604000, 4242600; 604700, 4241400; 605600, 4240800; 606200, 4240800; 606300, 4240600; 606300, 4239700; 606500, 4239600; 607100, 4239000; 607700, 4239000; 609300, 4239700; 609500, 4239700; 610300, 4239200; 610700, 4238900; 610700, 4236200; 610800, 4232600; 610900, 4232500; 610900, 4229500; 610500, 4228200; 611000, 4228000; 611900, 4228000; 612400, 4228400; 612800, 4228600; 613100, 4228600; 613400, 4228200; 612900,

4227800; 612500, 4227300; 611900, 4227100; 611000, 4227100; 610700, 4227400; 610100, 4227200; 609800, 4226500; 608100, 4226000; 602900, 4225600; 600600, 4225400; 599000, 4225300; 597600, 4226000; 597500, 4225900; 597500, 4225100; 597100, 4224900; 596700, 4224900; 596700, 4224400; returning to 596500, 4224300.

(33) *Unit 17*: Napa County, California.

(i) From USGS 1:24,000 quadrangle map Cuttings Wharf, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 562800, 4228500; 562500, 4228500; 561500, 4228900; 561300, 4229000; 560800, 4229200; 560600, 4229600; 560400, 4230200; 560500, 4230600; 560500, 4230900; 560800, 4231200; 561400, 4231200; 561400, 4230600; 561900, 4230600; 562100, 4230800; 562500, 4230800; 563500, 4231000; 563500, 4230600; 563600, 4230100; 563800, 4229500; 564100, 4229600; 564300, 4229200; 563200, 4228900; 563000, 4228900; returning to 562800, 4228500.

(34) *Unit 18*: San Joaquin and Stanislaus counties, California.

(i) From USGS 1:24,000 quadrangle maps Farmington, Linden, Peters, and Valley Springs SW, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 676400, 4201300; 675700, 4201400; 674500, 4201400; 673200, 4203100; 672200, 4204600; 672100, 4206300; 672100, 4206500; 671700, 4206500; 671600, 4206700; 671600, 4207100; 673200, 4207100; 673200, 4207400; 674000, 4207400; 673900, 4208800; 673100, 4209500; 673100, 4211900; 673500, 4211900; 673900, 4211700; 673900, 4211900; 674300, 4211900; 674300, 4211600; 674900, 4211400; 675200, 4211500; 675200, 4211800; 675500, 4212000; 675500, 4212500; 676000, 4212500; 676800, 4210900; 677200, 4211300; 678700, 4211300; 678800, 4210500; 680200, 4210400; 680200, 4209700; 681100, 4209700; 681800, 4210300; 682900, 4210100; 682900, 4209600; 681500, 4209100; 681300, 4208500; 680800, 4208400; 680800, 4206100; 680500, 4205700; 680400, 4205100; 679700, 4204600; 679700, 4203300; 678500, 4203300; 678400, 4202700; 677700, 4202200; 677600, 4201700; 676900, 4201400; returning to 676400, 4201300.

(35) *Subunit 19A*: Contra Costa County, California.

(i) From USGS 1:24,000 quadrangle maps Antioch South and Brentwood, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 611400, 4193400; 610900, 4193500; 610200, 4193700; 609900, 4193900; 609700, 4194000; 609100,

4194000; 608100, 4194300; 608500, 4194900; 608400, 4195100; 608600, 4195300; 608600, 4195900; 609600, 4195900; 609500, 4195600; 609200, 4195100; 609200, 4195000; 609300, 4194900; 609900, 4194800; 610200, 4194800; 610500, 4195100; 611200, 4195900; 612100, 4196300; 612500, 4195900; 611700, 4194500; 611700, 4194300; returning to 611400, 4193400.

(36) *Subunit 19B*: Contra Costa County, California.

(i) From USGS 1:24,000 quadrangle maps Byron Hot Springs and Clifton Court Forebay, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 620500, 4185200; 620200, 4185300; 619900, 4185600; 619600, 4185500; 618200, 4186600; 618100, 4187100; 617700, 4187400; 617800, 4187900; 618200, 4188100; 618500, 4188300; 618400, 4188600; 617700, 4188800; 617400, 4189000; 617400, 4189200; 618200, 4189500; 618100, 4189800; 618200, 4190100; 618700, 4190300; 618700, 4190700; 619000, 4191000; 619300, 4191100; 619600, 4191100; 619800, 4190700; 619900, 4190700; 620100, 4190900; 620400, 4190900; 620500, 4191300; 621800, 4191300; 622200, 4190700; 622400, 4189900; 623000, 4189300; 622900, 4188700; 621200, 4188700; 620900, 4188700; 620600, 4188400; 620400, 4188600; 620400, 4188100; 620500, 4187900; 620600, 4187800; 620700, 4187700; 620900, 4187700; 621100, 4187500; 620500, 4187100; 620500, 4186900; 621600, 4187400; 622000, 4187000; 622400, 4186400; 622700, 4186000; 622700, 4185700; 622300, 4185300; 621200, 4185300; 621000, 4185500; 620800, 4185500; returning to 620500, 4185200.

(37) *Subunit 19C*: Alameda County, California.

(i) From USGS 1:24,000 quadrangle maps Altamont and Livermore, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 610000, 4174800; 609100, 4175400; 608600, 4175600; 608400, 4175900; 610000, 4175900; 610000, 4176500; 610400, 4176500; 610400, 4178500; 610800, 4178300; 610800, 4177500; 610800, 4177200; 611200, 4177200; 611900, 4176700; 612300, 4176700; 612300, 4177200; 613300, 4177200; 613600, 4176800; 614400, 4175500; 614300, 4175300; 613700, 4175000; 613600, 4175200; 613600, 4176100; 613300, 4176100; 613200, 4175900; 613100, 4175900; 612800, 4176100; 612700, 4176100; 612500, 4175900; 612400, 4175900; 612400, 4176300; 612000, 4176300; 611800, 4176500; 611600, 4176500; 611600, 4175300; 611400, 4175300; 611200, 4175400; 610900, 4175400; 610800,

4175900; 610400, 4175900; 610300, 4175200; 610200, 4175100; 610000, 4175000; returning to 610000, 4174800.

(38) *Unit 20*: Stanislaus County, California.

(i) From USGS 1:24,000 quadrangle map Ripon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 660800, 4167200; 660000, 4167200; 659500, 4168800; 661600, 4168800; 661600, 4169400; 662400, 4169400; 662400, 4168300; 661600, 4168000; 661600, 4168300; 660300, 4167800; 660600, 4167500; returning to 660800, 4167200.

(39) *Unit 21*: Mariposa, Merced, and Stanislaus counties, California.

(i) From USGS 1:24,000 quadrangle maps Cooperstown, La Grange, Merced Falls, Montpelier, Paulsell, Snelling, and Turlock Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 715900, 4154900; 715400, 4155600; 715300, 4156600; 715100, 4156600; 715000, 4156200; 714800, 4156100; 714800, 4155800; 714700, 4155600; 714200, 4155600; 714000, 4155400; 713800, 4155400; 712600, 4155200; 712600, 4157100; 711200, 4157100; 711100, 4161900; 706300, 4161800; 706100, 4165000; 703000, 4165100; 702500, 4165200; 702500, 4165900; 702600, 4166600; 703700, 4167200; 704600, 4168200; 704900, 4168200; 705300, 4167800; 705900, 4167800; 707000, 4167500; 707700, 4167600; 708100, 4167300; 709400, 4167300; 709600, 4167300; 710200, 4166800; 711000, 4167600; 711600, 4167800; 712600, 4167800; 713200, 4167600; 713200, 4167200; 712900, 4167200; 712600, 4166900; 711800, 4167000; 711600, 4166800; 711600, 4166600; 711800, 4166500; 711800, 4166600; 711900, 4166600; 712000, 4166300; 712100, 4166500; 712200, 4166500; 712300, 4166400; 712500, 4166400; 712500, 4166200; 712700, 4166200; 712700, 4166300; 712800, 4166300; 713000, 4166100; 712800, 4166000; 712700, 4165800; 712500, 4165800; 712500, 4165600; 712700, 4165600; 712600, 4165400; 712400, 4165500; 712300, 4165400; 712500, 4165300; 712500, 4165200; 712400, 4165100; 712600, 4165100; 712600, 4165000; 712600, 4164900; 712700, 4164800; 712600, 4164700; 712500, 4164800; 712400, 4164800; 712400, 4164500; 712400, 4164300; 712800, 4164500; 713100, 4164300; 713200, 4164100; 712900, 4163800; 712900, 4163700; 713100, 4163800; 713500, 4164000; 713600, 4164000; 713600, 4164100; 713700, 4164300; 714200, 4164300; 714400, 4164500; 714500, 4164800; 714600, 4164800; 714800, 4164700; 714800, 4164200; 714400, 4164000; 714400, 4163600; 714500, 4163500;

715200, 4164000; 715300, 4164200;
 715400, 4164200; 715300, 4163900;
 715100, 4163700; 715000, 4163500;
 714800, 4163300; 714900, 4163200;
 715000, 4163200; 715700, 4163200;
 715900, 4163100; 716000, 4162900;
 716100, 4162800; 716200, 4162800;
 716300, 4162900; 716400, 4163000;
 716500, 4163100; 716600, 4163200;
 716600, 4163500; 716500, 4163600;
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 717200, 4166100; 717000, 4166400;
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 716400, 4167000; 716600, 4167200;
 716600, 4167300; 717000, 4167400;
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 718700, 4166400; 719100, 4166700;
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 720700, 4167700; 720900, 4167500;
 721100, 4167400; 721300, 4167700;
 721700, 4167700; 722000, 4167600;
 722500, 4167600; 722900, 4167500;
 723300, 4167400; 723000, 4168400;
 723000, 4169200; 723300, 4169700;
 723800, 4169800; 724100, 4169800;
 724600, 4169200; 724700, 4168300;
 725100, 4167900; 725300, 4167200;
 726200, 4167100; 726500, 4166800;
 726500, 4166600; 727300, 4166000;
 727700, 4165800; 729000, 4165800;
 730100, 4165400; 730400, 4165100;
 730500, 4164900; 730700, 4164100;
 731300, 4164100; 731700, 4163800;
 731800, 4163400; 732200, 4162800;
 732200, 4162500; 732700, 4162700;
 733000, 4162600; 733600, 4162100;
 733700, 4161500; 733600, 4161000;
 734600, 4160400; 734800, 4160200;
 734800, 4159500; 734400, 4158700;
 734300, 4158100; 734500, 4157900;
 734700, 4158000; 734900, 4158300;
 735000, 4158800; 735500, 4158800;
 735700, 4158600; 735600, 4158100;
 736200, 4157500; 736800, 4157300;
 736900, 4157100; 736900, 4156500;
 736300, 4156500; 736000, 4156300;
 735500, 4156300; 734100, 4156900;
 733400, 4157100; 731700, 4156900;
 730900, 4156500; 728900, 4156600;
 727100, 4156700; 726900, 4156400;
 725900, 4156400; 723900, 4155300;
 723300, 4155400; 722500, 4155000;
 722300, 4155000; 722300, 4157400;
 723800, 4157500; 723700, 4159000;
 722500, 4159000; 722200, 4159300;
 720900, 4159300; 720900, 4158500;
 719700, 4158500; 719700, 4158100;
 719100, 4158000; 718700, 4157600;
 718000, 4157700; 717800, 4157400;
 717900, 4157200; 718000, 4157000;
 718400, 4157300; 718700, 4156700;
 718700, 4156300; 717400, 4156300;
 717000, 4155800; 716600, 4155800;

716300, 4155700; 716200, 4155000;
 returning to 715900, 4154900.

(40) *Unit 22*: Mariposa and Merced counties, California.

(i) From USGS 1:24,000 quadrangle maps Haystack Mtn., Indian Gulch, Merced, Merced Falls, Owens Reservoir, Planada, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 734700, 4133300; 734700, 4133700; 734100, 4133900; 733100, 4133900; 733100, 4134600; 732700, 4134600; 732600, 4135000; 732300, 4135500; 730300, 4135400; 729900, 4135700; 729900, 4136500; 726500, 4136500; 726400, 4136100; 725900, 4136100; 725900, 4135300; 725600, 4135100; 725500, 4135100; 725300, 4135500; 725100, 4135400; 725000, 4135400; 725000, 4135600; 724800, 4135700; 724600, 4135700; 724600, 4134700; 724200, 4134700; 724200, 4135500; 723400, 4135500; 723400, 4135600; 722800, 4135600; 722800, 4135000; 722600, 4135000; 722600, 4134700; 722500, 4134700; 722200, 4137900; 722800, 4137900; 722800, 4139300; 721900, 4139300; 721900, 4140200; 721000, 4140200; 721000, 4140900; 717800, 4140900; 717700, 4142400; 714500, 4142400; 714500, 4144900; 715500, 4144900; 715500, 4145700; 717000, 4145800; 718000, 4145400; 718200, 4145900; 718200, 4147600; 719700, 4148400; 720600, 4148600; 720600, 4149200; 719600, 4149200; 719600, 4149800; 720300, 4149800; 721300, 4150700; 721700, 4150700; 724400, 4153300; 725000, 4153500; 725500, 4154200; 725800, 4154800; 727200, 4155900; 727800, 4155900; 728500, 4155600; 730200, 4155600; 731600, 4155500; 732400, 4155400; 732600, 4155200; 733200, 4154700; 734100, 4154900; 734600, 4154800; 735600, 4156000; 735900, 4156000; 737100, 4155400; 737800, 4155000; 738200, 4154200; 738300, 4153300; 739000, 4152800; 739100, 4152200; 740200, 4151800; 740800, 4151500; 740800, 4150300; 741100, 4149900; 741700, 4149400; 742100, 4148500; 742100, 4147100; 743400, 4146100; 744000, 4145600; 744400, 4144600; 744300, 4143900; 743900, 4142700; 744000, 4142000; 744200, 4141700; 745500, 4140300; 745500, 4139500; 745400, 4139400; thence southwest to y-coordinate 4139300 on Bear Creek; thence southwest along Bear Creek to y-coordinate 4133300; thence west to the point of beginning at 734700, 4133300.

(41) *Unit 23*: Merced County, California.

(i) From USGS 1:24,000 quadrangle maps Arena, Atwater, El Nido, Gustine, Ingomar, Los Banos, Plainsburg, San

Luis Ranch, Sandy Mush, Stevinson, and Turner Ranch, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 697300, 4104500; 696100, 4104500; 695700, 4105000; 695700, 4106600; 694700, 4107900; 693500, 4107900; 693700, 4109100; 692900, 4109100; 692900, 4109800; 693100, 4110200; 693800, 4110200; 693800, 4111800; 692500, 4111800; 692400, 4110600; 691800, 4110600; 691600, 4110200; 690800, 4110300; 690000, 4110300; 690000, 4111400; 689700, 4111800; 689200, 4111800; 689200, 4111300; 688400, 4111300; 688400, 4112100; 686700, 4112100; 686500, 4112900; 686500, 4113700; 686000, 4113700; 686000, 4116100; 684500, 4116100; 684400, 4114200; 682200, 4114200; 682100, 4113000; 681100, 4113000; 681100, 4111800; 680600, 4111700; 679600, 4110900; 678800, 4110900; 678200, 4111800; 678300, 4113600; 677900, 4114400; 679400, 4114400; 679400, 4115200; 680000, 4115200; 680300, 4116000; 681800, 4116100; 682800, 4116600; 683600, 4116500; 683600, 4117100; 681200, 4117100; 681000, 4124500; 680800, 4124900; 679800, 4124900; 679800, 4125700; 680700, 4125700; 680600, 4126400; 680300, 4126700; 680300, 4127200; 678900, 4127800; 679000, 4129000; 679300, 4129200; 680100, 4129400; 679700, 4130700; 679400, 4130200; 678600, 4130200; 678000, 4131200; 678500, 4132100; 678800, 4132400; 679000, 4131800; 679200, 4131800; 680200, 4132200; 680700, 4131700; 681600, 4132800; 681200, 4133100; 681200, 4133600; 681600, 4134100; 681700, 4134200; 681900, 4134200; 682300, 4134000; 682700, 4133800; 683400, 4133100; 683600, 4132600; 683600, 4132300; 683100, 4131800; 683100, 4131500; 683400, 4131500; 684300, 4130400; 684700, 4130000; 685500, 4130700; 686000, 4130700; 686200, 4130900; 686400, 4130900; 688800, 4131400; 690300, 4131400; 690500, 4130600; 691600, 4130600; 691600, 4130000; 692900, 4130000; 692800, 4131700; 692400, 4131800; 692400, 4133500; 693000, 4133000; 694400, 4133100; 694400, 4132000; 693700, 4132000; 693700, 4129800; 695200, 4129800; 695200, 4130300; 695700, 4130300; 695900, 4130000; 696100, 4129500; 696100, 4129100; 696900, 4129100; 696900, 4130200; 697200, 4130200; 698300, 4128600; 698600, 4128200; 700100, 4127600; 700500, 4129200; 700500, 4130600; 701700, 4130600; 701800, 4129200; 703300, 4129200; 703300, 4128800; 703900, 4128800; 703900, 4129000; 704200, 4129000; 705600, 4128500; 705600, 4127800;

705300, 4127000; 705400, 4126200;
705900, 4125700; 706800, 4125400;
707200, 4125400; 707900, 4126100;
708300, 4126100; 708300, 4125400;
709100, 4125400; 709900, 4125700;
709900, 4126000; 710200, 4126200;
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708000, 4124500; 706700, 4124500;
706700, 4122100; 711500, 4122200;
711500, 4121700; 712100, 4121400;
715600, 4121500; 715600, 4121100;
715300, 4121100; 714800, 4120600;
714800, 4119900; 716400, 4119900;
716400, 4119300; 715600, 4119300;
715600, 4118200; 718900, 4118300;
718900, 4118900; 718100, 4118900;
717700, 4119100; 717700, 4119900;
718100, 4119900; 718100, 4120800;
717000, 4120800; 717000, 4121600;
719300, 4121600; 719600, 4121700;
719600, 4123200; 718000, 4123200;
718000, 4124000; 722200, 4124000;
722200, 4123300; 721500, 4123300;
721500, 4122500; 722900, 4122500;
722900, 4121600; 722900, 4121200;
721300, 4121200; 721300, 4120300;
722900, 4120300; 722900, 4118500;
726100, 4118600; 726100, 4120100;
726900, 4120400; 728500, 4120400;
728500, 4121400; 730700, 4121800;
730900, 4122700; 731700, 4122700;
731700, 4123100; 732500, 4123100;
732600, 4121400; 735000, 4121100;
735300, 4120300; 733400, 4120300;
733400, 4118700; 731700, 4118700;
731700, 4117000; 730400, 4117000;
730400, 4118600; 727700, 4118600;
727500, 4118400; 727500, 4116900;
726800, 4116900; 726800, 4115300;
725900, 4115300; 725900, 4116900;
724300, 4116900; 724300, 4117600;
722600, 4117500; 722600, 4117600;
721800, 4117600; 721800, 4118400;
720200, 4118400; 720200, 4117600;
719400, 4117600; 719500, 4115900;
714600, 4115800; 714600, 4115000;
712200, 4115000; 711600, 4115500;
710600, 4116000; 709600, 4116500;
707300, 4116500; 707300, 4118100;
705000, 4118100; 704500, 4119600;
699400, 4119500; 699300, 4118700;
698800, 4118700; 698500, 4118500;
698200, 4117700; 697600, 4117700;
697800, 4116500; 693700, 4116200;
694200, 4115100; 694400, 4114600;
694800, 4114600; 695000, 4115100;
695800, 4115100; 696300, 4114300;
697600, 4114200; 697900, 4113900;
697900, 4113100; 698900, 4112500;
698800, 4109800; 695700, 4109800;
695700, 4109000; 697300, 4109000;
697300, 4108100; 696400, 4108100;
696400, 4107300; 696700, 4106600;
697600, 4106600; 698200, 4105800;
698200, 4105300; returning to 697300,
4104500.

(42) *Subunit 24a*: Madera County, California.

(i) From USGS 1:24,000 quadrangle maps Daulton, Gregg, Lanes Bridge, and Little Table Mtn., California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 246600, 4092800; 246300, 4092800; 246300, 4093000; 245500, 4093000; 242300, 4093100; 242300, 4095000; 242500, 4095100; 244000, 4095000; 244000, 4096700; 244800, 4096600; 244900, 4098200; 245700, 4098200; 245700, 4099800; 242500, 4100000; 242400, 4095200; 242300, 4095200; 237600, 4095200; 237600, 4096200; 237700, 4098500; 239600, 4098400; 239700, 4100000; 236100, 4100100; 236100, 4100400; 237500, 4101900; 238400, 4102700; 238800, 4103300; 239300, 4104100; 240900, 4106000; 242100, 4107300; 242100, 4106800; 242300, 4106800; 244300, 4105600; 245200, 4104700; 245800, 4103600; 246100, 4102700; 246500, 4101800; 246800, 4101300; 247200, 4100900; 248300, 4100900; 248900, 4101400; 250600, 4101400; 250600, 4098900; 251100, 4098900; 251100, 4098000; 251700, 4098000; 251700, 4096600; 253200, 4096600; 253200, 4095200; 252800, 4095200; 252500, 4095700; 252100, 4095600; 252100, 4094800; 250500, 4094800; 250400, 4093200; 250400, 4092900; 246600, 4092900; returning to 246600, 4092800.

(43) *Subunit 24B*: Fresno County, California.

(i) From USGS 1:24,000 quadrangle map Friant, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 260100, 4086600; 259200, 4086600; 259200, 4087700; 259600, 4087500; 260000, 4087500; 260100, 4087900; 259700, 4088100; 258500, 4088200; 258000, 4088300; 258000, 4089100; 258500, 4089300; 258500, 4089800; 258300, 4089800; 257700, 4089200; 256600, 4089200; 256600, 4090200; 256800, 4090800; 256900, 4092700; 257200, 4094300; 257300, 4095500; 258600, 4096700; 258900, 4096700; 259100, 4097500; 259500, 4097700; 260100, 4097700; 260500, 4097300; 260700, 4096900; 261800, 4096500; 262200, 4096600; 262400, 4097000; 263100, 4097200; 263300, 4097200; 263600, 4097200; 264900, 4096500; 264900, 4096200; 265400, 4096100; 265700, 4095800; 264300, 4095600; 264300, 4095300; 263300, 4094700; 262300, 4094200; 261800, 4093600; 260700, 4093400; 259900, 4092300; 259900, 4092100; 260200, 4092100; 261200, 4092400; 262200, 4091500; 262900, 4091800; 263400, 4091300; 263400, 4089900; 263200, 4089800; 263100, 4089400; 261700, 4088800; 261700, 4089400; 261300, 4089400; 261300, 4088200; 261100, 4088200; 261100, 4087400;

260200, 4087400; returning to 260100, 4086600.

(44) *Unit 25*: Madera County, California.

(i) From USGS 1:24,000 quadrangle maps Millerton Lake East and North Fork, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 4108720; 271200, 4106800; 270200, 4106800; 269900, 4107000; 269900, 4107600; 270100, 4108600; 269300, 4108300; 269000, 4108700; 268500, 4108700; 268300, 4110000; 268800, 4110400; 268900, 4111000; 268300, 4111300; 268500, 4111500; 268600, 4112300; 268800, 4112400; 270600, 4112400; 270800, 4112100; 270700, 4111300; 269600, 4110800; 269700, 4110500; 270000, 4110200; 270600, 4109700; 270800, 4108800; 271300, 4108400; 271500, 4107800; 271600, 4107300; returning to 271200, 4106800.

(45) *Unit 26A*: Kings and Tulare counties, California.

(i) From USGS 1:24,000 quadrangle maps Burris Park, Monson, Remnoy, and Traver, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 274700, 4028100; 274700, 4029800; 275600, 4029800; 276100, 4030400; 276400, 4030600; 276800, 4031400; 277500, 4031500; 278200, 4031900; 279500, 4031800; 279000, 4032900; 280500, 4032900; 281400, 4033300; 281800, 4033200; 283000, 4034300; 283800, 4034400; 284700, 4035200; 286800, 4035100; 288500, 4035100; 288500, 4035600; 287700, 4035700; 287700, 4036700; 289300, 4036700; 289400, 4037400; 291100, 4037400; 291100, 4037200; 291800, 4037200; 291900, 4036800; 291900, 4035600; 292700, 4035800; 292700, 4036500; 293500, 4036400; 293500, 4036000; 294300, 4036000; 294300, 4035600; 293500, 4035600; 293400, 4034000; 292600, 4034000; 292600, 4035400; 291700, 4035400; 291700, 4035600; 290500, 4035700; 290500, 4036100; 289800, 4036100; 289800, 4035700; 289400, 4035700; 289400, 4034500; 288500, 4034500; 288500, 4034200; 287700, 4034200; 287700, 4034600; 287000, 4034300; 285000, 4034400; 285000, 4033800; 283100, 4033800; 283100, 4033100; 282600, 4033100; 282600, 4032600; 282200, 4032600; 282100, 4031800; 282100, 4031100; 280100, 4031100; 280100, 4030800; 279000, 4030600; 278700, 4030500; 278500, 4030100; 278100, 4030000; 276400, 4030100; 275700, 4029600; 275500, 4029200; 275300, 4028600; 275000, 4028300; returning to 274700, 4028100.

(46) *Subunit 26B*: Tulare County, California.

(i) From USGS 1:24,000 quadrangle map Monson, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 297500, 4035500; 296700, 4035500; 296700, 4036300; 297500, 4036300; returning to 297500, 4035500.

(47) *Subunit 26C*: Tulare County, California.

(i) From USGS 1:24,000 quadrangle map Ivanhoe, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 299200, 4038200; 298400, 4038200; 298400, 4039000; 298400, 4039500; 298500, 4039800; 298900, 4039900; 298900, 4041500; 300900, 4041500; 300900, 4040100; 300300, 4040100; 300300, 4039400; 299200, 4039400; returning to 299200, 4038200.

(48) *Subunit 27A*: Tulare County, California.

(i) From USGS 1:24,000 quadrangle maps Alpaugh, Corcoran, and Taylor Weir, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 279200, 3986500; 278900, 3986500; 278900, 3986700; 278600, 3987200; 278500, 3987400; 278300, 3987500; 277100, 3987600; 276900, 3988500; 276900, 3989000; 276500, 3989000; 276000, 3989900; 275900, 3990800; 276100, 3991000; 276100, 3991500; 276400, 3991500; 276400, 3992300; 276300, 3992400; 276000, 3992300; 274300, 3992300; 274100, 3992500; 274100, 3994000; 274200, 3994300; 274700, 3994400; 274700, 3994700; 274900, 3995100; 275100, 3995200; 274500, 3995900; 274300, 3996200; 273500, 3997200; 273500, 3997500; 276500, 3997500; 276700, 3997200; 278100, 3997200; 278300, 3997100; 278300, 3995800; 279700, 3995800; 279900, 3995600; 279900, 3993900; 279700, 3993800; 278300, 3993800; 278300, 3992600; 278800, 3992600; 279000, 3992400; 279000, 3991800; 279600, 3991800; 279800, 3991700; 279800, 3990800; 279600, 3990800; 279600, 3990000; 279800, 3990000; 279800, 3989100; 279600, 3988900; 279000, 3988900; 279000, 3987700; 279200, 3987600; returning to 279200, 3986500.

(49) *Subunit 27B*: Tulare County, California.

(i) From USGS 1:24,000 quadrangle maps Alpaugh, Delano West, and Pixley, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 292100, 3971100; 289500, 3971100; 289500, 3972500; 290300, 3972500; 290300, 3974400; 288200, 3974400; 288000, 3973600; 287200, 3973600; 287200, 3973000; 285800, 3973000; 285800, 3973500; 285200, 3973500; 285200, 3972800; 283800, 3972800; 282800, 3974600; 287500,

3974600; 288000, 3975100; 288000, 3975800; 288000, 3976000; 285800, 3976000; 285400, 3976100; 285100, 3976300; 285000, 3976800; 284900, 3977300; 284600, 3977500; 284600, 3977700; 283200, 3977700; 282900, 3977400; 284000, 3976400; 284000, 3976100; 282000, 3976100; 281000, 3977900; 282200, 3977900; 282600, 3977600; 282800, 3977700; 282800, 3977900; 283100, 3978100; 283100, 3979500; 286400, 3979500; 286400, 3980300; 287500, 3980300; 287500, 3979500; 287800, 3979400; 287700, 3977800; 289000, 3977800; 288900, 3976200; 290500, 3976100; 290600, 3975300; 291500, 3975300; 291400, 3973700; 292200, 3973700; 292200, 3973200; 292500, 3972900; 292900, 3972900; 292900, 3971900; 292100, 3971900; returning to 292100, 3971100.

(50) *Unit 28*: Monterey and San Benito counties, California.

(i) From USGS 1:24,000 quadrangle maps Hepsedam Peak, Hernandez Reservoir, Llanada, Lonoak, Monarch Peak, Nattrass Valley, Pinalito Canyon, Rock Spring Peak, San Benito, and Topo Valley, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 691600, 4008600; 690800, 4008600; 689500, 4009400; 689000, 4010100; 688900, 4010700; 687800, 4011000; 687100, 4011000; 685400, 4012100; 684900, 4013300; 683600, 4014100; 683400, 4014900; 682700, 4015200; 682500, 4016200; 683100, 4016600; 683100, 4017700; 684200, 4019500; 684200, 4020500; 683400, 4022200; 681700, 4023500; 681100, 4023600; 680700, 4024400; 680600, 4025500; 679800, 4025700; 679300, 4026900; 678700, 4027300; 678100, 4026600; 677400, 4026400; 676000, 4025600; 676000, 4025000; 676600, 4024500; 676800, 4023700; 675800, 4022500; 675600, 4021200; 675000, 4020200; 674200, 4019900; 672200, 4016700; 670800, 4015700; 670000, 4015700; 669500, 4016000; 669100, 4016700; 669600, 4017400; 669500, 4018600; 670100, 4019300; 670300, 4022200; 671000, 4023000; 672700, 4024100; 673500, 4024300; 674800, 4026200; 674500, 4026500; 674600, 4027000; 674100, 4027300; 673000, 4026800; 672400, 4027000; 671600, 4028700; 670700, 4028700; 669700, 4028900; 669700, 4030100; 669800, 4030700; 670300, 4032100; 670700, 4035100; 671300, 4037100; 669100, 4037700; 669200, 4038600; 668700, 4040300; 669800, 4042700; 671900, 4043300; 674100, 4043500; 676000, 4045600; 677300, 4046700; 683000, 4043300; 683800, 4042200; 683700, 4040600; 682300, 4039700; 681300, 4038600; 681600, 4037000; 681700, 4035800; 680800, 4034500; 678800,

4035200; 678000, 4036000; 677600, 4037100; 677200, 4037800; 676800, 4037900; 676100, 4038500; 675800, 4039000; 675000, 4038500; 675100, 4038000; 674700, 4037600; 673100, 4037000; 673800, 4036500; 674000, 4035500; 674700, 4035000; 675500, 4034700; 676000, 4033600; 676800, 4033300; 677600, 4032700; 678100, 4032100; 679000, 4031400; 679600, 4031200; 679900, 4031700; 679900, 4032700; 680500, 4033000; 681000, 4032500; 681500, 4031500; 682600, 4031200; 684400, 4028700; 685200, 4028700; 685500, 4028200; 687400, 4029500; 688000, 4030700; 688800, 4031100; 689700, 4031200; 691200, 4032600; 692000, 4032300; 692500, 4031600; 693200, 4031300; 693700, 4031300; 694300, 4030900; 693800, 4029500; 692600, 4028500; 693500, 4028500; 694300, 4027800; 694300, 4027200; 695100, 4026100; 696600, 4024900; 696600, 4023700; 697200, 4022600; 697900, 4022600; 698300, 4021500; 699200, 4020500; 699100, 4019400; 698500, 4019300; 698000, 4018700; 697100, 4018800; 695700, 4017900; 695400, 4016900; 695100, 4016500; 694900, 4015900; 694900, 4015000; 694400, 4013700; 693800, 4013100; 693600, 4012100; 692400, 4010900; 692000, 4009100; returning to 691600, 4008600.

(51) *Subunit 29A*: Monterey County, California.

(i) From USGS 1:24,000 quadrangle maps Cosio Knob, Jolon, and Williams Hill, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 673700, 3973300; 672700, 3974100; 672100, 3973300; 669400, 3974400; 668300, 3975600; 667100, 3976800; 665700, 3977800; 665100, 3978300; 664800, 3978900; 663900, 3979200; 663500, 3980000; 662800, 3980300; 661700, 3981000; 661000, 3982100; 660200, 3982200; 658900, 3982800; 658800, 3983700; 659100, 3983900; 659100, 3984100; 659400, 3984100; 660000, 3984600; 660200, 3986200; 660300, 3986400; 659800, 3986600; 659900, 3986800; 660200, 3986800; 660500, 3987200; 660700, 3987200; 660800, 3987500; 660500, 3987900; 660300, 3988400; 660500, 3988500; 661700, 3987600; 662400, 3986500; 663400, 3984300; 663500, 3983700; 664700, 3982000; 665100, 3982100; 665300, 3982400; 665500, 3982500; 666700, 3982200; 668000, 3982100; 668500, 3981900; 668700, 3981600; 668500, 3981100; 668700, 3980600; 669400, 3980100; 669800, 3980500; 670600, 3980700; 671400, 3980600; 671400, 3979500; 671900, 3979500; 672700, 3978600; 674700, 3978600; 675400, 3978200; 674600, 3976900; 674800, 3975700; 675100,

3975300; 675100, 3974800; 674600, 3974300; 674400, 3973400; returning to 673700, 3973300.

(52) *Subunit 29B*: Monterey and San Luis Obispo counties, California.

(i) From USGS 1:24,000 quadrangle maps Adelaida, Bradley, Paso Robles, San Miguel, Valleton, and Wunpost, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 701800, 3951600; 700200, 3951900; 699700, 3953000; 700000, 3953600; 698600, 3955300; 697900, 3957000; 698100, 3957800; 697200, 3958800; 696600, 3958600; 696300, 3958500; 695700, 3958500; 694500, 3960600; 694200, 3961400; 694800, 3961800; 694900, 3962400; 694700, 3962800; 694800, 3963500; 695400, 3963500; 695800, 3963400; 696700, 3963400; 697800, 3964200; 699000, 3964200; 700100, 3965600; 700500, 3966800; 701400, 3968400; 698800, 3970000; 698800, 3970400; 699200, 3970700; 699800, 3972200; 700200, 3972800; 700400, 3973600; 700800, 3974300; 701300, 3974700; 701700, 3975500; 702900, 3976300; 703200, 3976900; 704200, 3977800; 704800, 3977900; 705400, 3977900; 706100, 3978300; 706700, 3978700; 706700, 3978300; 706200, 3976700; 706100, 3975500; 706300, 3975100; 706500, 3974400; 706400, 3971900; 706600, 3970800; 707000, 3970100; 707000, 3969400; 706800, 3969200; 706800, 3968200; 706600, 3967400; 705500, 3965500; 705400, 3964700; 705800, 3963600; 705700, 3963000; 706000, 3962800; 706800, 3963500; 707600, 3963500; 707500, 3962800; 707900, 3962500; 708100, 3962000; 707500, 3961300; 706500, 3961200; 706000, 3961000; 705600, 3959800; 705900, 3959400; 706000, 3958800; 706600, 3958600; 706900, 3958000; 706900, 3957600; 706400, 3957200; 705100, 3957000; 704900, 3956700; 705400, 3956700; 705800, 3956000; 707900, 3956100; 707900, 3955400; 708100, 3955100; 707600, 3954000; 707300, 3953600; 705700, 3952600; 705000, 3952800; returning to 701800, 3951600.

(53) *Subunit 29C*: San Luis Obispo County, California.

(i) From USGS 1:24,000 quadrangle maps Cholame Hills, Creston, Estrella, Paso Robles, and Ranchito Canyon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 717700, 3941700; 717400, 3941700; 717000, 3941900; 717200, 3942500; 715100, 3944900; 715300, 3945200; 714500, 3945900; 714800, 3946200; 714600, 3946400; 714000, 3946400; 713200, 3947000; 713200, 3947200; 713600, 3947800; 713500, 3948400; 713200, 3948700; 712800,

3947900; 712600, 3947900; 712500, 3948000; 712500, 3948800; 711600, 3949100; 711300, 3949300; 711200, 3949800; 710600, 3949900; 710500, 3950000; 710500, 3950200; 710900, 3950400; 710900, 3950600; 710600, 3950700; 709400, 3950500; 709300, 3952100; 709800, 3952800; 709800, 3954800; 709500, 3955200; 709500, 3955600; 710200, 3955600; 710400, 3955500; 711000, 3955300; 711500, 3954600; 711600, 3953600; 713900, 3953600; 714200, 3954000; 714500, 3953800; 715000, 3953700; 715300, 3953500; 715500, 3953400; 715700, 3953400; 716000, 3953700; 716500, 3953700; 716800, 3953600; 717600, 3953700; 717900, 3954200; 718500, 3954600; 718900, 3954800; 719300, 3954900; 720400, 3955600; 721400, 3956700; 722200, 3958400; 722500, 3960400; 723300, 3962100; 724200, 3962500; 724400, 3963300; 725100, 3964000; 725100, 3963300; 725000, 3962100; 725600, 3961700; 726100, 3961700; 726100, 3961300; 725200, 3960400; 725100, 3959200; 724700, 3958300; 724300, 3956700; 724700, 3956500; 725200, 3955000; 724100, 3953600; 723800, 3952700; 723400, 3952000; 723100, 3950600; 723500, 3949700; 723500, 3949000; 724100, 3948500; 723500, 3948400; 722300, 3948900; 719200, 3948900; 719200, 3949700; 718300, 3949700; 718300, 3948900; 718900, 3948900; 719000, 3948700; 719200, 3948700; 719200, 3948100; 720000, 3948100; 720000, 3946500; 720200, 3946400; 720800, 3945700; 721000, 3945200; 721100, 3944900; 721100, 3943400; 720100, 3943400; 718700, 3942200; returning to 717700, 3941700.

(54) *Unit 30*: San Luis Obispo County, California.

(i) From USGS 1:24,000 quadrangle maps Chimineas Ranch, McKittrick Summit, Painted Rock, and Simmler, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 247900, 3894600; 245800, 3895500; 243500, 3896000; 242700, 3896400; 242200, 3897600; 240100, 3898900; 239500, 3899300; 239300, 3899600; 238300, 3900400; 237900, 3900300; 236100, 3901000; 235800, 3901300; 235800, 3902300; 235500, 3903500; 234800, 3904400; 233000, 3904900; 231800, 3905800; 231600, 3907000; 231900, 3908800; 231800, 3909400; 229400, 3910200; 227200, 3911200; 227300, 3913400; 228100, 3913800; 229000, 3913900; 231900, 3913200; 233300, 3913200; 234300, 3912900; 235100, 3912100; 235300, 3911200; 233900, 3910100; 233700, 3909700; 235300, 3909000; 235700, 3908500; 237200, 3907500; 237700, 3906300; 238200, 3905800; 239100,

3905200; 239100, 3904900; 242800, 3902600; 244400, 3901300; 244400, 3901000; 244700, 3900700; 244800, 3899100; 245400, 3898800; 247200, 3896600; 248200, 3895000; returning to 247900, 3894600.

(55) *Unit 31*: Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle maps Figueroa Mtn., Lake Cachuma, Los Olivos, and Santa Ynez, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 775000, 3831900; 774200, 3831800; 773600, 3831900; 772500, 3831800; 772100, 3831400; 771400, 3831500; 770400, 3831000; 769800, 3830900; 769300, 3831100; 769100, 3831300; 768500, 3832600; 768500, 3833300; 768700, 3833700; 769900, 3834700; 770200, 3834700; 771900, 3835200; 772300, 3835300; 772800, 3835000; 773100, 3835000; 773100, 3835300; 773700, 3835300; 773700, 3836100; 773200, 3836900; 773800, 3837100; 774300, 3836500; 774900, 3836300; thence southeast to UTM zone 11, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 225100, 3836200; 225300, 3836400; 225600, 3837000; 226600, 3838500; 228200, 3839300; 229800, 3839000; 232200, 3840500; 232400, 3841700; 232300, 3842700; 231600, 3843100; 230300, 3844900; 230000, 3846200; 230800, 3846400; 231200, 3846200; 231700, 3846200; 232000, 3846500; 232800, 3847000; 233800, 3847000; 234500, 3846400; 234700, 3845600; 235200, 3845600; 235900, 3844500; 236400, 3844200; 236400, 3843800; 235900, 3843600; 235700, 3843300; 235500, 3843000; 235200, 3842900; 235100, 3842800; 235100, 3842000; 235300, 3841300; 235200, 3840700; 234700, 3840000; 234900, 3839700; 234600, 3839500; 234600, 3839300; 234300, 3839300; 233800, 3839300; 233100, 3838200; 232900, 3838000; 232300, 3837900; 232100, 3838200; 231800, 3838400; 231400, 3838500; 230700, 3837700; 230800, 3837200; 230300, 3836600; 230100, 3836100; 230000, 3835700; 229100, 3835300; 228900, 3834900; 228800, 3833800; 228000, 3833300; 227400, 3833200; 227000, 3832800; 226700, 3832400; 226100, 3832400; 225800, 3832500; 225200, 3832000; 225000, 3831900; 225000, 3831900; 224800, 3831900; thence west to UTM zone 10 to the point of beginning at UTM 10 NAD 83 coordinates 775000, 3831900.

(56) *Unit 32*: Ventura County, California.

(i) From USGS 1:24,000 quadrangle maps Alamo Mountain, Lion Canyon, Lockwood Valley, San Guillermo, and Topatopa Mountains, California, land

bounded by the following UTM 11 NAD 83 coordinates (E, N): 310100, 3830500; 309400, 3831000; 308400, 3830900; 307200, 3830600; 306000, 3831200; 304700, 3831300; 303400, 3832100; 302100, 3832600; 301600, 3833600; 300400, 3833600; 299200, 3834000; 298200, 3834400; 297700, 3835300; 297900, 3837300; 299500, 3837500; 301200, 3838400; 301500, 3839300; 303400, 3841000; 303800, 3842700; 304900, 3843600; 305800, 3843600; 307700, 3843400; 309500, 3843400; 310500, 3844200; 311900, 3844600; 313400, 3845400; 314500, 3844100; 315200, 3843800; 315700, 3842400; 316500, 3841100; 317200, 3838100; 317200, 3837000; 316500, 3833900; 315700, 3833300; 315200, 3834100; 314000, 3834100; 313100, 3832200; 311500, 3830800; returning to 310100, 3830500.

(57) *Subunit 33A: Riverside County, California.*

(i) From USGS 1:24,000 quadrangle maps Perris, Romoland, and Lake Elsinore, California, land bounded by the following UTM11 NAD83

coordinates (E,N): 486950, 3744600; 487050, 3744600; 487050, 3744100; 487150, 3744098; 487400, 3744450; 487400, 3744500; 487500, 3744500; 487500, 3744400; 487550, 3744400; 487700, 3744250; 487700, 3744050; 487650, 3744050; 487650, 3744000; 487600, 3744000; 487600, 3743950; 487500, 3743900; 487450, 3743900; 487450, 3743800; 487350, 3743800; 487350, 3743750; 487300, 3743750; 487300, 3743550; 487100, 3743550; 487200, 3743391; 487300, 3743400; 487300, 3743350; 487350, 3743350; 487350, 3743150; 487300, 3743150; 487100, 3742943; 487100, 3742900; 487000, 3742900; 487000, 3742850; 486900, 3742850; 486900, 3742800; 486850, 3742800; 486850, 3742599; 486650, 3742600; 486650, 3742550; 486600, 3742550; 486600, 3742500; 486500, 3742500; 486500, 3742400; 486450, 3742400; 486450, 3742350; 486400, 3742350; 486400, 3742200; 486350, 3742200; 486350, 3742100; 486300, 3742100; 486300, 3742000; 486250, 3742000; 486250, 3741950; 486200, 3741950; 486200, 3741900; 486250, 3741900; 486250, 3741750; 486102, 3741592; 486050, 3741600; 486050, 3741400; 486000, 3741400; 486000, 3741250; 485950, 3741250; 485950, 3741150; 485900, 3741150; 485900, 3741100; 485850, 3741100; 485850, 3741000; 485800, 3741000; 485800, 3740900; 485750, 3740900; 485750, 3740550; 485700, 3740550; 485700, 3740250; 485650, 3740250; 485650, 3740200; 485250, 3740200; 485250, 3740150; 485200, 3740150;

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 482800, 3739350; 482800, 3739400;
 482900, 3739400; 482900, 3739450;
 483250, 3739450; 483250, 3739500;
 483400, 3739500; 483400, 3739550;
 483500, 3739550; 483500, 3739600;
 484100, 3740050; 484100, 3740100;
 484400, 3740100; 484400, 3740150;
 486800, 3743700; 486850, 3743700;
 486850, 3743800; 486800, 3743800;
 486800, 3744000; 487000, 3744000;
 487000, 3744100; 486950, 3744100;
 returning to 486950, 3744600.

(58) *Subunit 33B*: Riverside County, California.

(i) From USGS 1:24,000 quadrangle maps Lakeview and Winchester,

California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 496100, 3734600; 497000, 3734600; 497000, 3732800; 497200, 3732800; 497200, 3732900; 498000, 3732900; 498000, 3732800; 497900, 3732800; 497900, 3732630; 497230, 3732290; 497250, 3732250; 497300, 3732280; 497340, 3732220; 497760, 3732430; 497800, 3732400; 497800, 3732100; 497000, 3732100; 497000, 3731700; 495500, 3731000; 495300, 3731000; 495300, 3731300; 494500, 3731300; 494500, 3731500; 494600, 3731500; 494700, 3731600; 494700, 3731600; 494800, 3732000; 494800, 3732100; 495550, 3732100; 495550, 3733300; 495600, 3733300; 495600, 3733600; 496100, 3733600; returning to 496100, 3734600; excluding land bounded by 495900, 3733500; 495900, 3733300; 496000, 3733300; 496000, 3733500; 495900, 3733500; and land bounded by 495800, 3732100; 495700, 3731700; 496000, 3731700; 496000, 3732100; 495800, 3732100.

(59) *Subunit 33C*: Riverside County, California.

(i) From USGS 1:24,000 quadrangle map Lakeview, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 496900, 3736800; 497200, 3736800; 497200, 3736500; 496900, 3736500; returning to 496900, 3736800.

(60) *Unit 34*: Riverside County, California.

(i) From USGS 1:24,000 quadrangle maps Murrieta and Wildomar, California, land bounded by the following UTM11 NAD27 coordinates (E, N): 476250, 3711500; 477000, 3711500; 477000, 3711250; 477250, 3711250; 477250, 3710750; 478000, 3710750; 478000, 3710500; 478250, 3710500; 478250, 3710250; 478500, 3710250; 478500, 3710000; 478750, 3710000; 479250, 3709750; 479250, 3709500; 479500, 3709500; 479500, 3709250; 479250, 3709250; 479250, 3709000; 479500, 3709000; 479500, 3708500; 479250, 3708500; 479250, 3708250; 479000, 3708250; 479000, 3708500; 478750, 3708500; 478750, 3708750; 478250,

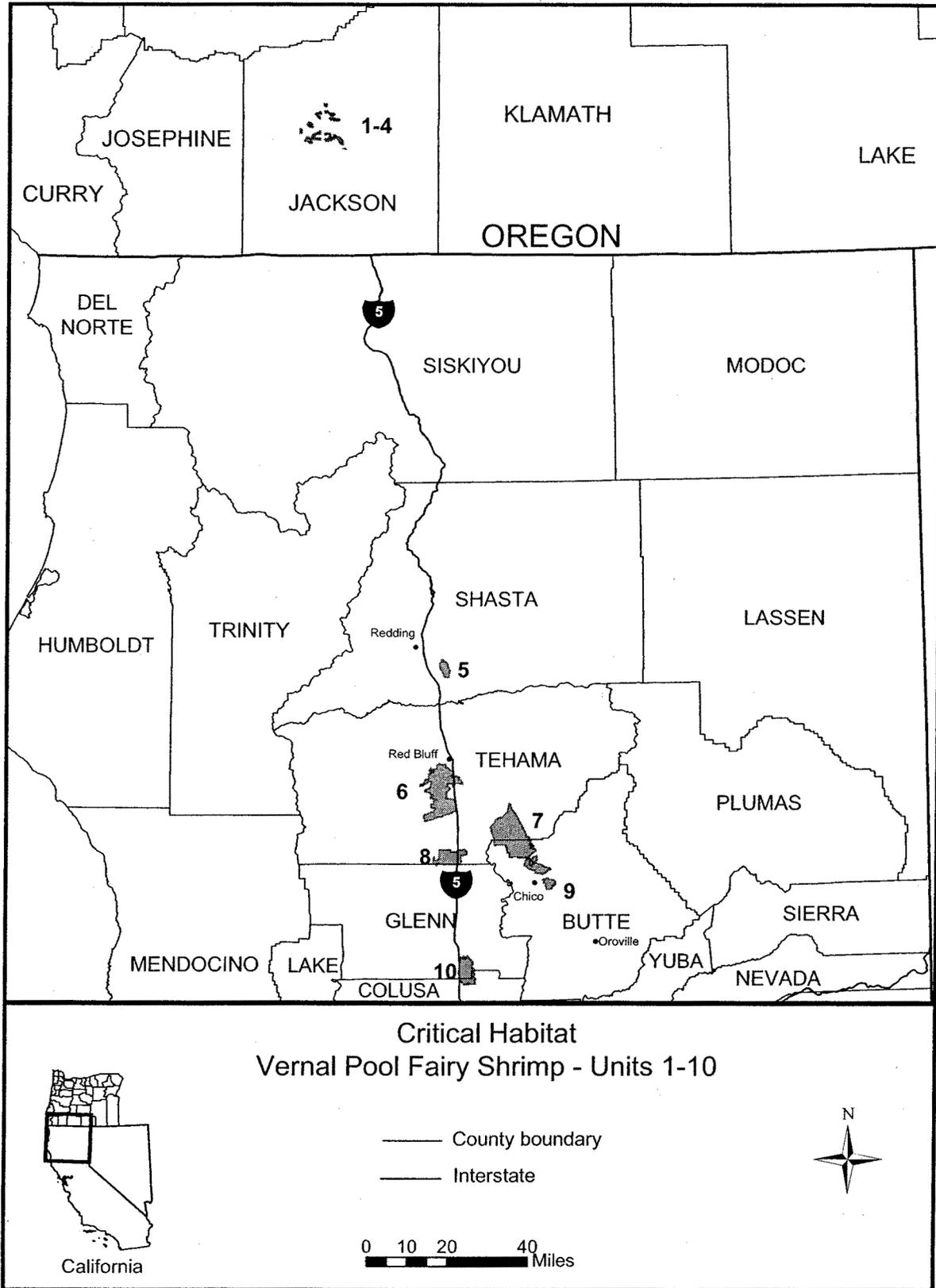
3708750; 478250, 3709000; 477500, 3709000; 477500, 3709250; 476750, 3709250; 476750, 3709000; 476500, 3709000; 476500, 3708500; 475750, 3708500; 475750, 3708000; 475000, 3708000; 475000, 3707000; 474000, 3707000; 474000, 3706750; 472000, 3706750; 472000, 3708250; 472500, 3708250; 472500, 3708500; 472750, 3708500; 473000, 3709250; 473000, 3710500; 473250, 3710500; 473250, 3710750; 474000, 3710750; 474000, 3710500; 474250, 3710500; 474250, 3710250; 474500, 3710250; 474500, 3710000; 474750, 3710000; 474750, 3709750; 475000, 3709750; 475000, 3710000; 475500, 3710000; 475500, 3710250; 475750, 3710250; 475750, 3711250; 476250, 3711250; returning to 476250, 3711500; excluding land bounded by 475000, 3709500; 475000, 3709000; 475250, 3709000; 475250, 3709250; 475500, 3709250; 475500, 3709500; 475000, 3709500; and land bounded by 473500, 3709000; 473500, 3708750; 474250, 3708750; 474250, 3709000; 473500, 3709000.

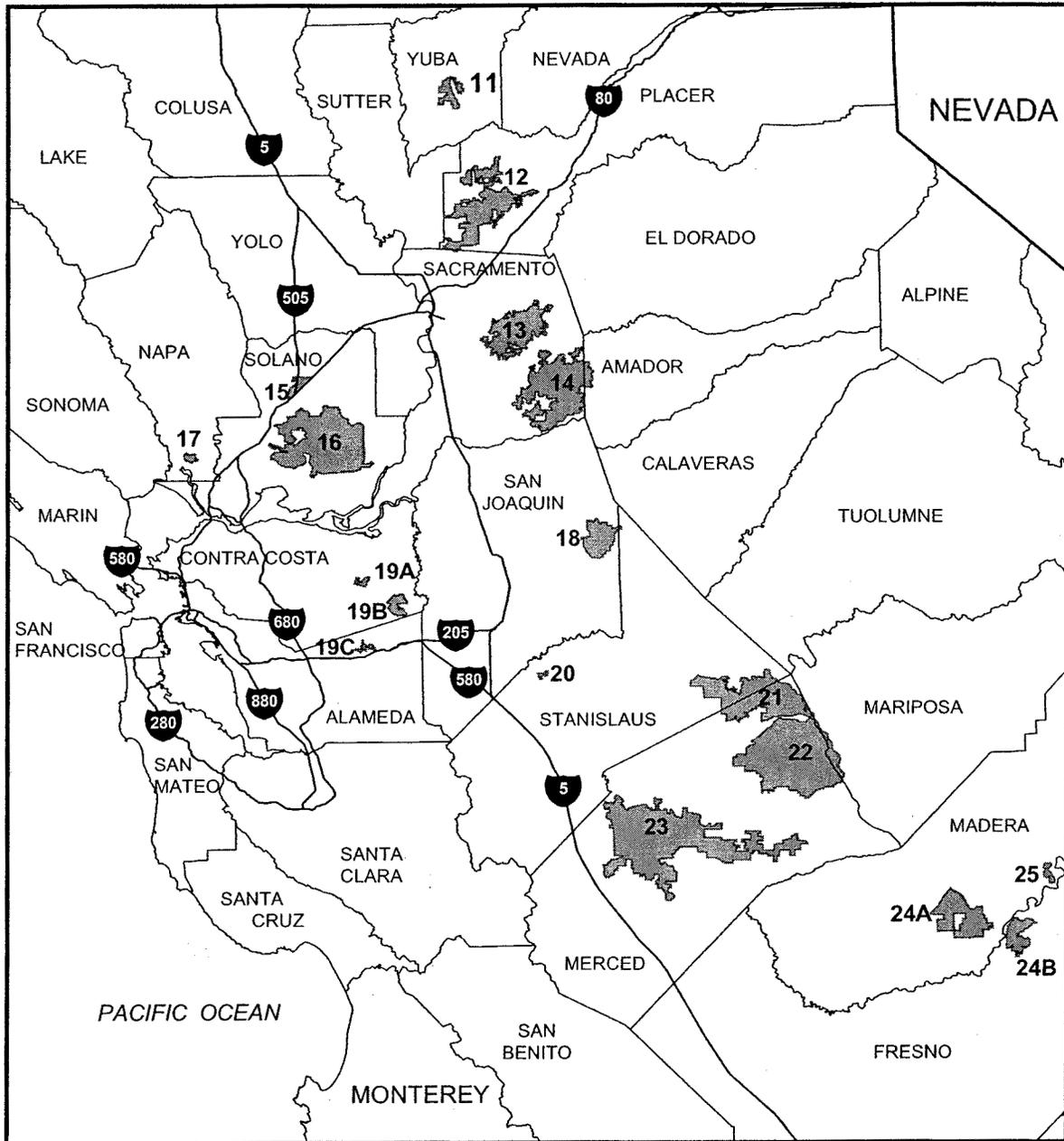
(61) *Unit 35*: Riverside County, California.

(i) From USGS 1:24,000 quadrangle map Bachelor Mtn., California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 490800, 3712500; 490400, 3712500; 490400, 3712600; 490200, 3712600; 490200, 3712700; 490100, 3712700; 490100, 3712800; 490000, 3712800; 490000, 3712900; 489800, 3712900; 489800, 3713000; 489700, 3713000; 489700, 3713300; 489800, 3713300; 489800, 3713600; 490200, 3713600; 490200, 3713500; 490600, 3713500; 490600, 3713400; 491000, 3713400; 491000, 3713300; 490900, 3713300; 490900, 3713200; 490800, 3713200; 490800, 3713000; 490900, 3713000; 490900, 3712700; 490800, 3712700; returning to 490800, 3712500.

(62) Maps follow of critical habitat units 1 through 10, 11 through 25, and 26 through 35 (respectively) for vernal pool fairy shrimp (*Branchinecta lynchi*).

BILLING CODE 4310-55-P





Critical Habitat
Vernal Pool Fairy Shrimp - Units 11-25

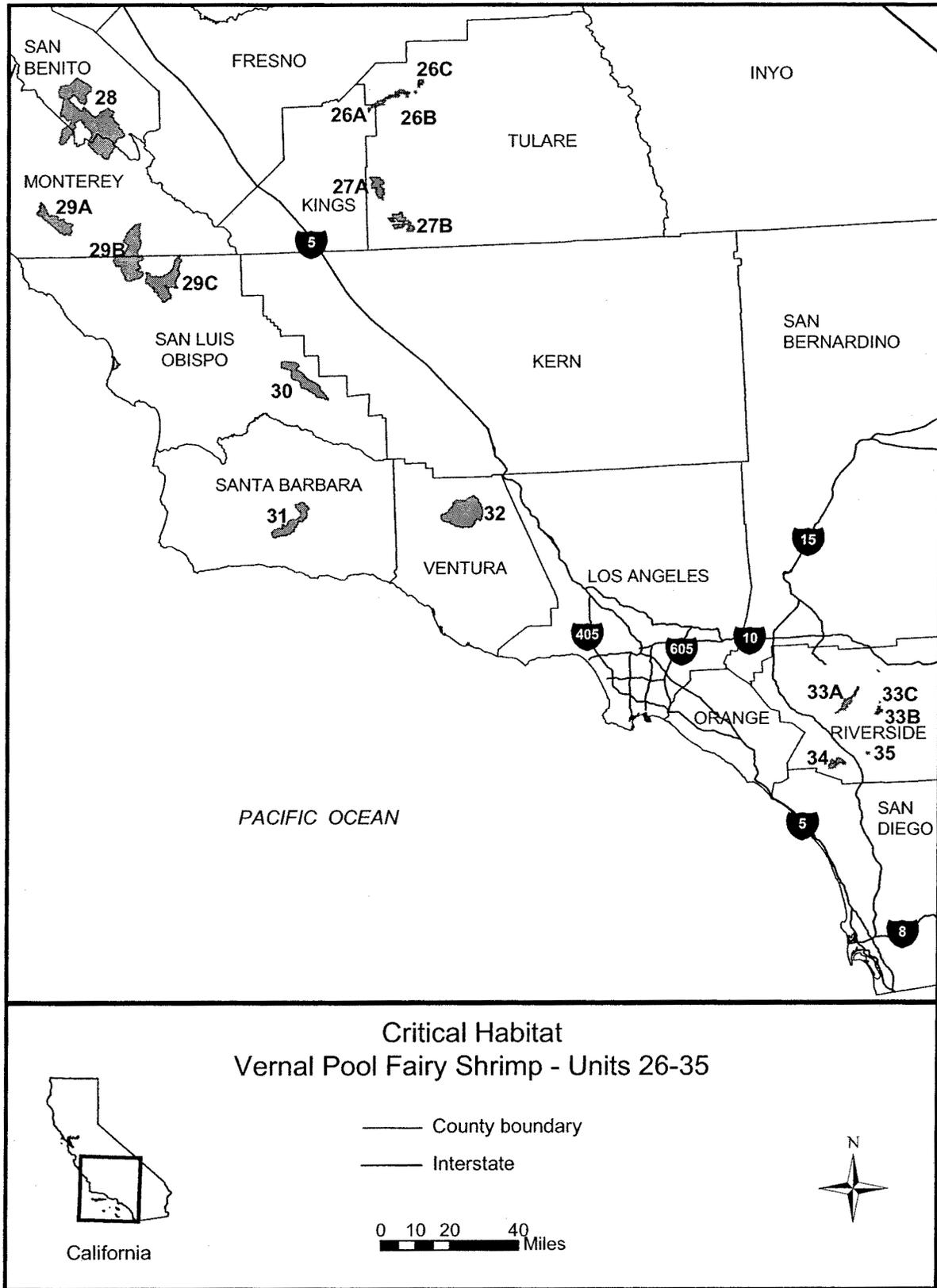


California

- County boundary
- Interstate



0 5 10 20
Miles



BILLING CODE 4310-55-C

Vernal Pool Tadpole Shrimp (*Lepidurus packardii*)

(1) Critical habitat units are depicted for Shasta, Butte, Tehama, Glenn, Colusa, Sacramento, Solano, Alameda, Amador, Stanislaus, Merced, Mariposa,

Madera, Fresno, Tulare and Kings counties, California on the map below.

(2) The primary constituent elements of critical habitat for *Lepidurus packardii*

are the habitat components that provide—

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths that typically become inundated during winter rains and hold water for sufficient lengths of time necessary for vernal pool tadpole shrimp incubation, reproduction, dispersal, feeding, and sheltering, but which are dry during the summer and do not necessarily fill with water every year; including but not limited to vernal pools on Redding and Corning soils on high terrace landforms, and

(ii) The geographic, topographic, and edaphic features that support aggregations or systems of hydrologically interconnected pools, swales, and other ephemeral wetlands and depressions within a matrix of surrounding uplands that together form hydrologically and ecologically functional units called vernal pool complexes. These features contribute to the filling and drying of the vernal pool, and maintain suitable periods of pool inundation, water quality, and soil moisture for vernal pool crustacean hatching, growth and reproduction, and dispersal, but not necessarily every year.

(3) Existing man-made features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) *Unit 1: Shasta County, California.*

(i) From USGS 1:24,000 quadrangle maps Balls Ferry, Cottonwood, Enterprise, and Palo Cedro, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 564200, 4480800; 564000, 4480800; 563600, 4480900; 563300, 4481000; 563100, 4480900; 562900, 4480900; 562500, 4481200; 562400, 4481500; 562400, 4481700; 562300, 4482400; 562000, 4482500; 561900, 4482800; 561800, 4483300; 561500, 4483700; 561000, 4484000; 560700, 4485400; 560700, 4486500; 560800, 4486700; 561000, 4486900; 561200, 4487000; 561300, 4487600; 561600, 4487900; 562000, 4487900; 562500, 4487400; 562700, 4487100; 562900, 4487200; 563200, 4487200; 563300, 4487000; 563300, 4486700; 563800, 4486400; 564300, 4484700; 564300, 4484400; 564700, 4483800; 564900, 4483600; 564900, 4483400; 564500, 4483000; 564500, 4482800; 564600, 4482700; 564600,

4482400; 564400, 4482100; 564500, 4481700; 564500, 4481000; returning to 564200, 4480800.

(5) *Unit 2: Shasta and Tehama counties, California.*

(i) From USGS 1:24,000 quadrangle maps Balls Ferry, Bend, Dales, Red Bluff East, Shingletown, and Tuscan Buttes NE, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 570200, 4454800; 570200, 4455000; 570600, 4455900; 570000, 4456100; 569500, 4456300; 569300, 4456500; 568900, 4456500; 568600, 4456500; 568000, 4456800; 567900, 4457100; 567900, 4458000; 568400, 4458800; 569100, 4459800; 569600, 4460500; 569500, 4460800; 569000, 4460600; 568300, 4460700; 567500, 4460700; 566800, 4460000; 566400, 4460000; 565900, 4461100; 565800, 4461400; 565800, 4461700; 566000, 4462000; 565800, 4462300; 565300, 4463200; 566400, 4464000; 566700, 4464200; 566800, 4464100; 567600, 4463400; 568300, 4463200; 569800, 4463200; 570600, 4463900; 570800, 4464300; 572000, 4465200; 572000, 4466300; 572100, 4466600; 572800, 4467300; 573500, 4468600; 573400, 4469000; 573100, 4469400; 572900, 4469600; 572600, 4469600; 571800, 4468800; 571400, 4468100; 570700, 4467600; 570300, 4467700; 570300, 4467900; 570700, 4469000; 570700, 4469400; 569900, 4470200; 569600, 4470200; 569300, 4470200; 569000, 4470600; 569000, 4471300; 569400, 4472000; 569500, 4472400; 569900, 4472400; 570400, 4472300; 572100, 4472800; 572700, 4472500; 574100, 4473200; 575100, 4473200; 575600, 4473500; 576000, 4473900; 576600, 4473900; 577300, 4473900; 577700, 4474200; 578600, 4474200; 579300, 4474400; 580000, 4474400; 580600, 4474700; 581900, 4474700; 582400, 4475300; 583000, 4475400; 583200, 4475400; 583700, 4475000; 584200, 4475200; 584600, 4475200; 585400, 4474500; 586000, 4473600; 586100, 4473400; 585800, 4472600; 585500, 4472100; 584800, 4471900; 584500, 4471600; 584500, 4471400; 584700, 4471100; 584700, 4470800; 584500, 4470500; 583400, 4469700; 583100, 4469400; 582600, 4468500; 582600, 4467600; 582700, 4466900; 582700, 4466700; 581900, 4465800; 581000, 4465500; 580600, 4465200; 580400, 4464000; 580200, 4463300; 578900, 4462700; 578500, 4462300; 578100, 4462000; 577800, 4460900; 577700, 4460000; 576700, 4459300; 576600, 4458800; 576800, 4458300; 576800, 4457100; 576400, 4456700; 575500, 4456800; 574900, 4456800; 574100, 4455900; 573500, 4455600; 572300, 4455300; 572000, 4455300; 571600,

4455600; 571400, 4455400; 571100, 4454900; 570600, 4454900; returning to 570200, 4454800.

(6) *Unit 3: Butte and Tehama Counties, California.*

(i) From USGS 1:24,000 quadrangle maps Acorn Hollow, Campbell Mound, Foster Island, Nord, Richardson Springs, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 602400, 4401600; 601900, 4401800; 601800, 4402000; 601500, 4401900; 601000, 4401900; 600400, 4402100; 599600, 4402100; 599400, 4403400; 599100, 4403200; 598300, 4403400; 597100, 4403700; 596400, 4404200; 596300, 4404800; 595100, 4405000; 595100, 4405600; 595400, 4406000; 595400, 4407100; 595500, 4407100; 595700, 4407300; 595700, 4407400; 596100, 4407400; 596400, 4408000; 596400, 4408100; 596100, 4408200; 596100, 4408400; 596200, 4408600; 595900, 4408800; 595700, 4408800; 595500, 4408200; 594300, 4408200; 594100, 4408300; 594000, 4408400; 593600, 4408500; 593400, 4408200; 592600, 4408200; 592500, 4408700; 592100, 4408500; 592000, 4408700; 591400, 4408700; 590700, 4408700; 590400, 4408300; 589900, 4408300; 589000, 4408600; 589000, 4409300; 589100, 4409900; 588900, 4410200; 588200, 4410300; 588200, 4411000; 587900, 4411400; 587900, 4412000; 587900, 4412400; 587600, 4412700; 587600, 4413400; 584200, 4413400; 583100, 4413100; 582900, 4413400; 582900, 4415900; 582000, 4418300; 581800, 4419200; 582000, 4419500; 581400, 4420000; 581400, 4420400; 581800, 4420700; 581600, 4421000; 583200, 4422600; 583500, 4423600; 585200, 4424500; 586000, 4424500; 587500, 4426100; 588200, 4426500; 588600, 4429100; 588800, 4430200; 589500, 4429500; 589500, 4428600; 591400, 4425800; 592600, 4424100; 593400, 4422300; 594200, 4421100; 595900, 4417800; 595800, 4417300; 595800, 4416600; 596100, 4416600; 596400, 4416800; 596600, 4416800; 597100, 4416400; 597100, 4415600; 596800, 4415200; 597100, 4415000; 597800, 4415500; 598100, 4415200; 597600, 4414600; 597600, 4414400; 597300, 4413800; 597300, 4413300; 598200, 4413900; 598400, 4413900; 598400, 4413600; 597400, 4411900; 597600, 4411900; 598300, 4412700; 598500, 4413300; 598900, 4413300; 598900, 4411800; 599400, 4411700; 599800, 4411700; 599800, 4411000; 597700, 4409400; 597000, 4408500; 596800, 4408300; 596800, 4407500; 597300, 4407500; 597300, 4408000; 597900, 4407500; 598100, 4407500; 598100, 4407100; 597700,

4406800; 597800, 4406700; 597500, 4406500; 597300, 4406700; 597100, 4406600; 597500, 4406100; 597100, 4405900; 597600, 4405100; 598000, 4405300; 598400, 4404700; 598500, 4404800; 598200, 4405300; 599000, 4405800; 598900, 4406100; 598700, 4406000; 598500, 4406000; 598500, 4407200; 598300, 4407200; 598300, 4407500; 598200, 4407800; 598700, 4408400; 599900, 4409000; 600100, 4409000; 600300, 4408800; 600300, 4408400; 600000, 4408100; 600400, 4407600; 599500, 4406700; 599500, 4406200; 600300, 4406000; 601200, 4405600; 601800, 4405600; 602000, 4405500; 602200, 4405200; 602500, 4405200; 602700, 4404900; 603300, 4404700; 604500, 4404200; 605200, 4404200; 605600, 4404000; 605600, 4403600; 605100, 4403300; 604700, 4403400; 604500, 4403300; 604400, 4402800; 603600, 4402100; 602900, 4402100; returning to 602400, 4401600.

(7) *Unit 4: Butte County, California.*

(i) From USGS 1:24,000 quadrangle maps Cherokee, Chico, Hamlin Canyon, Oroville, and Shippee, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 614900, 4374100; 614400, 4374700; 614000, 4376000; 614400, 4376800; 614700, 4377000; 615900, 4377000; 616300, 4377000; 616300, 4378100; 614500, 4378100; 614500, 4378900; 612600, 4378900; 612200, 4380400; 612200, 4382600; 612500, 4383300; 613600, 4384200; 614200, 4384800; 613000, 4386100; 612300, 4386300; 612000, 4386100; 611300, 4384500; 611300, 4383600; 610100, 4382100; 608500, 4383300; 608800, 4383800; 609500, 4384200; 609500, 4384500; 609200, 4385000; 609500, 4385300; 609300, 4385800; 609500, 4386100; 610500, 4386700; 611100, 4387100; 611400, 4387400; 610400, 4388500; 609300, 4388100; 609300, 4387900; 608500, 4387700; 608500, 4389000; 607900, 4389000; 607200, 4389500; 607100, 4391000; 605700, 4392300; 605300, 4393200; 605300, 4393900; 604800, 4394600; 604600, 4395600; 604000, 4395700; 603900, 4396700; 603600, 4396800; 603600, 4398000; 602900, 4398200; 603000, 4398800; 603100, 4399000; 602600, 4399400; 602600, 4399600; 603500, 4399800; 604700, 4400200; 605100, 4399600; 606500, 4399500; 607200, 4399100; 607400, 4399100; 607700, 4398100; 607700, 4397800; 606200, 4396500; 606200, 4395800; 608300, 4396100; 610900, 4397700; 611900, 4398300; 612300, 4398300; 612600, 4398600; 612900, 4398300; 611900, 4397200; 611800, 4396600; 611100, 4395800; 609400, 4393900; 609800, 4393600; 610900, 4392400; 611300, 4392500;

611500, 4392500; 611700, 4392200; 611700, 4391900; 611100, 4391400; 611500, 4391300; 612500, 4390200; 613300, 4389600; 613300, 4388900; 614500, 4388900; 616000, 4389200; 616800, 4390700; 617200, 4390700; 618600, 4390600; 618800, 4390200; 618800, 4389700; 617800, 4388300; 617200, 4387700; 616700, 4387500; 616200, 4386300; 615500, 4385200; 616400, 4384800; 617300, 4386500; 618500, 4387700; 619500, 4387900; 620400, 4388400; 620700, 4388400; 620700, 4387200; 621300, 4387200; 621600, 4386500; 621400, 4385600; 620900, 4385500; 620600, 4384900; 620400, 4384800; 619600, 4385100; 618600, 4384500; 618500, 4382500; 619300, 4381300; 619500, 4381000; 619500, 4380500; 620800, 4378900; 620900, 4378400; 620300, 4377700; 618800, 4377000; 617800, 4376400; 617100, 4376200; 616900, 4376000; 617500, 4374800; 617500, 4374500; 617300, 4374200; returning to 614900, 4374100.

(8) *Unit 5: Colusa and Glenn Counties, California.*

(i) From USGS 1:24,000 quadrangle maps Logandale, Maxwell, Moulton Weir, and Princeton, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 572900, 4357400; 571200, 4357400; 571200, 4358200; 570400, 4358200; 570400, 4359000; 569600, 4359000; 569500, 4360500; 569300, 4362200; 569500, 4363300; 569500, 4367200; 570000, 4367200; 569900, 4368400; 570300, 4368400; 571000, 4367600; 571000, 4367800; 570700, 4368500; 570900, 4368800; 571500, 4368800; 571900, 4368300; 571900, 4367600; 572100, 4367600; 572400, 4368100; 572400, 4368400; 572600, 4368900; 572800, 4368900; 573000, 4368100; 573400, 4368000; 573800, 4367600; 574100, 4367300; 574400, 4367200; 574500, 4366400; 574900, 4366400; 574900, 4365600; 574700, 4365500; 574400, 4364100; 575200, 4363900; 575600, 4363600; 575100, 4362400; 575600, 4361400; 575100, 4360700; 576000, 4359600; 575500, 4358900; 575700, 4358300; 575900, 4357700; 575300, 4357800; 575000, 4357700; 574700, 4357700; 573600, 4357800; 573500, 4358200; 572900, 4358200; returning to 572900, 4357400.

(9) *Unit 6: Colusa County, California.*

(i) From USGS 1:24,000 quadrangle maps Colusa and Meridian, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 589300, 4335900; 587800, 4335900; 587600, 4336100; 587300, 4336400; 587100, 4336800; 586700, 4337700; 586400, 4337700; 586400, 4336800; 586300, 4336600; 586000, 4336600; 585600,

4337200; 585600, 4337500; 585600, 4338300; 586100, 4338400; 586800, 4338900; 587000, 4338900; 587200, 4338500; 587100, 4338400; 587600, 4337800; 587700, 4337800; 588800, 4336700; 588900, 4336700; 589100, 4336900; 589300, 4336900; returning to 589300, 4335900.

(10) *Unit 7: Yuba County, California.*

(i) From USGS 1:24,000 quadrangle maps Browns Valley and Wheatland, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 636300, 4327700; 635600, 4327700; 635300, 4327800; 635300, 4328800; 634800, 4329000; 634800, 4329700; 634600, 4329900; 633800, 4329900; 633600, 4330100; 633500, 4330100; 632800, 4329700; 632700, 4328800; 631300, 4328800; 631300, 4329300; 631400, 4329300; 631400, 4330600; 632400, 4330700; 632800, 4330700; 633000, 4330900; 633000, 4331300; 633100, 4331500; 633500, 4331700; 633800, 4331500; 633800, 4332300; 631500, 4332200; 631500, 4333900; 632400, 4333900; 632400, 4335400; 633300, 4335800; 633700, 4336300; 634100, 4336400; 634900, 4336700; 635100, 4336600; 635200, 4336400; 635700, 4336400; 636000, 4336400; 636100, 4335900; 635900, 4335800; 636000, 4335200; 636500, 4335100; 637100, 4335300; 637400, 4334700; 637800, 4334700; 637700, 4333600; 638200, 4333400; 638200, 4332600; 637600, 4332600; 636900, 4332100; 636700, 4332300; 636600, 4332500; 636100, 4334000; 636700, 4334300; 636600, 4334500; 636000, 4334200; 635400, 4336000; 634500, 4336000; 634500, 4335100; 634400, 4334700; 635100, 4332600; 636000, 4330500; 636400, 4330300; 636500, 4329300; 637100, 4328800; 636900, 4327900; returning to 636300, 4327700.

(11) *Unit 8: Sacramento County, California.*

(i) From USGS 1:24,000 quadrangle maps Buffalo Creek, Carmichael, Elk Grove, Folsom SE, and Sloughhouse, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 650400, 4257200; 650200, 4257200; 650200, 4258300; 649600, 4258300; 649600, 4257400; 649400, 4257400; 649400, 4259000; 649100, 4259000; 649100, 4258500; 648500, 4258500; 648200, 4257400; 648100, 4258300; 647700, 4258600; 647700, 4258900; 648000, 4259300; 647700, 4259600; 646800, 4259200; 646500, 4258800; 646500, 4258700; 645800, 4258700; 646100, 4259000; 646100, 4260000; 646400, 4260100; 646600, 4260400; 646100, 4260800; 645300, 4261200; 645000, 4260700; 644800, 4260700; 644400,

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(12) *Unit 9: Amador, Sacramento, and San Joaquin counties, California.*

(i) From USGS 1:24,000 quadrangle maps Carbondale, Clay, Elk Grove, Galt, Goose Creek, Irish Hill, and Sloughhouse, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 660400, 4236800; 660300, 4236800; 660100, 4237500; 659700, 4237700; 659700, 4238100; 660200, 4238400; 659700, 4238900; 659500, 4238900; 659300, 4238100; 659000, 4238300; 658800, 4238400; 658300, 4238300; 657800, 4238300; 657100, 4239000; 657200, 4239400; 657400, 4239700; 658000, 4239900; 661500, 4239900; 661500, 4241900; 661900, 4242100; 661600, 4242400; 661000, 4242500; 660700, 4241900; 660400, 4241500; 659400, 4241500; 659400, 4241800; 659200, 4241800; 659200, 4241700; 659000, 4241600; 658700, 4241700; 658500, 4241700; 658500, 4240500; 657800, 4240400; 657000, 4240400; 657000, 4241300; 656500, 4241300; 655900, 4241600; 655100, 4241200; 654900, 4241900; 655800, 4242400; 655800, 4243100; 656200, 4243100; 656600, 4242600; 657100, 4242700; 658600, 4244000; 658600, 4244700; 659100, 4244800; 659100, 4245600; 659700, 4245600; 659800, 4245100; 659400, 4244900; 659700, 4244500; 660000, 4244500; 660100, 4243100; 661700, 4243100; 662600, 4243000; 663300, 4243300; 663000, 4243900; 662500, 4243900; 662700, 4244700; 663000, 4244900; 663100, 4245400; 664200, 4245600; 664500, 4245600; 664600, 4245200; 665000, 4245300; 664800, 4246100; 664600, 4246300; 663700, 4246500; 662500, 4246100; 662100, 4246400; 661700, 4246400; 661700, 4246800; 661900, 4247000; 661600, 4247300; 661100, 4247300; 660600, 4246900; 659900, 4246900; 659500, 4247300; 659500, 4248400; 658600, 4248400; 658600, 4246800; 658400, 4246600; 658400, 4246100; 658100, 4246000; 657400, 4246000; 657400, 4245000; 657000, 4244900; 656700, 4244800; 656400, 4245100; 656100, 4245200; 656100, 4246100; 654900, 4246600; 654900, 4245800; 655100, 4245200; 655100, 4244900; 654600, 4244900; 654600, 4244100; 654600, 4243400; 653900, 4244300; 653300, 4243500; 653400, 4244300; 652200, 4244500; 652000, 4244800; 652300, 4245200; 652800, 4245200; 653500, 4245300; 653600, 4245800; 653300, 4246000; 653300, 4247300; 653600, 4247300; 653700, 4247100; 654200, 4247100; 654600, 4247500; 654600, 4248600; 654800, 4248900; 654600, 4249100; 654500, 4249400; 653800, 4249400; 653800, 4248600; 653600, 4248400; 653300, 4248400; 653200, 4249400; 652600, 4249700; 652300, 4250100; 652300, 4251100; 652900, 4251100; 653100, 4251100; 653300, 4251200; 653100, 4251400; 653000, 4251800; 652700, 4252000; 652700, 4252300; 653100, 4252500; 653100, 4253400; 653800, 4253600; 654000, 4253200; 654100, 4253200; 654700, 4253500; 654600, 4253800; 654800, 4254000; 655400, 4253800; 655500, 4253600; 655600, 4253700; 656200, 4254000; 656400, 4253900; 657000, 4253700; 657300, 4254500; 657200, 4254900; 656700, 4255100; 656800, 4255400; 657000, 4255500; 657200, 4255500; 657400, 4255300; 657400, 4255100; 657800, 4255100; 657900, 4255800; 658100, 4255900; 658300, 4255800; 658400, 4255600; 658200, 4255300; 658200, 4255000; 658300, 4254700; 658200, 4254500; 657800, 4254500; 657800, 4254200; 658100, 4254000; 658900, 4253500; 659200, 4253600; 659900, 4254700; 660000, 4255100; 660200, 4255400; 660700, 4255400; 660800, 4256000; 660600, 4256200; 660300, 4256100; 660100, 4256000; 659500, 4256200;

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 663800, 4238500; 662800, 4237400;
 662400, 4237500; 662000, 4237900;
 661900, 4237900; 661800, 4237400;
 661500, 4237200; 660900, 4237200;
 returning to 660400, 4236800.

(13) *Unit 10: Yolo County, California.*

(i) From USGS 1:24,000 quadrangle maps Davis and Saxon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 615400, 4260700; 614500, 4260700; 614500, 4261500; 614200, 4261500; 614200, 4261800; 614000, 4261800; 614000, 4262400; 615400, 4262400; returning to 615400, 4260700.

(14) *Unit 11: Solano County, California.*

(i) From USGS 1:24,000 quadrangle maps Birds Landing, Denverton, Dozier, Elmira, Fairfield North Fairfield South, Liberty Island, and Rio Vista, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 596500, 4224300; 596200, 4224400; 595700, 4224600; 595700, 4224800; 596000, 4225800; 596300, 4226800; 596200, 4227000; 596100, 4227600; 595800, 4227700; 595600, 4228300; 595400, 4228700; 595500, 4229200; 595500, 4229600; 595700, 4229900; 595700, 4230600; 594500, 4231200; 593800, 4231200; 593600, 4230500; 594200, 4230100; 594400, 4228900; 594400, 4228400; 594000, 4228200; 593400, 4227700; 592600, 4227700; 591400, 4226900; 590900, 4226800; 590300, 4227100; 589500, 4227200; 589000, 4227100; 587500, 4227700; 586800, 4228000; 586400, 4228800; 586000, 4229000; 585700, 4229300; 584900, 4229300; 584700, 4229500; 584600, 4230300; 584800, 4230700; 585200, 4230800; 585600, 4231400; 587400, 4231300; 587600, 4231500; 587800, 4231500; 589000, 4231200; 589100, 4231300; 589100, 4231700; 588600,

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(15) *Unit 12*: Solano County, California.

(i) From USGS 1:24,000 quadrangle maps Antioch North and Honker Bay, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 600900, 4215500; 599300, 4215500; 598400, 4216900; 598316, 6875000; 4217900; 598400, 4217900; 598800, 4218100; 598800, 4218600; 599000, 4219000; 599200, 4219300; 599400, 4219500; 600600, 4216900; returning to 600900, 4215500.

(16) *Unit 13*: Stanislaus County, California.

(i) From USGS 1:24,000 quadrangle maps Knights Ferry, Oakdale, Paulsell, and Waterford, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 702000, 4169700; 700400, 4169700; 700100, 4169800; 700100, 4170700; 699500, 4171100; 698500, 4171200; 698500, 4172000; 697800, 4172300; 697100, 4171200; 696000, 4171200; 694000, 4171200; 694000, 4172100; 694500, 4172100; 694500, 4174500; 696300, 4174500; 696300, 4175300; 697300, 4175300; 697300, 4176200; 697700, 4176200; 697700, 4179300; 696600, 4179300; 696400, 4180000; 695800, 4180000; 695500, 4179500; 695000, 4179300; 694400, 4179300; 694400, 4179800; 694800, 4180400; 694500, 4180800; 694500, 4181000; 694900, 4181400; 694500, 4181600; 694500, 4181900; 695100, 4182200; 696100, 4182200; 696200, 4181800; 695700, 4181600; 696300, 4180500; 697000, 4180100; 697400, 4180100; 697600, 4180400; 697600, 4182600; 700300, 4182600; 700300, 4183400; 699400, 4183400; 699400, 4184100; 700800, 4185100; 704100, 4186300; 705300, 4187700; 705700, 4187700; 706500, 4187700; 706200, 4186800; 705600, 4185900; 706800, 4184600; 705500, 4183800; 705000, 4183100; 704800, 4181800; 701800, 4181800; 701800, 4181500; 701500, 4181100; 702000, 4179500; 703200, 4179500; 702900, 4178300; 703400, 4177000; 703400, 4176200; 702000, 4176200; 702000, 4175100; 701600, 4175100; 701600, 4174200;

702100, 4173600; 701200, 4171800; 702000, 4171800; returning to 702000, 4169700.

(17) *Unit 14*: Alameda County, California.

(i) From USGS 1:24,000 quadrangle maps Milpitas and Niles, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 591200, 4148600; 590700, 4148600; 590300, 4149100; 589300, 4150400; 589700, 4150600; 590500, 4150200; 590600, 4150400; 590400, 4150500; 590500, 4150600; 590700, 4150500; 590900, 4150700; 590400, 4151200; 591100, 4151600; 591300, 4151600; 591400, 4151500; 591400, 4151400; 591300, 4151100; 591500, 4150900; 591600, 4150700; 591800, 4150700; 592000, 4150900; 592300, 4150600; 592300, 4150400; 592200, 4150000; 592100, 4149600; 592000, 4149500; 591600, 4149500; 591600, 4148800; returning to 591200, 4148600.

(18) *Unit 15*: Madera, Mariposa, and Merced Counties, California.

(i) From USGS 1:24,000 quadrangle maps Haystack Mtn., Illinois Hill, Indian Gulch, Le Grand, Merced, Merced Falls, Owens Reservoir, Plainsburg, Planada, Raynor Creek, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 751800, 4114900; 751600, 4115400; 752000, 4115800; 751900, 4116000; 751400, 4116100; 751100, 4116300; 751100, 4116700; 750700, 4116700; 749900, 4116500; 744700, 4116500; 744600, 4117600; 743600, 4117800; 743300, 4118600; 742800, 4118600; 742800, 4118900; 742300, 4119000; 742300, 4119800; 742900, 4119900; 743300, 4120600; 745500, 4120700; 745800, 4121600; 745400, 4121600; 745400, 4121800; 746100, 4121800; 746200, 4122200; 747500, 4122400; 747500, 4123900; 747000, 4124700; 746900, 4125100; 743600, 4125000; 743600, 4127000; 742700, 4127000; 742600, 4126600; 742300, 4126300; 741700, 4126300; 741200, 4126800; 741200, 4128600; 740400, 4128600; 740400, 4130300; 739000, 4130300; 739000, 4130600; 738400, 4131100; 737500, 4131200; 737800, 4131700; 737700, 4132600; 737700, 4132900; 737100, 4132900; 737100, 4133400; 738100, 4133600; 738300, 4133600; 738800, 4133500; 741000, 4133500; 741000, 4133900; 741900, 4133900; 741800, 4135800; 741028, 4135800; 741000, 4135800; thence north to x-coordinate 741000 on Bear Creek; thence southwest along Bear Creek to y-coordinate 4133300; thence west to 734700, 4133300; 734700, 4133700; 734100, 4133900; 733100, 4133900; 733100, 4134600; 732700, 4134600;

732600, 4135000; 732300, 4135500; 730300, 4135400; 729900, 4135700; 729900, 4136500; 726500, 4136500; 726400, 4136100; 725900, 4136100; 725900, 4135300; 725600, 4135100; 725500, 4135100; 725300, 4135500; 725100, 4135400; 725000, 4135400; 725000, 4135600; 724800, 4135700; 724600, 4135700; 724600, 4134700; 724200, 4134700; 724200, 4135500; 723400, 4135500; 723400, 4135600; 722800, 4135600; 722800, 4135000; 722600, 4135000; 722600, 4134700; 722500, 4134700; 722200, 4137900; 722800, 4137900; 722800, 4139300; 721900, 4139300; 721900, 4140200; 721000, 4140200; 721000, 4140900; 717800, 4140900; 717700, 4142400; 714500, 4142400; 714500, 4144900; 715500, 4144900; 715500, 4145700; 717000, 4145800; 718000, 4145400; 718200, 4145900; 718200, 4147600; 719700, 4148400; 720600, 4148600; 720600, 4149200; 719600, 4149200; 719600, 4149800; 720300, 4149800; 721300, 4150700; 721700, 4150700; 724400, 4153300; 725000, 4153500; 725500, 4154200; 725800, 4154800; 727200, 4155900; 727800, 4155900; 728500, 4155600; 730200, 4155600; 731600, 4155500; 732400, 4155400; 732600, 4155200; 733200, 4154700; 734100, 4154900; 734600, 4154800; 735600, 4156000; 735900, 4156000; 737100, 4155400; 737800, 4155000; 738200, 4154200; 738300, 4153300; 739000, 4152800; 739100, 4152200; 740200, 4151800; 740800, 4151500; 740800, 4150300; 741100, 4149900; 741700, 4149400; 742100, 4148500; 742100, 4147100; 743400, 4146100; 744000, 4145600; 744400, 4144600; 744300, 4143900; 743900, 4142700; 744000, 4142000; 744200, 4141700; 745500, 4140300; 746100, 4139500; 746800, 4138500; 747700, 4137700; 748500, 4135800; 748700, 4135100; 749500, 4134000; 750700, 4131700; 751600, 4130500; 752000, 4130200; 752800, 4130100; 753300, 4130400; 753500, 4130400; 753900, 4130200; 754000, 4129300; 753400, 4128400; 753900, 4127700; 754400, 4127700; 754600, 4127400; 755300, 4128400; 755400, 4128400; 755600, 4127700; 756900, 4126400; 757800, 4125800; 758400, 4126300; 758500, 4126300; 758600, 4126000; 757900, 4125100; 757400, 4125100; 757800, 4124400; 757800, 4124000; 758200, 4124000; 758500, 4123600; 758800, 4123600; 759000, 4123900; 759300, 4123900; 759700, 4123500; 759700, 4123400; 759200, 4122900; 760300, 4121300; 761000, 4121000; 761300, 4120300; 762100, 4119500; thence south to x-coordinate 762100 on the Chowchilla River; thence southwest along the

Chowchilla River to Ash Slough; thence southwest along Ash Slough to y-coordinate 4114900; thence west to the point of beginning at 751800, 4114900.

(19) *Unit 16*: Merced County, California.

(i) From USGS 1:24,000 quadrangle maps Arena, Atwater, El Nido, Gustine, Ingomar, Los Banos, Plainsburg, San Luis Ranch, Sandy Mush, Stevinson, and Turner Ranch, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 697300, 4104500; 696100, 4104500; 695700, 4105000; 695700, 4106600; 694700, 4107900; 693500, 4107900; 693700, 4109100; 692900, 4109100; 692900, 4109800; 693100, 4110200; 693800, 4110200; 693800, 4111800; 692500, 4111800; 692400, 4110600; 691800, 4110600; 691600, 4110200; 690800, 4110300; 690000, 4110300; 690000, 4111400; 689700, 4111800; 689200, 4111800; 689200, 4111300; 688400, 4111300; 688400, 4112100; 686700, 4112100; 686500, 4112900; 686500, 4113700; 686000, 4113700; 686000, 4116100; 684500, 4116100; 684400, 4114200; 682200, 4114200; 682100, 4113000; 681100, 4113000; 681100, 4111800; 680600, 4111700; 679600, 4110900; 678800, 4110900; 678200, 4111800; 678300, 4113600; 677900, 4114400; 679400, 4114400; 679400, 4115200; 680000, 4115200; 680300, 4116000; 681800, 4116100; 682800, 4116600; 683600, 4116500; 683600, 4117100; 681200, 4117100; 681000, 4124500; 680800, 4124900; 679800, 4124900; 679800, 4125700; 680700, 4125700; 680600, 4126400; 680300, 4126700; 680300, 4127200; 678900, 4127800; 679000, 4129000; 679300, 4129200; 680100, 4129400; 679700, 4130700; 679400, 4130200; 678600, 4130200; 678000, 4131200; 678500, 4132100; 678800, 4132400; 679000, 4131800; 679200, 4131800; 680200, 4132200; 680700, 4131700; 681600, 4132800; 681200, 4133100; 681200, 4133600; 681600, 4134100; 681700, 4134200; 681900, 4134200; 682300, 4134000; 682700, 4133800; 683400, 4133100; 683600, 4132600; 683600, 4132300; 683100, 4131800; 683100, 4131500; 683400, 4131500; 684300, 4130400; 684700, 4130000; 685500, 4130700; 686000, 4130700; 686200, 4130900; 686400, 4130900; 688800, 4131400; 690300, 4131400; 690500, 4130600; 691600, 4130600; 691600, 4130000; 692900, 4130000; 692800, 4131700; 692400, 4131800; 692400, 4133500; 693000, 4133000; 694400, 4133100; 694400, 4132000; 693700, 4132000; 693700, 4129800; 695200, 4129800; 695200, 4130300; 695700, 4130300; 695900, 4130000; 696100, 4129500; 696100, 4129100; 696900, 4129100;

696900, 4130200; 697200, 4130200; 698300, 4128600; 698600, 4128200; 700100, 4127600; 700500, 4129200; 700500, 4130600; 701700, 4130600; 701800, 4129200; 703300, 4129200; 703300, 4128800; 703900, 4128800; 703900, 4129000; 704200, 4129000; 705600, 4128500; 705600, 4127800; 705300, 4127000; 705400, 4126200; 705900, 4125700; 706800, 4125400; 707200, 4125400; 707900, 4126100; 708300, 4126100; 708300, 4125400; 709100, 4125400; 709900, 4125700; 709900, 4126000; 710200, 4126200; 711500, 4126200; 711500, 4124600; 708000, 4124500; 706700, 4124500; 706700, 4122100; 711500, 4122200; 711500, 4121700; 712100, 4121400; 715600, 4121500; 715600, 4121100; 715300, 4121100; 714800, 4120600; 714800, 4119900; 716400, 4119900; 716400, 4119300; 715600, 4119300; 715600, 4118200; 718900, 4118300; 718900, 4118900; 718100, 4118900; 717700, 4119100; 717700, 4119900; 718100, 4119900; 718100, 4120800; 717000, 4120800; 717000, 4121600; 719300, 4121600; 719600, 4121700; 719600, 4123200; 718000, 4123200; 718000, 4124000; 722200, 4124000; 722200, 4123300; 721500, 4123300; 721500, 4122500; 722900, 4122500; 722900, 4121600; 722900, 4121200; 721300, 4121200; 722900, 4120300; 722900, 4118500; 726100, 4118600; 726100, 4120100; 726900, 4120400; 728500, 4120400; 728500, 4121400; 730700, 4121800; 730900, 4122700; 731700, 4122700; 731700, 4123100; 732500, 4123100; 732600, 4121400; 735000, 4121100; 735300, 4120300; 733400, 4120300; 733400, 4118700; 731700, 4118700; 731700, 4117000; 730400, 4117000; 730400, 4118600; 727700, 4118600; 727500, 4118400; 727500, 4116900; 726800, 4116900; 726800, 4115300; 725900, 4115300; 725900, 4116900; 724300, 4116900; 724300, 4117600; 722600, 4117500; 722600, 4117600; 721800, 4117600; 721800, 4118400; 720200, 4118400; 720200, 4117600; 719400, 4117600; 719500, 4115900; 714600, 4115800; 714600, 4115000; 712200, 4115000; 711600, 4115500; 710600, 4116000; 709600, 4116500; 707300, 4116500; 707300, 4118100; 705000, 4118100; 704500, 4119600; 699400, 4119500; 699300, 4118700; 698800, 4118700; 698500, 4118500; 698200, 4117700; 697600, 4117700; 697800, 4116500; 693700, 4116200; 694200, 4115100; 694400, 4114600; 694800, 4114600; 695000, 4115100; 695800, 4115100; 696300, 4114300; 697600, 4114200; 697900, 4113900; 697900, 4113100; 698900, 4112500; 698800, 4109800; 695700, 4109800;

695700, 4109000; 697300, 4109000; 697300, 4108100; 696400, 4108100; 696400, 4107300; 696700, 4106600; 697600, 4106600; 698200, 4105800; 698200, 4105300; returning to 697300, 4104500.

(20) *Unit 17*: Fresno County, California.

(i) From USGS 1:24,000 quadrangle maps Academy and Millerton Lake East, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 267300, 4097300; 266900, 4097300; 267000, 4097600; 267800, 4098300; 268100, 4098700; 268100, 4098900; 268000, 4099100; 267400, 4099800; 267400, 4100300; 267700, 4100800; 268100, 4101400; 268600, 4101400; 269100, 4101100; 269600, 4101100; 269800, 4101300; 269900, 4101500; 269600, 4102200; 269200, 4102400; 268600, 4102800; 268700, 4103800; 269100, 4103800; 269600, 4103100; 270200, 4103500; 270300, 4103500; 270900, 4102500; 270500, 4102400; 270300, 4102200; 270300, 4101900; 270500, 4101500; 270600, 4101100; 270500, 4101000; 270200, 4100700; 269400, 4100500; 268300, 4100500; 268100, 4100300; 268100, 4100100; 268400, 4099800; 268600, 4099500; 268700, 4099200; 268700, 4098900; 268600, 4098300; 268500, 4098100; 268400, 4097800; 268100, 4097600; 267800, 4097400; returning to 267300, 4097300.

(21) *Subunit 18A*: Kings and Tulare Counties, California.

(i) From USGS 1:24,000 quadrangle maps Burris Park, Monson, Remnoy, and Traver, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 274700, 4028100; 274700, 4029800; 275600, 4029800; 276100, 4030400; 276400, 4030600; 276800, 4031400; 277500, 4031500; 278200, 4031900; 279500, 4031800; 279000, 4032900; 280500, 4032900; 281400, 4033300; 281800, 4033200; 283000, 4034300; 283800, 4034400; 284700, 4035200; 286800, 4035100; 288500, 4035100; 288500, 4035600; 287700, 4035700; 287700, 4036700; 289300, 4036700; 289400, 4037400; 291100, 4037400; 291100, 4037200; 291800, 4037200; 291900, 4036800; 291900, 4035600; 292700, 4035800; 292700, 4036500; 293500, 4036400; 293500, 4036000; 294300, 4036000; 294300, 4036000; 293400, 4034000; 292600, 4034000; 292600, 4035400; 291900, 4035400; 291700, 4035400; 291700, 4035600; 290500, 4035700; 290500, 4036100; 289800, 4036100; 289800, 4035700; 289400, 4034500; 288500, 4034500; 288500, 4034200; 287700, 4034200; 287700, 4034500; 287000, 4034600; 287000, 4034300;

285000, 4034400; 285000, 4033800;
283100, 4033800; 283100, 4033100;
282600, 4033100; 282600, 4032600;
282200, 4032600; 282100, 4031800;
282100, 4031100; 280100, 4031100;
280100, 4030800; 279000, 4030600;
278700, 4030500; 278500, 4030100;
278100, 4030000; 276400, 4030100;
275700, 4029600; 275500, 4029200;
275300, 4028600; 275000, 4028300;
returning to 274700, 4028100.

(22) *Subunit 18B*: Tulare County,
California.

(i) From USGS 1:24,000 quadrangle
map Monson, California, land bounded
by the following UTM 11 NAD 83
coordinates (E, N): 297500, 4035500;
296700, 4035500; 296700, 4036300;
297500, 4036300; returning to 297500,
4035500.

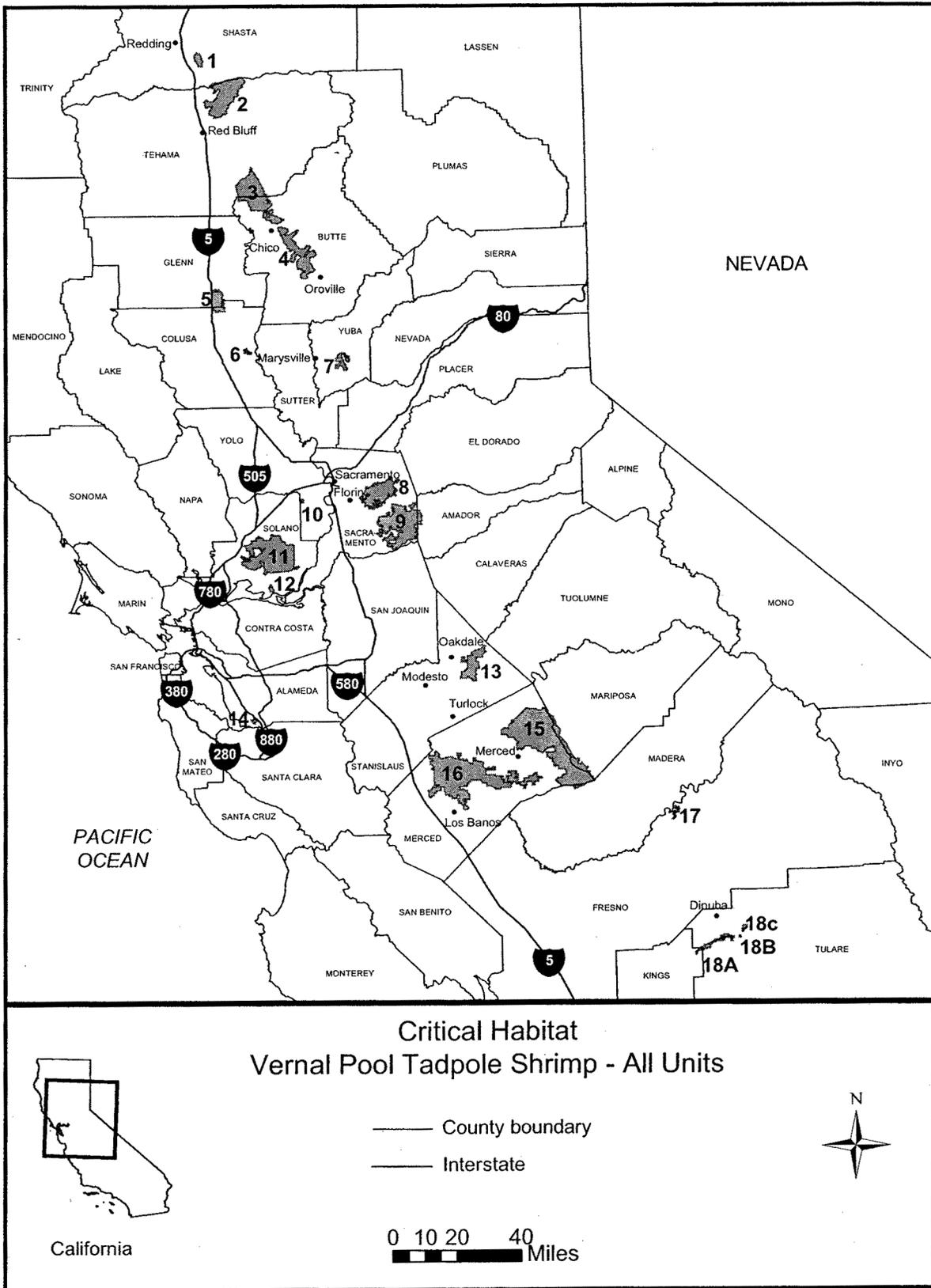
(23) *Subunit 18C*: Tulare County,
California.

(i) From USGS 1:24,000 quadrangle
map Ivanhoe, California, land bounded
by the following UTM 11 NAD 83
coordinates (E, N): 299200, 4038200;

298500, 4038200; 298400, 4038200;
298400, 4038700; 298400, 4039500;
298500, 4039800; 298900, 4039900;
298900, 4041500; 300900, 4041500;
300900, 4040100; 300300, 4040100;
300300, 4039400; 299200, 4039400;
returning to 299200, 4038200.

(24) Map follows of all critical habitat
units for vernal pool tadpool shrimp
(*Lepidurus packardii*).

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

5. In § 17.96 add critical habitat for *Castilleja campestris* ssp. *succulenta* (succulent (or fleshy) owl's-clover),

Chamaesyce hooveri (Hoover's spurge), *Lasthenia conjugens* (Contra Costa goldfields), *Limnanthes floccosa* ssp.

californica (Butte County meadowfoam), *Neostapfia colusana* (Colusa grass), *Orcuttia inaequalis* (San Joaquin Valley

Orcutt grass), *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia tenuis* (slender Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), *Tuctoria greenei* (Greene's tuctoria), and *Tuctoria mucronata* (Solano grass) under paragraph (a) by adding entries for these species in alphabetical order by family under Asteraceae, Euphorbiaceae, Limnanthaceae, Poaceae, and Scrophulariaceae, (respectively) to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering Plants

* * * * *

Family Asteraceae: *Lasthenia conjugens* (Contra Costa Goldfields).

(1) Critical habitat units are depicted for Mendocino, Napa, Solano, Contra Costa, Alameda, Santa Clara and Monterey counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Lasthenia conjugens* are the habitat components that provide:

(i) Vernal pools, swales, moist flats, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Lasthenia conjugens* germination, growth and reproduction, including, but not limited to, vernal pools on clay soils from a variety of soils series, rock outcrop pools on basalt flows, and vernal pools in saline alkaline transition zones with tidal marsh habitats. All of these habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Lasthenia conjugens* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Unit 1*: Mendocino County, California.

(i) From USGS 1:24,000 quadrangle map Point Arena, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 441000, 4310900; 440700, 4310900; 440500, 4311100; 440200, 4311100; 440000, 4311300; 439500, 4311000; 438900, 4311000; 438500, 4311400; 438500, 4311800; 438500, 4312500; 438500, 4312700; 438700, 4313000; 439000, 4313100; 439100, 4313500; 439300, 4313900; 439500, 4314000; 439800, 4313900; 440100, 4314000; 441000, 4314000; 441200, 4314200; 441300, 4314200; 441600, 4313700; 441700, 4313500; 442200, 4313400; 442500, 4313300; 442900, 4312800; 443200, 4312300; 443300, 4312000; 443300, 4311800; 442500, 4311800; 442400, 4312000; 442200, 4312000; 441300, 4311000; returning to 441000, 4310900.

(5) *Unit 2*: Napa County, California.

(i) From USGS 1:24,000 quadrangle maps Capell Valley and Yountville, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 567300, 4248100; 567200, 4248300; 567000, 4249800; 566700, 4250000; 566400, 4250300; 566100, 4250400; 566000, 4250500; 565500, 4250500; 565100, 4250500; 565100, 4250800; 565400, 4251200; 566000, 4251800; 566600, 4251600; 566800, 4250900; 567300, 4250500; 568100, 4250500; 568300, 4250100; 568100, 4250000; 568400, 4249400; 568500, 4249300; 568300, 4249100; 567800, 4249000; 567500, 4248900; 567400, 4248600; returning to 567300, 4248100.

(6) *Unit 3*: Napa County, California.

(i) From USGS 1:24,000 quadrangle maps Cuttings Wharf and Napa, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 564800, 4232000; 564500, 4232300; 564200, 4232600; 563800, 4233000; 563800, 4233600; 563800, 4235100; 563700, 4235200; 563900, 4235300; 564200, 4235400; 564400, 4235300; 564500, 4235100; 564800, 4235000; 564800, 4233300; returning to 564800, 4232000.

(7) *Unit 4*: Solano County, California.

(i) From USGS 1:24,000 quadrangle maps Denverton, Elmira, Fairfield North, and Fairfield South, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 593600, 4230500; 589300, 4230700; 589000, 4231200; 589100, 4231300; 589100, 4231700; 588600, 4231600; 588200, 4231800; 587800, 4231700; 587100, 4231900; 587000, 4232000; 587000, 4232900; 587100, 4232900; 587100, 4232800; 587300, 4232700; 587600, 4232500; 588600, 4232500; 588600, 4232800; 588400, 4233000; 588600,

4233300; 588700, 4233500; 589300, 4233500; 589400, 4233600; 589400, 4234000; 589000, 4234400; 588500, 4236400; 588400, 4236400; 588400, 4236300; 588200, 4236200; 588000, 4236400; 587700, 4236500; 586900, 4236500; 586900, 4237200; 587000, 4237300; 586800, 4237300; 586800, 4238100; 586100, 4238700; 585600, 4238700; 585600, 4238800; 586100, 4239100; 586100, 4239200; 587800, 4239200; 588100, 4239600; 588300, 4239600; 588700, 4239800; 589200, 4240000; 589500, 4240600; 589500, 4240900; 589100, 4241400; 590100, 4241400; 590600, 4241400; 590800, 4241600; 591100, 4241600; 591100, 4241300; 591600, 4241300; 591600, 4242600; 591700, 4242900; 592200, 4242900; 592200, 4243100; 592400, 4243200; 592700, 4243200; 592700, 4243600; 592900, 4243600; 593200, 4243600; 593400, 4242700; 593400, 4240100; 594000, 4240100; 594300, 4239900; 594300, 4238400; 595000, 4238400; 595300, 4238100; 595400, 4237400; 596000, 4236600; 596000, 4236300; 595600, 4235500; 595100, 4234900; 595600, 4233800; 595500, 4232900; 596100, 4232100; 596600, 4231900; 596600, 4231300; 595700, 4230600; 594500, 4231200; 593800, 4231200; returning to 593600, 4230500.

(8) *Subunit 5A*: Solano County, California.

(i) From USGS 1:24,000 quadrangle map Fairfield South, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 577900, 4229100; 577300, 4229400; 577200, 4229800; 577400, 4230000; 577600, 4229800; 577600, 4229700; 577700, 4229600; 578100, 4229800; 578100, 4229700; returning to 577900, 4229100.

(9) *Subunit 5B*: Solano County, California.

(i) From USGS 1:24,000 quadrangle map Fairfield South, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 581900, 4230400; 581700, 4230400; 581700, 4231100; 581800, 4231100; 581800, 4231600; 581300, 4231600; 581300, 4232500; 581100, 4232700; 581100, 4232900; 581900, 4232900; 582100, 4233000; 582300, 4233100; 582800, 4233100; 583100, 4233300; 583800, 4233300; 583700, 4232900; 583100, 4231900; 582700, 4231800; 582400, 4231500; 582300, 4230700; 582000, 4230700; returning to 581900, 4230400.

(10) *Unit 6*: Contra Costa County, California

(i) From USGS 1:24,000 quadrangle maps Benicia and Mare Island, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 569200, 4206400; 569000,

4206400; 567500, 4207100; 567200, 4207100; 566600, 4207700; 566400, 4207500; 565900, 4207400; 565700, 4207700; 566500, 4208600; 567000, 4208600; 567500, 4207800; 567900, 4207400; 568200, 4207200; 568500, 4207100; 568900, 4207000; 569200, 4206600; returning to 569200, 4206400.

(11) *Unit 7*: Contra Costa County, California.

(i) From USGS 1:24,000 quadrangle maps Byron Hot Springs and Clifton Court Forebay, California, land bounded by the following UTM 10 NAD 83

coordinates (E, N): 620500, 4185200; 620200, 4185300; 620200, 4185500; 620000, 4185900; 620000, 4186100; 620500, 4186100; 620700, 4186200; 620700, 4186600; 620200, 4186800; 620100, 4186900; 620000, 4186800; 619900, 4186600; 619900, 4186400; 619800, 4186300; 619600, 4186400; 619500, 4186300; 619600, 4186100; 619600, 4185700; 619400, 4185700; 618200, 4186600; 618100, 4187100; 617700, 4187400; 617800, 4187900; 618400, 4187900; 618400, 4187500; 619000, 4186900; 619400, 4186700; 619500, 4186900; 619500, 4189200; 619300, 4189400; 619400, 4189600; 619000, 4189700; 618700, 4189400; 618500, 4189000; 617800, 4188900; 617700, 4188800; 617400, 4189000; 617400, 4189200; 618200, 4189500; 618100, 4189800; 618200, 4190100; 618700, 4190300; 618700, 4190700; 619000, 4191000; 619300, 4191100; 619600, 4191100; 619800, 4190700; 619900, 4190700; 620100, 4190900; 620400, 4190900; 620500, 4191300; 621800, 4191300; 622200, 4190700; 622300, 4190400; 621200, 4190400; 621200, 4188700; 620900, 4188700; 620600, 4188400; 620400, 4188600;

620400, 4188100; 620500, 4187900; 620600, 4187800; 620700, 4187700; 620900, 4187700; 621100, 4187500; 620500, 4187100; 620500, 4186900; 621300, 4187300; 621700, 4187100; 621800, 4186900; 621600, 4186200; 621600, 4186000; 621800, 4185900; 621900, 4186100; 621800, 4186500; 621900, 4186600; 622100, 4186600; 622200, 4186400; 622300, 4186200; 622500, 4186000; 622700, 4185700; 622300, 4185300; 621200, 4185300; 621200, 4185700; 621300, 4186000; 621100, 4186100; 620500, 4185900; 620600, 4185400; returning to 620500, 4185200.

(12) *Unit 8*: Alameda County, California.

(i) From USGS 1:24,000 quadrangle maps Milpitas and Niles, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 591200, 4148600; 590700, 4148600; 590300, 4149100; 589300, 4150400; 589700, 4150600; 590500, 4150200; 590600, 4150400; 590400, 4150500; 590500, 4150600; 590700, 4150500; 590900, 4150700; 590400, 4151200; 591100, 4151600; 591300, 4151600; 591400, 4151500; 591400, 4151400; 591300, 4151100; 591500, 4150900; 591600, 4150700; 591800, 4150700; 592000, 4150900; 592300, 4150600; 592300, 4150400; 592200, 4150000; 592100, 4149600; 592000, 4149500; 591600, 4149500; 591600, 4148800; returning to 591200, 4148600.

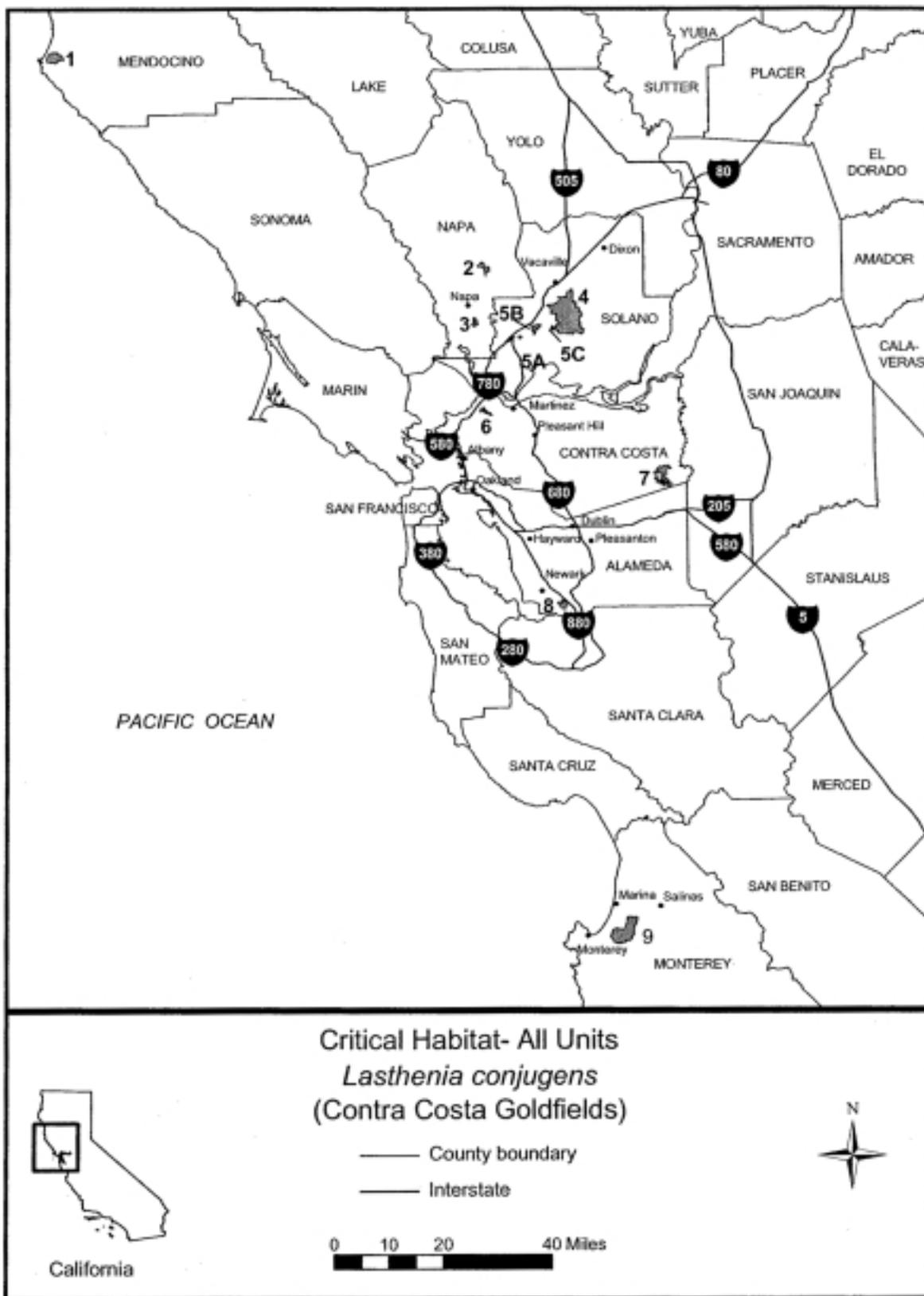
(13) *Unit 9*: Monterey County, California.

(i) From USGS 1:24,000 quadrangle maps Marina, Salinas, Seaside, and Spreckels, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 608100, 4048800;

607700, 4048800; 607200, 4048900; 606700, 4049100; 606500, 4049200; 606400, 4049200; 606400, 4049300; 606300, 4049500; 606100, 4049800; 606000, 4049900; 605600, 4050300; 605500, 4050500; 605400, 4050800; 605400, 4051200; 605700, 4052100; 606000, 4052700; 606000, 4052800; 606900, 4053300; 607200, 4053200; 607900, 4053100; 608100, 4053100; 608400, 4053000; 609100, 4053000; 609300, 4053200; 609500, 4053500; 609600, 4053700; 609700, 4053900; 609700, 4054100; 609800, 4054300; 609900, 4054600; 609900, 4054900; 610200, 4055500; 610200, 4056300; 610400, 4056500; 610600, 4056600; 610700, 4056700; 610900, 4056800; 611100, 4056700; 611200, 4056700; 612200, 4056600; 612700, 4056600; 612800, 4056700; 612900, 4056600; 613000, 4056600; 613100, 4056500; 613100, 4056400; 613200, 4056200; 613100, 4056000; 613100, 4055500; 613000, 4055200; 613000, 4055000; 612900, 4054900; 612600, 4054300; 612300, 4053700; 612300, 4052900; 612200, 4052800; 612100, 4052500; 612100, 4052200; 612200, 4052000; 612300, 4051700; 612200, 4051500; 612000, 4051300; 611900, 4051100; 611700, 4050800; 611600, 4050100; 611300, 4050000; 611200, 4049900; 611000, 4049700; 610800, 4049600; 610500, 4049700; 610000, 4049700; 609900, 4049600; 609900, 4049400; 609800, 4049300; 608600, 4049000; 608400, 4049000; 608200, 4048900; returning to 608100, 4048800.

(14) Map follows of all critical habitat units for *Lasthenia conjugens* (Contra Costa goldfields).

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

* * * * *

Family Euphorbiaceae: *Chamaesyce hooveri* (Hoover's Spurge).

(1) Critical habitat units are depicted for Tehama, Butte, Glenn, Colusa, Stanislaus, Merced, Tulare and

Tuolumne counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Chamaesyce*

hooveri are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Chamaesyce hooveri* germination, growth and reproduction, including but not limited to vernal pools formed on neutral to saline-alkaline soils over lime-silica cemented hardpan or claypan, or on acidic soils over iron-silica cemented hardpan, that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Chamaesyce hooveri* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueduct, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Unit 1*: Tehama and Butte counties, California.

(i) From USGS 1:24,000 quadrangle maps Acorn Hollow, Foster Island, Los Molinos, Nord, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 583100, 4413100; 582900, 4413400; 582900, 4415900; 582000, 4418300; 581800, 4419200; 582000, 4419500; 581400, 4420000; 581400, 4420400; 581800, 4420700; 581600, 4421000; 583200, 4422600; 583500, 4423600; 585200, 4424500; 584900, 4424900; 582900, 4424300; 581300, 4422800; 581000, 4422600; 580500, 4422800; 579800, 4424400; 579500, 4425400; 580300, 4426100; 581700, 4427000; 583400, 4427100; 584000, 4427200; 585000, 4428300; 586700, 4429000; 588800, 4430200; 589500, 4429500; 589500, 4428600; 589500, 4428000; 589800, 4427100; 590500, 4426400; 590500, 4425300; 591200, 4424400; 591500, 4423300; 591600, 4422100; 590900, 4420900; 590700, 4419800; 588000, 4417000; 587500, 4416400; 587200, 4415500;

587200, 4414000; 586400, 4413800; 586200, 4413600; 586200, 4413400; 584200, 4413400; returning to 583100, 4413100.

(5) *Unit 2*: Butte County, California.

(i) From USGS 1:24,000 quadrangle map Hamlin Canyon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 611100, 4387700; 610400, 4388500; 610300, 4388800; 609200, 4389800; 609100, 4390100; 610200, 4391100; 610300, 4391400; 611100, 4391400; 611500, 4391300; 612500, 4390200; 613300, 4389600; 613300, 4388900; 613200, 4388400; 612800, 4388000; 612100, 4387900; 611500, 4387900; returning to 611100, 4387700.

(6) *Unit 3*: Glenn and Colusa counties, California.

(i) From USGS 1:24,000 quadrangle maps Logandale, Maxwell, Moulton Weir, and Princeton, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 572900, 4357400; 571200, 4357400; 571200, 4358200; 570400, 4358200; 570400, 4359000; 569600, 4359000; 569500, 4360500; 569300, 4362200; 569500, 4363300; 569500, 4367200; 570000, 4367200; 569900, 4368400; 570300, 4368400; 571000, 4367600; 571000, 4367800; 570700, 4368500; 570900, 4368800; 571500, 4368800; 571900, 4368300; 571900, 4367600; 572100, 4367600; 572400, 4368100; 572400, 4368400; 572600, 4368900; 572800, 4368900; 573000, 4368100; 573400, 4368000; 573800, 4367600; 574100, 4367300; 574400, 4367200; 574500, 4366400; 574900, 4366400; 574900, 4365600; 574700, 4365500; 574400, 4364100; 575200, 4363900; 575600, 4363600; 575100, 4362400; 575600, 4361400; 575100, 4360700; 576000, 4359600; 575500, 4358900; 575700, 4358300; 575900, 4357700; 575300, 4357800; 575000, 4357700; 574700, 4357700; 573600, 4357800; 573500, 4358200; 572900, 4358200; returning to 572900, 4357400.

(7) *Unit 4*: Stanislaus and Tuolumne Counties, California.

(i) From USGS 1:24,000 quadrangle maps Cooperstown, Keystone, Knights Ferry, La Grange, and Paulsell, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 718900, 4168000; 718700, 4168000; 717900, 4168500; 715500, 4168200; 715400, 4168300; 712500, 4168900; 710900, 4168400; 710350, 6875000 4168525; 710500, 4169100; 709300, 4169100; 709100, 4169500; 709100, 4169700; 708900, 4169700; 708800, 4169900; 708700, 4169900; 708600, 4169800; 708500, 4169900; 708400, 4170000; 708700, 4170200; 708800, 4170300; 708900,

4170400; 709100, 4170500; 709200, 4170600; 709400, 4170600; 709400, 4170800; 709300, 4170800; 709200, 4170900; 709100, 4170800; 708800, 4170700; 708800, 4170600; 708500, 4170500; 708400, 4170300; 708100, 4170200; 707900, 4170200; 707900, 4170300; 708100, 4170500; 708200, 4170500; 708200, 4170600; 708000, 4170600; 708200, 4170800; 708200, 4170900; 708100, 4170900; 707900, 4170700; 707700, 4170700; 707700, 4170800; 707600, 4170900; 707400, 4170900; 707100, 4171100; 707100, 4171200; 707200, 4171300; 707300, 4171200; 707500, 4171300; 707800, 4171600; 707900, 4171600; 708100, 4171600; 708200, 4171700; 708100, 4171800; 708100, 4171900; 708300, 4171900; 708300, 4172100; 708400, 4172100; 708500, 4172200; 708500, 4172300; 708700, 4172400; 708800, 4172500; 708800, 4172600; 708700, 4172700; 708500, 4172700; 708400, 4172800; 708300, 4172700; 708200, 4172700; 708100, 4172600; 708000, 4172500; 707900, 4172500; 707800, 4172700; 707600, 4172600; 707400, 4172500; 707400, 4172600; 707200, 4172700; 707100, 4172300; 707000, 4172200; 706700, 4172200; 706700, 4172300; 706500, 4172300; 706400, 4172300; 706400, 4172400; 706200, 4172600; 706300, 4172700; 706400, 4172800; 706100, 4172900; 705900, 4173100; 705800, 4173300; 705800, 4173500; 706000, 4173800; 705900, 4173900; 705800, 4174100; 705700, 4174200; 705500, 4174200; 705400, 4174100; 705400, 4173700; 705300, 4173500; 705200, 4173200; 705100, 4174700; 705400, 4175400; 705000, 4175900; 705300, 4176300; 705700, 4176700; 705700, 4177000; 705700, 4177700; 705200, 4177900; 705000, 4178100; 705400, 4178900; 706200, 4178400; 706600, 4177600; 707200, 4177300; 707300, 4176800; 706800, 4176200; 706900, 4175800; 707600, 4175800; 708000, 4176500; 708500, 4176400; 709800, 4176600; 710200, 4176200; 710700, 4176600; 711200, 4176900; 711500, 4177100; 711600, 4178100; 711700, 4178700; 710600, 4178800; 710300, 4179200; 709900, 4179500; 709500, 4179600; 709100, 4180800; 709200, 4182200; 709700, 4182700; 710300, 4182900; 711400, 4182100; 712400, 4182100; 713200, 4182000; 714100, 4182600; 714700, 4182000; 715200, 4181600; 715600, 4180900; 715400, 4180400; 716600, 4180400; 716900, 4179900; 717700, 4180100; 718500, 4180000; 718700, 4179200; 719300, 4178700; 719700, 4177600; 720300, 4177700; 720700, 4177700; 720800, 4176400; 721400,

4175900; 722200, 4175300; 722700, 4175200; 722800, 4173600; 723000, 4173500; 723200, 4173600; 723700, 4173600; 724000, 4173300; 724100, 4172300; 722800, 4172200; 721700, 4171200; 721400, 4169900; 720500, 4168700; returning to 718900, 4168000.

(8) *Unit 5*: Stanislaus and Merced counties, California.

(i) From USGS 1:24,000 quadrangle maps Cooperstown, La Grange, Merced Falls, Montpelier, Paulsell, Snelling, and Turlock Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 715900, 4154900; 715400, 4155600; 715300, 4156600; 715100, 4156600; 715000, 4156200; 714800, 4156100; 714800, 4155800; 714700, 4155600; 714200, 4155600; 714000, 4155400; 713800, 4155400; 712600, 4155200; 712600, 4157100; 711200, 4157100; 711100, 4161900; 706300, 4161800; 706100, 4165000; 703000, 4165100; 702500, 4165200; 702500, 4165900; 702600, 4166600; 703700, 4167200; 704600, 4168200; 704900, 4168200; 705300, 4167800; 705900, 4167800; 707000, 4167500; 707700, 4167600; 708100, 4167300; 709400, 4167300; 709600, 4167300; 710200, 4166800; 711000, 4167600; 711600, 4167800; 712600, 4167800; 713200, 4167600; 713200, 4167200; 712900, 4167200; 712600, 4166900; 711800, 4167000; 711600, 4166800; 711600, 4166600; 711800, 4166500; 711800, 4166600; 711900, 4166600; 712000, 4166300; 712100, 4166500; 712200, 4166500; 712300, 4166400; 712500, 4166400; 712500, 4166200; 712700, 4166200; 712700, 4166300; 712800, 4166300; 713000, 4166100; 712800, 4166000; 712700, 4165800; 712500, 4165800; 712500, 4165600; 712700, 4165600; 712600, 4165400; 712400, 4165500; 712300, 4165400; 712500, 4165300; 712500, 4165200; 712400, 4165100; 712600, 4165100; 712600, 4165000; 712600, 4164900; 712700, 4164800; 712600, 4164700; 712500, 4164800; 712400, 4164800; 712400, 4164300; 712800, 4164500; 713100, 4164300; 713200, 4164100; 712900, 4163800; 712900, 4163700; 713100, 4163800; 713500, 4164000; 713600, 4164000; 713600, 4164100; 713700, 4164300; 714200, 4164300; 714400, 4164500; 714500, 4164800; 714600, 4164800; 714800, 4164700; 714800, 4164200; 714400, 4164000; 714400, 4163600; 714500, 4163500; 715200, 4164000; 715300, 4164200; 715400, 4164200; 715300, 4163900; 715100, 4163700; 715000, 4163500; 714800, 4163300; 714900, 4163200; 715000, 4163200; 715700, 4163200; 715900, 4163100; 716000, 4162900; 716100, 4162800; 716200, 4162800; 716300, 4162900; 716400, 4163000;

716500, 4163100; 716600, 4163200; 716600, 4163500; 716500, 4163600; 716500, 4163800; 716600, 4164100; 716800, 4164500; 716700, 4164900; 716800, 4165300; 717200, 4165800; 717200, 4166100; 717000, 4166400; 716600, 4166400; 716400, 4166300; 716400, 4167000; 716600, 4167200; 716600, 4167300; 717000, 4167400; 717500, 4167400; 718100, 4167300; 718500, 4167100; 718600, 4166600; 718700, 4166400; 719100, 4166700; 719300, 4166800; 719800, 4166800; 719500, 4167400; 719500, 4167600; 719700, 4167800; 720500, 4167800; 720700, 4167700; 720900, 4167500; 721100, 4167400; 721300, 4167700; 721700, 4167700; 722000, 4167600; 722500, 4167600; 723200, 4167100; 723500, 4166300; 723000, 4166100; 723200, 4165600; 723400, 4165700; 723600, 4165600; 723600, 4165100; 723700, 4164900; 724300, 4164900; 725000, 4163700; 725300, 4163800; 724900, 4162800; 725100, 4162700; 725400, 4162700; 726000, 4164100; 726300, 4163500; 726200, 4163100; 726000, 4163000; 726100, 4162700; 726200, 4160600; 725800, 4160600; 725000, 4160200; 725300, 4159800; 726300, 4160200; 727000, 4159500; 727000, 4160400; 727300, 4160700; 727500, 4159800; 727600, 4159800; 727800, 4160400; 728300, 4160400; 729000, 4160800; 730400, 4160100; 730300, 4160500; 730600, 4160600; 731500, 4161400; 731900, 4161400; 732000, 4160800; 731700, 4160700; 732000, 4160000; 733500, 4159000; 733700, 4158700; 733300, 4158600; 733300, 4158300; 733800, 4157700; 733400, 4157100; 731700, 4156900; 730900, 4156500; 728900, 4156600; 727100, 4156700; 726900, 4156400; 725900, 4156400; 723900, 4155300; 723300, 4155400; 722500, 4155000; 722300, 4155000; 722300, 4157400; 723800, 4157500; 723700, 4159000; 722500, 4159000; 722200, 4159300; 720900, 4159300; 720900, 4158500; 719700, 4158500; 719700, 4158100; 719100, 4158000; 718700, 4157600; 718000, 4157700; 717800, 4157400; 717900, 4157200; 718000, 4157000; 718400, 4157300; 718700, 4156700; 718700, 4156300; 717400, 4156300; 717000, 4155800; 716600, 4155800; 716300, 4155700; 716200, 4155000; returning to 715900, 4154900.

(9) *Unit 6*: Merced County, California.

(i) From USGS 1:24,000 quadrangle maps Arena, Atwater, San Luis Ranch, Sandy Mush, Stevinson, and Turner Ranch, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 711600, 4118100; 707300, 4118100; 705000, 4118100; 704500, 4119600; 699400, 4119500; 699300, 4118700; thence west to y-coordinate

4118700 on the San Joaquin River; thence northeast along the San Joaquin River to x-coordinate 693100; thence north to 693100, 4125600; 693700, 4127500; 694500, 4127000; 694800, 4127000; 695200, 4127700; 695200, 4129800; 695200, 4130300; 695700, 4130300; 695900, 4130000; 696100, 4129500; 696100, 4129100; 696900, 4129100; 696900, 4130200; 697200, 4130200; 698300, 4128600; 698600, 4128200; 700100, 4127600; 700500, 4129200; 700500, 4130600; 701700, 4130600; 701800, 4129200; 703300, 4129200; 703300, 4128800; 703900, 4129000; 704200, 4129000; 705600, 4128500; 705600, 4127800; 705300, 4127000; 705400, 4126200; 705900, 4125700; 706800, 4125400; 707200, 4125400; 707900, 4126100; 708300, 4126100; 708300, 4125400; 709100, 4125400; 709900, 4125700; 709900, 4126000; 710200, 4126200; 711500, 4126200; 711500, 4124600; 708000, 4124500; 706700, 4124500; 706700, 4122100; 711500, 4122200; 711500, 4121700; 712100, 4121400; 713200, 4121400; 713200, 4118700; 711600, 4118700; returning to 711600, 4118100.

(10) *Subunit 7A*: Tulare County, California.

(i) From USGS 1:24,000 quadrangle maps Ivanhoe, Monson, and Stokes Mtn., California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 302400, 4036900; 300700, 4037000; 298500, 4038200; 297600, 4038200; 297600, 4039500; 298400, 4039500; 298500, 4039800; 298900, 4039900; 298900, 4041200; 299400, 4041300; 298900, 4042000; 298900, 4042500; 298900, 4043300; 299500, 4043800; 299600, 4044300; 299700, 4044700; 300100, 4045300; 300700, 4045400; 301200, 4045800; 302200, 4045800; 302500, 4045600; 303000, 4045900; 303100, 4045900; 303300, 4045700; 303600, 4045700; 303800, 4046100; 304300, 4046100; 304500, 4046300; 304700, 4046300; 304900, 4046800; 304700, 4047700; 304800, 4047900; 304700, 4048300; 304800, 4048500; 305400, 4048500; 305800, 4048000; 306000, 4047900; 306300, 4047900; 306500, 4047600; 306500, 4047000; 306300, 4046900; 306100, 4045900; 305900, 4045300; 305600, 4045100; 305400, 4044300; 305400, 4044100; 305900, 4043900; 305700, 4043400; 305700, 4042400; 305000, 4042400; 304900, 4042000; 304200, 4042000; 304100, 4041600; 301400, 4041700; 300900, 4041500; 300900, 4040100; 300300, 4040100; 300300, 4039400; 301200, 4039400; 302500, 4037900; returning to 302400, 4036900.

(11) *Subunit 7B*: Tulare County, California.

(i) From USGS 1:24,000 quadrangle maps Auckland, Ivanhoe, Stokes Mtn., and Woodlake, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 308300, 4033500; 307800, 4033500; 306600, 4034100; 305900, 4035100; 305700, 4036700; 305300, 4038400; 305000, 4038600; 305000, 4039200; 305300, 4039300; 305600, 4039300; 306000, 4038600; 306500, 4038600; 306900, 4039000; 306800, 4039900; 308100, 4040200; 308500, 4040700; 308200, 4041500; 307600, 4041500; 307100, 4042000; 307100, 4042600; 307700, 4043700; 307800, 4044500; 308200, 4044700; 309000, 4043900; 309600, 4043400; 311700, 4043400; 312100, 4043000; 312700, 4043000; 313000, 4042700; 313000, 4042300; 312500, 4042000; 311000, 4041000; 311000, 4040400; 311200, 4040000; 311700, 4040000; 312100, 4040700; 312700, 4041000; 313000, 4041000; 313600, 4040500; 313700, 4040300; 313100, 4039600; 312700, 4039600; 312700, 4039400;

313300, 4039400; 313500, 4039000; 313100, 4038600; 313700, 4038600; 313900, 4038500; 314100, 4038000; 314600, 4038000; 314800, 4037500; 314800, 4037200; 314000, 4036600; 314100, 4036400; 314900, 4036400; 315100, 4036600; 315500, 4036600; 316100, 4036400; 316400, 4035400; 316400, 4035200; 315900, 4034500; 314100, 4034600; 313400, 4034900; 311100, 4035100; 310700, 4034800; 310500, 4034800; 310200, 4035000; 310200, 4036600; 309800, 4036700; 308500, 4036700; 308400, 4035800; 309100, 4035400; 309100, 4034200; returning to 308300, 4033500.

(12) *Subunit 7C*: Tulare County, California.

(i) From USGS 1:24,000 quadrangle map Monson, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 297500, 4035200; 296800, 4035300; 296200, 4035300; 296700, 4036800; 297700, 4036700; returning to 297500, 4035200.

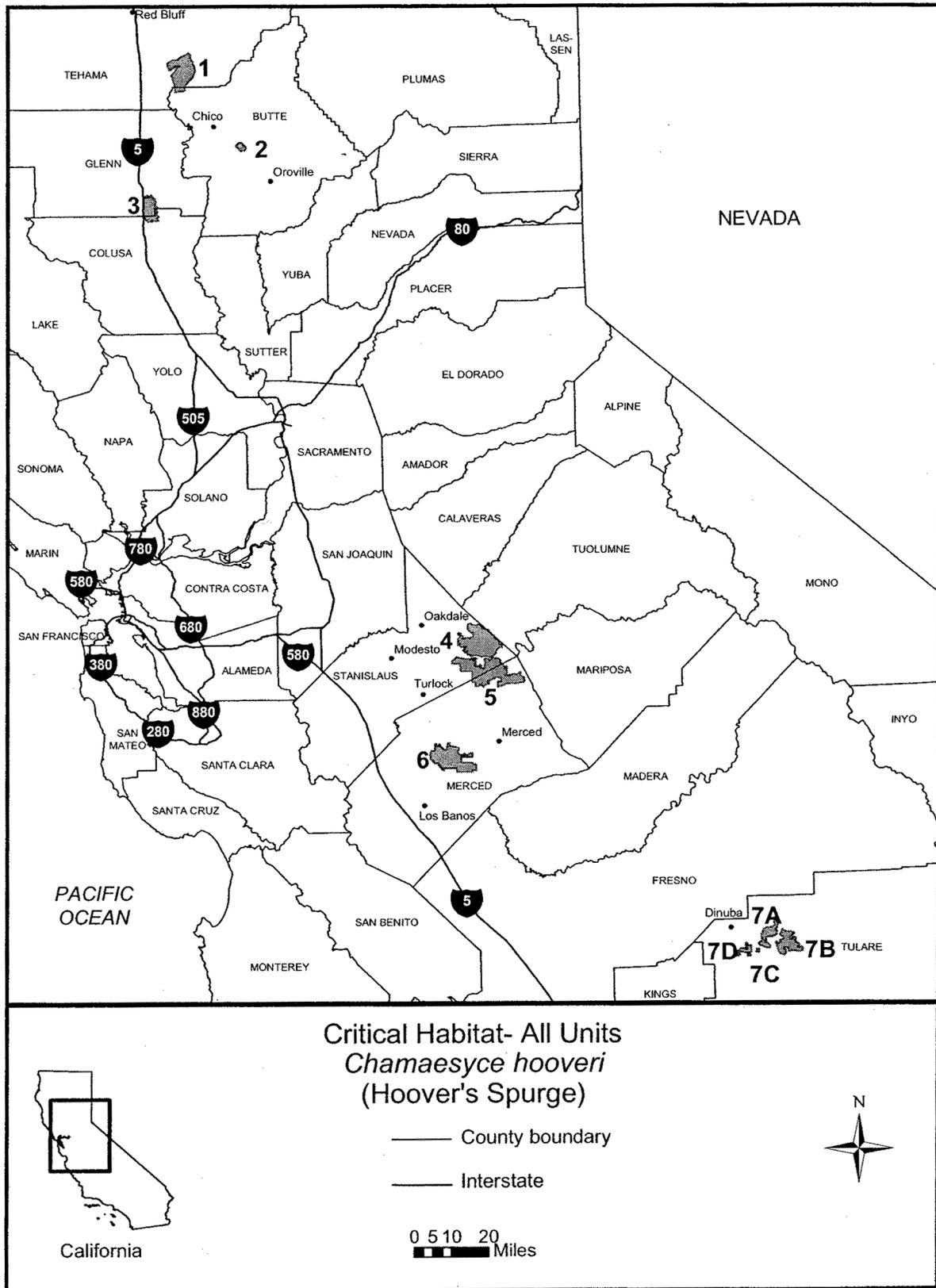
(13) *Subunit 7D*: Tulare County, California.

(i) From USGS 1:24,000 quadrangle maps Monson and Traver, California,

land bounded by the following UTM 11 NAD 83 coordinates (E, N): 293800, 4034000; 292500, 4034000; 292600, 4035400; 291700, 4035400; 291700, 4035600; 290500, 4035700; 290500, 4036100; 289800, 4036100; 289800, 4035700; 289400, 4035700; 289400, 4034500; 288500, 4034500; 288500, 4034200; 287700, 4034200; 287700, 4034500; 287000, 4034600; 287000, 4035100; 288500, 4035100; 288500, 4035600; 287700, 4035700; 287700, 4036700; 289300, 4036700; 289400, 4037400; 291100, 4037400; 291100, 4037200; 291800, 4037200; 291900, 4036800; 292700, 4036800; 292700, 4037600; 291900, 4037700; 292000, 4039700; 292500, 4039700; 292500, 4039400; 292800, 4039400; 292800, 4038500; 294400, 4038500; 294300, 4035500; 293500, 4035500; 293500, 4034800; 293800, 4034800; returning to 293800, 4034000.

(14) Map follows of all critical habitat units for *Chamaesyce hooveri* (Hoover's spurge).

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

Family Limnanthaceae: *Limnanthes floccosa* ssp. *californica* (Butte County Meadowfoam).

(1) Critical habitat units are depicted for Tehama and Butte counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Limnanthes floccosa* ssp. *californica* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Limnanthes floccosa* ssp. *californica* germination, growth and reproduction, including but not limited to vernal pool swales and the margins of vernal pools on the Tuscan, Redbluff, Riverbank, and Modesto geologic formations underlain by Tuscan-Anita and Igo-Redding complex soils among others. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Limnanthes floccosa* ssp. *californica* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Unit 1*: Tehama and Butte counties, California.

(i) From USGS 1:24,000 quadrangle maps Campbell Mound, Nord, Richardson Springs, and Richardson Springs NW, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 595500, 4408200; 594300, 4408200; 594100, 4408300; 594000, 4408400; 593600, 4408500; 593400, 4408200; 592800, 4408200; 592800, 4408800; 592900, 4409200; 592900, 4409600; 593100, 4409900; 592800, 4409900; 592500, 4409800; 592500, 4410800; 592700, 4411200; 593300, 4411400; 594000, 4411600; 594600, 4412400; 594400, 4412800;

594200, 4412800; 594100, 4412500; 593800, 4412500; 593800, 4412700; 593600, 4412900; 593300, 4413100; 593200, 4412400; 593000, 4412200; 592600, 4412200; 592400, 4412600; 591700, 4412600; 590900, 4411000; 590700, 4411000; 590000, 4411600; 589700, 4411800; 589000, 4411900; 587900, 4412000; 587900, 4412400; 587600, 4412700; 587600, 4413400; 587800, 4414300; 588000, 4414500; 589100, 4414900; 590800, 4416100; 592400, 4416700; 595800, 4416600; 596100, 4416600; 596400, 4416800; 596600, 4416800; 597100, 4416400; 597100, 4415600; 596800, 4415200; 597100, 4415000; 597800, 4415500; 598100, 4415200; 597600, 4414600; 597600, 4414400; 597300, 4413800; 597300, 4413300; 598200, 4413900; 598400, 4413600; 597400, 4411900; 597600, 4411900; 598300, 4412700; 598500, 4413300; 598900, 4413300; 598900, 4411800; 599400, 4411700; 599800, 4411700; 599800, 4411000; 597700, 4409400; 596200, 4408600; 595900, 4408800; 595700, 4408800; returning to 595500, 4408200.

(5) *Unit 2*: Butte County, California.

(i) From USGS 1:24,000 quadrangle maps Nord and Richardson Springs, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 602400, 4401600; 601900, 4401800; 601800, 4402000; 601500, 4401900; 601000, 4401900; 600400, 4402100; 599600, 4402100; 599400, 4403400; 599100, 4403200; 598300, 4403400; 597100, 4403700; 596400, 4404200; 596300, 4404800; 595100, 4405000; 595100, 4405600; 595400, 4406000; 595400, 4407100; 595500, 4407100; 595700, 4407300; 595700, 4407400; 596100, 4407400; 596400, 4408000; 596400, 4408100; 596800, 4408300; 596800, 4407500; 597300, 4407500; 597300, 4408000; 597900, 4407500; 598700, 4408400; 599900, 4409000; 600100, 4409000; 600300, 4408800; 600300, 4408400; 600000, 4408100; 600400, 4407600; 599500, 4406700; 599500, 4406200; 600300, 4406000; 601200, 4405600; 601800, 4405600; 602000, 4405500; 602200, 4405200; 602500, 4405200; 602700, 4404900; 603300, 4404700; 604500,

4404200; 605200, 4404200; 605600, 4404000; 605600, 4403600; 605100, 4403300; 604700, 4403400; 604500, 4403300; 604400, 4402800; 603600, 4402100; 602900, 4402100; returning to 602400, 4401600.

(6) *Unit 3*: Butte County, California.

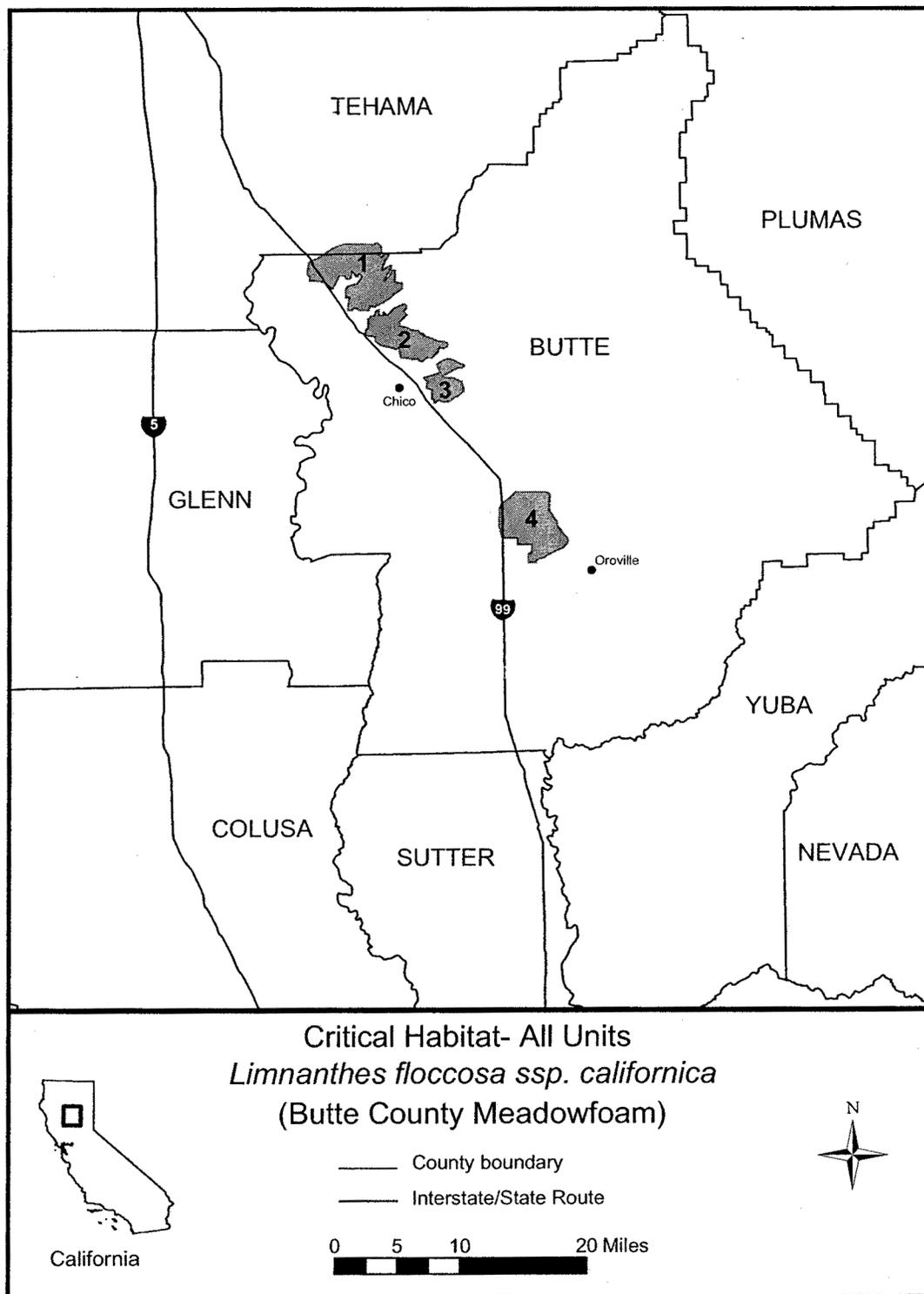
(i) From USGS 1:24,000 quadrangle maps Chico, Hamlin Canyon, Paradise West, and Richardons Springs, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 604100, 4396300; 603900, 4396300; 603900, 4396700; 603600, 4396800; 603600, 4398000; 602900, 4398200; 603000, 4398800; 603100, 4399000; 602600, 4399400; 602600, 4399600; 603500, 4399800; 604700, 4400200; 604200, 4401300; 605300, 4401900; 605900, 4402000; 606400, 4401800; 607100, 4401400; 607600, 4401300; 607800, 4401100; 607500, 4400800; 606900, 4400800; 605100, 4399800; 605100, 4399600; 606500, 4399500; 607200, 4399100; 607400, 4399100; 607700, 4398100; 607700, 4397800; 606900, 4397100; 606700, 4397100; 605700, 4396400; 605100, 4396400; 604700, 4396600; 604500, 4396600; 604100, returning to 604100, 4396300.

(7) *Unit 4*: Butte County, California.

(i) From USGS 1:24,000 quadrangle maps Oroville and Shippee, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 616900, 4375800; 616600, 4375800; 615900, 4375800; 615900, 4377000; 616300, 4377000; 616300, 4378100; 614500, 4378100; 614500, 4378900; 612600, 4378900; 612200, 4380400; 612200, 4382600; 612500, 4383300; 613600, 4384200; 614200, 4384800; 616400, 4384800; 618200, 4384800; 618600, 4384500; 618500, 4382500; 619300, 4381300; 619500, 4381000; 619500, 4380500; 620800, 4378900; 620900, 4378400; 620300, 4377700; 618800, 4377000; 617800, 4376400; 617100, 4376200; 616900, 4376000; returning to 616900, 4375800.

(8) Map follows of all critical habitat units for *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam).

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

Family Poaceae: *Neostapfia colusana*
(Colusa Grass)

(1) Critical habitat units are depicted for Yolo, Solano, Stanislaus, Merced, Mariposa, Tuolumne and Calaveras counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Neostapfia*

colusana are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Neostapfia colusana* germination, growth and reproduction, and that typically become

inundated during winter rains, including but not limited to vernal pools formed on the rim of alkaline basins in the Sacramento and San Joaquin valleys, as well as on acidic soils of alluvial fans and stream terraces along the eastern margin of the San Joaquin Valley and into the adjacent foothills. All of these pool types are dry

during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Neostapfia colusana* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Unit 1: Yolo County, California.*

(i) From USGS 1:24,000 quadrangle maps Davis and Saxon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 615400, 4260700; 614500, 4260700; 614500, 4261500; 614200, 4261500; 614200, 4261800; 614000, 4261800; 614000, 4262400; 615400, 4262400; returning to 615400, 4260700.

(5) *Unit 2: Solano County, California.*

(i) From USGS 1:24,000 quadrangle maps Birds Landing, Denverton, Dozier, and Elmira, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 600700, 4230600; 600400, 4230900; 600400, 4231700; 601100, 4232300; 601200, 4233200; 598400, 4233200; 598200, 4232100; 597800, 4231800; 597100, 4233200; 595600, 4233800; 595400, 4234700; 595600, 4235500; 595600, 4236800; 596500, 4237600; 596300, 4237700; 595500, 4237100; 595200, 4237700; 595200, 4238200; 598800, 4238200; 598500, 4239100; 598000, 4239700; 598000, 4241000; 598800, 4241000; 598800, 4240600; 600400, 4240600; 602800, 4240600; 604300, 4239400; 605200, 4240600; 605300, 4239700; 605500, 4239000; 605400, 4238300; 604500, 4238100; 604500, 4237500; 605200, 4237200; 605700, 4235200; 605400, 4234900; 605000, 4233900; 604600, 4233700; 604200, 4233300; 604100, 4232500; 603800, 4231500; 602300, 4230800; 601400, 4230700; returning to 600700, 4230600.

(6) *Unit 3: Stanislaus and Calaveras counties, California.*

(i) From USGS 1:24,000 quadrangle maps Bachelor Valley, Copperopolis, Farmington, Knights Ferry, and

Oakdale, California, land bounded by the following UTM 10 NAD 83

coordinates (E, N): 697300, 4184800; 697100, 4185000; 696900, 4185400; 696500, 4185700; 696900, 4186000; 696900, 4186300; 696400, 4186300; 696000, 4185900; 695400, 4185900; 695100, 4185400; 694600, 4185500; 694400, 4185800; 693500, 4185800; 693300, 4185600; 693100, 4185500; 693000, 4185100; 692500, 4185100; 692400, 4185400; 692000, 4185400; 691700, 4186300; 691300, 4186400; 691100, 4187200; 690700, 4187000; 690200, 4187000; 689900, 4187600; 689500, 4187600; 688800, 4187200; 688600, 4186800; 688300, 4186800; 688300, 4187500; 688700, 4187800; 688700, 4188400; 689100, 4188900; 689700, 4188900; 689900, 4189100; 689900, 4189400; 691100, 4189500; 691100, 4189900; 690900, 4190000; 690600, 4190600; 690800, 4191100; 691300, 4190700; 691600, 4190800; 691500, 4191100; 691700, 4191100; 691700, 4191700; 693100, 4191900; 693600, 4192400; 693800, 4193200; 694000, 4193300; 694800, 4192800; 695800, 4192200; 696000, 4191500; 696300, 4191500; 696300, 4192500; 694800, 4193600; 694400, 4193700; 694000, 4193700; 693000, 4194400; 691900, 4194800; 691900, 4195600; 691300, 4195600; 690400, 4196400; 689500, 4196400; 689500, 4197000; 689100, 4197000; 688900, 4196200; 686900, 4196200; 687000, 4196400; 687200, 4197000; 687900, 4197100; 687900, 4198500; 688200, 4198800; 688400, 4198800; 688500, 4199300; 688500, 4200000; 688000, 4200200; 688100, 4201700; 686600, 4201800; 686300, 4202600; 686300, 4202900; 686500, 4203100; 687700, 4203800; 687800, 4203800; 687900, 4203500; 688600, 4203800; 689100, 4203600; 689400, 4203800; 689400, 4204400; 690200, 4204400; 690300, 4203600; 691600, 4204200; 692500, 4204600; 692400, 4203100; 693200, 4202800; 693200, 4202100; 692800, 4200800; 695000, 4199200; 695800, 4199200; 696200, 4199100; 696500, 4198900; 696600, 4198700; 696800, 4198100; 696900, 4197800; 697300, 4198400; 697700, 4198400; 697500, 4197100; 697800, 4196700; 698300, 4196700; 699100, 4195600; 699300, 4195300; 699600, 4195300; 700000, 4194700; 700200, 4194600; 700200, 4194000; 700900, 4194000; 702000, 4193700; 702300, 4193800; 702300, 4194600; 702600, 4194700; 702900, 4194500; 702900, 4193800; 702200, 4193100; 702300, 4192400; 703900, 4191600; 703900, 4191100; 704400, 4190700; 705400, 4190400; 705700, 4189100; 705500, 4188600; 705100, 4188500;

704800, 4188500; 704300, 4188900; 703800, 4188500; 703600, 4188500; 703400, 4189100; 702300, 4189000; 700700, 4188500; 700100, 4188500; 700000, 4188800; 699600, 4188300; 699800, 4188200; 700100, 4187600; 699900, 4186200; 698400, 4185200; returning to 697300, 4184800.

(7) *Unit 4: Stanislaus and Tuolumne counties, California.*

(i) From USGS 1:24,000 quadrangle maps Cooperstown, Keystone, Knights Ferry, La Grange, Oakdale, Paulsell, and Waterford, California, land bounded by the following UTM 10 NAD 83

coordinates (E, N): 718900, 4168000; 718700, 4168000; 717900, 4168500; 715500, 4168200; 715400, 4168300; 712500, 4168900; 710900, 4168400; 710300, 4168500; 710500, 4169100; 709300, 4169100; 709100, 4169500; 709100, 4169700; 708900, 4169700; 708800, 4169900; 708700, 4169900; 708600, 4169800; 708500, 4169900; 708400, 4170000; 708700, 4170200; 708800, 4170300; 708900, 4170400; 709100, 4170500; 709200, 4170600; 709400, 4170600; 709400, 4170800; 709300, 4170800; 709200, 4170900; 709100, 4170800; 708800, 4170700; 708800, 4170600; 708500, 4170500; 708400, 4170300; 708100, 4170200; 707900, 4170200; 707900, 4170300; 708100, 4170500; 708200, 4170500; 708200, 4170600; 708000, 4170600; 708200, 4170800; 708200, 4170900; 708100, 4170900; 707900, 4170700; 707700, 4170700; 707700, 4170800; 707600, 4170900; 707400, 4170900; 707100, 4171100; 707100, 4171200; 707200, 4171300; 707300, 4171200; 707500, 4171300; 707800, 4171600; 707900, 4171600; 708100, 4171600; 708200, 4171700; 708100, 4171800; 708100, 4171900; 708300, 4171900; 708300, 4172100; 708400, 4172100; 708500, 4172200; 708500, 4172300; 708700, 4172400; 708800, 4172500; 708800, 4172600; 708700, 4172700; 708500, 4172700; 708400, 4172800; 708300, 4172700; 708200, 4172700; 708100, 4172600; 708000, 4172500; 707900, 4172500; 707800, 4172700; 707600, 4172600; 707400, 4172500; 707400, 4172600; 707200, 4172700; 707100, 4172300; 707000, 4172200; 706700, 4172200; 706700, 4172300; 706500, 4172300; 706400, 4172300; 706400, 4172400; 706200, 4172600; 706300, 4172700; 706400, 4172800; 706300, 4172800; 706200, 4172800; 706100, 4172900; 705900, 4173100; 705800, 4173300; 705800, 4173500; 706000, 4173800; 705900, 4173900; 705800, 4174100; 705700, 4174200; 705500, 4174200; 705400, 4174100; 705400, 4173700; 705300, 4173500; 705200, 4173200; 705100, 4173200; 705100, 4172600; 704900, 4172400;

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 705900, 4169300; 706000, 4168900;
 706000, 4168800; 705400, 4168900;
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 700200, 4171100; 699500, 4171100;
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 696300, 4174500; 696300, 4175300;
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 694500, 4181900; 695100, 4182200;
 696100, 4182200; 696200, 4181800;
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 697000, 4180100; 697400, 4180100;
 697600, 4180400; 697600, 4182600;
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 699400, 4183400; 699400, 4184100;
 700800, 4185100; 704100, 4186300;
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 710100, 4188200; 709900, 4186700;
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 712400, 4182100; 713200, 4182000;
 714100, 4182600; 714700, 4182000;
 715200, 4181600; 715600, 4180900;
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 716900, 4179900; 717700, 4180100;
 718500, 4180000; 718700, 4179200;
 719300, 4178700; 719700, 4177600;
 720300, 4177700; 720700, 4177700;
 720800, 4176400; 721400, 4175900;
 722200, 4175300; 722700, 4175200;
 722800, 4173600; 723000, 4173500;
 723200, 4173600; 723700, 4173600;
 724000, 4173300; 724100, 4172300;
 722800, 4172200; 721700, 4171200;
 721400, 4169900; 720500, 4168700;
 returning to 718900, 4168000.

(8) *Unit 5*: Stanislaus and Merced counties, California.

(i) From USGS 1:24,000 quadrangle maps Cooperstown, La Grange, Merced Falls, Montpelier, Paulsell, Snelling, and Turlock Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 715900, 4154900;

715400, 4155600; 715300, 4156600;
 715100, 4156600; 715000, 4156200;
 714800, 4156100; 714800, 4155800;
 714700, 4155600; 714200, 4155600;
 714000, 4155400; 713800, 4155400;
 712600, 4155200; 712600, 4157100;
 711200, 4157100; 711100, 4161900;
 706300, 4161800; 706100, 4165000;
 703000, 4165100; 702500, 4165200;
 702500, 4165900; 702600, 4166600;
 703700, 4167200; 704600, 4168200;
 704900, 4168200; 705300, 4167800;
 705900, 4167800; 707000, 4167500;
 707700, 4167600; 708100, 4167300;
 709400, 4167300; 709600, 4167300;
 710200, 4166800; 711000, 4167600;
 711600, 4167800; 712600, 4167800;
 713200, 4167600; 713200, 4167200;
 712900, 4167200; 712600, 4166900;
 711800, 4167000; 711600, 4166800;
 711600, 4166600; 711800, 4166500;
 711800, 4166600; 711900, 4166600;
 712000, 4166300; 712100, 4166500;
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 712400, 4165100; 712600, 4165100;
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 712500, 4164800; 712400, 4164800;
 712400, 4164300; 712800, 4164500;
 713100, 4164300; 713200, 4164100;
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 713600, 4164000; 713600, 4164100;
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 714400, 4164500; 714500, 4164800;
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 714800, 4163300; 714900, 4163200;
 715000, 4163200; 715700, 4163200;
 715900, 4163100; 716000, 4162900;
 716100, 4162800; 716200, 4162800;
 716300, 4162900; 716400, 4163000;
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 718500, 4167100; 718600, 4166600;
 718700, 4166400; 719100, 4166700;
 719300, 4166800; 719800, 4166800;
 719500, 4167400; 719500, 4167600;

719700, 4167800; 720500, 4167800;
 720700, 4167700; 720900, 4167500;
 721100, 4167400; 721300, 4167700;
 721700, 4167700; 722000, 4167600;
 722500, 4167600; 723200, 4167100;
 723500, 4166300; 723000, 4166100;
 723200, 4165600; 723400, 4165700;
 723600, 4165600; 723600, 4165100;
 723700, 4164900; 724300, 4164900;
 725000, 4163700; 725300, 4163800;
 724900, 4162800; 725100, 4162700;
 725400, 4162700; 726000, 4164100;
 726300, 4163500; 726200, 4163100;
 726000, 4163000; 726100, 4162700;
 726200, 4160600; 725800, 4160600;
 725000, 4160200; 725300, 4159800;
 726300, 4160200; 727000, 4159500;
 727000, 4160400; 727300, 4160700;
 727500, 4159800; 727600, 4159800;
 727800, 4160400; 728300, 4160400;
 729000, 4160800; 730400, 4160100;
 730300, 4160500; 730600, 4160600;
 731500, 4161400; 731900, 4161400;
 732000, 4160800; 731700, 4160700;
 732000, 4160000; 733500, 4159000;
 733700, 4158700; 733300, 4158600;
 733300, 4158300; 733800, 4157700;
 733400, 4157100; 731700, 4156900;
 730900, 4156500; 728900, 4156600;
 727100, 4156700; 726900, 4156400;
 725900, 4156400; 723900, 4155300;
 723300, 4155400; 722500, 4155000;
 722300, 4155000; 722300, 4157400;
 723800, 4157500; 723700, 4159000;
 722500, 4159000; 722200, 4159300;
 720900, 4159300; 720900, 4158500;
 719700, 4158500; 719700, 4158100;
 719100, 4158000; 718700, 4157600;
 718000, 4157700; 717800, 4157400;
 717900, 4157200; 718000, 4157000;
 718400, 4157300; 718700, 4156700;
 718700, 4156300; 717400, 4156300;
 717000, 4155800; 716600, 4155800;
 716300, 4155700; 716200, 4155000;
 returning to 715900, 4154900.

(9) *Unit 6*: Merced and Mariposa counties, California.

(i) From USGS 1:24,000 quadrangle maps Atwater, Haystack Mtn., Indian Gulch, Merced, Merced Falls, Owens Reservoir, Planada, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 734700, 4133300;
 734700, 4133700; 734100, 4133900;
 733100, 4133900; 733100, 4134600;
 732700, 4134600; 732600, 4135000;
 732300, 4135500; 730300, 4135400;
 729900, 4135700; 729900, 4136500;
 726500, 4136500; 726400, 4136100;
 725900, 4136100; 725900, 4135300;
 725600, 4135100; 725500, 4135100;
 725300, 4135500; 725100, 4135400;
 725000, 4135400; 725000, 4135600;
 724800, 4135700; 724600, 4135700;
 724600, 4134700; 724200, 4134700;
 724200, 4135500; 723400, 4135500;
 723400, 4135600; 722800, 4135600;
 722800, 4135000; 722600, 4135000;

722600, 4134700; 722500, 4134700;
 722200, 4137900; 722800, 4137900;
 722800, 4139300; 721900, 4139300;
 721900, 4140200; 721000, 4140200;
 721000, 4140900; 717800, 4140900;
 717800, 4137700; 717100, 4137700;
 717000, 4138200; 714500, 4140900;
 714100, 4141300; 714100, 4142200;
 713600, 4142400; 713200, 4143000;
 713000, 4143900; 713100, 4144300;
 713700, 4144600; 714500, 4145300;
 714500, 4145700; 715800, 4145800;
 717000, 4145800; 718000, 4145400;
 718200, 4145900; 718200, 4147600;
 719700, 4148400; 720600, 4148600;
 720600, 4149200; 719600, 4149200;
 719600, 4149800; 720300, 4149800;
 721300, 4150700; 721700, 4150700;
 724400, 4153300; 725000, 4153500;
 725500, 4154200; 725800, 4154800;
 727200, 4155900; 727800, 4155900;
 728500, 4155600; 730200, 4155600;
 731600, 4155500; 732400, 4155400;
 732600, 4155200; 733200, 4154700;
 734100, 4154900; 734600, 4154800;
 735600, 4156000; 735900, 4156000;
 737100, 4155400; 737800, 4155000;
 738200, 4154200; 738300, 4153300;
 739000, 4152800; 739100, 4152200;
 740200, 4151800; 740800, 4151500;
 740800, 4150300; 741100, 4149900;
 741700, 4149400; 742100, 4148500;
 742100, 4147100; 743400, 4146100;
 744000, 4145600; 744400, 4144600;
 744300, 4143900; 743900, 4142700;
 744000, 4142000; 744200, 4141700;
 745500, 4140300; thence south to x-
 coordinate 745500 on Bear Creek;

thence southwest along Bear Creek to y-
 coordinate 4133300; thence west to the
 point of beginning at 734700, 4133300.

(10) *Subunit 7A*: Merced County,
 California.

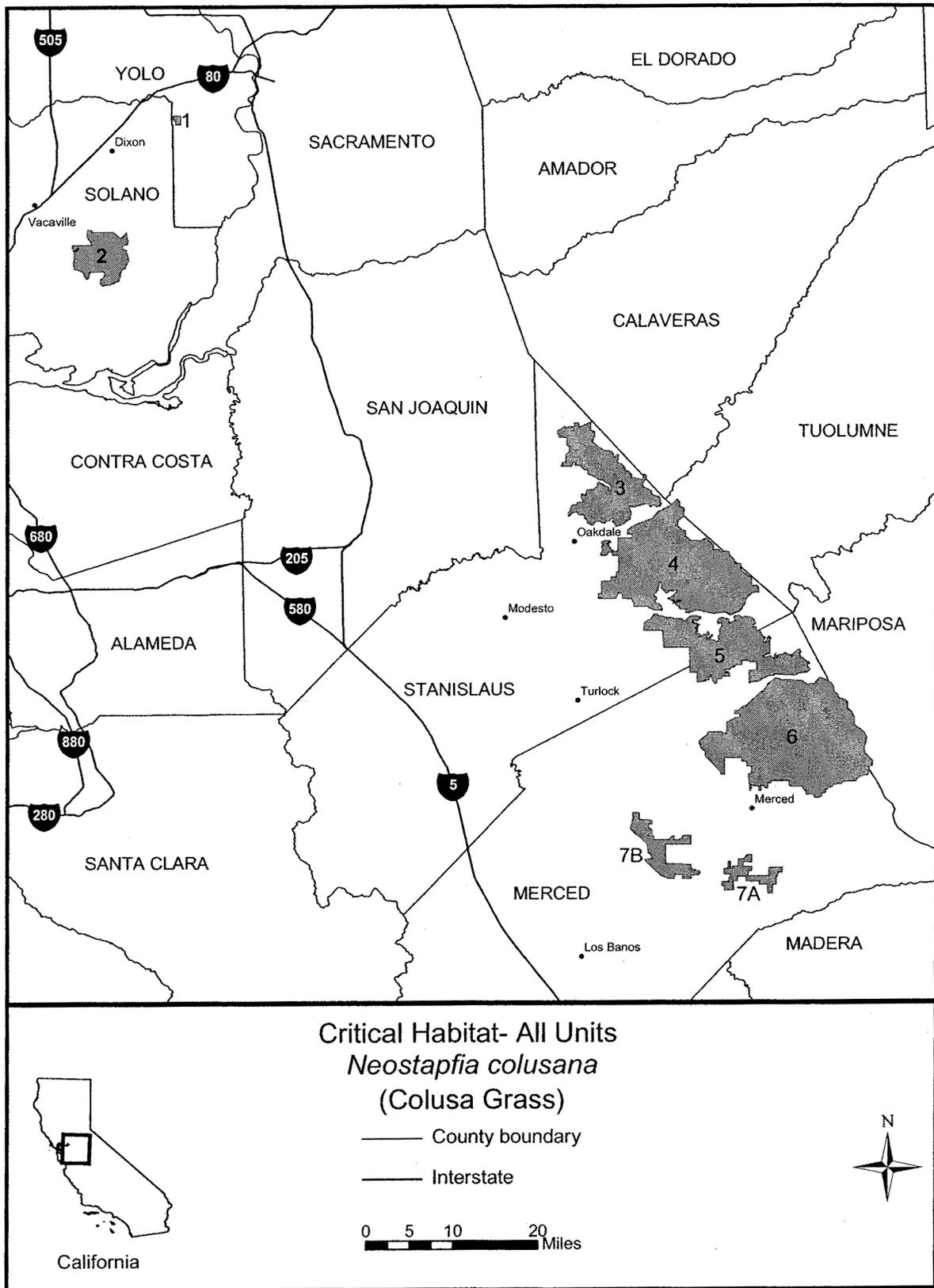
(i) From USGS 1:24,000 quadrangle
 maps Arena, Atwater, Sandy Mush, and
 Turner Ranch, California, land bounded
 by the following UTM 10 NAD 83
 coordinates (E, N): 726800, 4115300;
 725900, 4115300; 725900, 4116900;
 724300, 4116900; 724300, 4117600;
 722600, 4117500; 722600, 4117600;
 721800, 4117600; 721800, 4118400;
 720200, 4118400; 720200, 4117600;
 719400, 4117600; 719500, 4115900;
 717800, 4115900; 717800, 4116700;
 717300, 4116700; 717300, 4117500;
 718600, 4117500; 718600, 4118291;
 718900, 4118300; 718900, 4118900;
 718100, 4118900; 717700, 4119100;
 717700, 4119900; 718500, 4120000;
 718500, 4121300; 718900, 4121300;
 718900, 4120000; 719300, 4120000;
 719400, 4120400; 720400, 4120400;
 720400, 4121700; 721300, 4121700;
 722000, 4122500; 722900, 4122500;
 722900, 4121200; 721300, 4121200;
 721300, 4120300; 722900, 4120300;
 722900, 4119500; 722200, 4119500;
 722200, 4118500; 726100, 4118600;
 726100, 4120100; 728600, 4120200;
 728600, 4119200; 727800, 4119200;
 727700, 4118600; 727500, 4118400;
 727500, 4116900; 726800, 4116900;
 returning to 726800, 4115300.

(11) *Subunit 7B*: Merced County,
 California.

(i) From USGS 1:24,000 quadrangle
 maps El Nido and Sandy Mush,
 California, land bounded by the
 following UTM 10 NAD 83 coordinates
 (E, N): 711600, 4118100; 709900,
 4118100; 709900, 4118800; 708400,
 4118800; 708400, 4118100; 707300,
 4118100; 706800, 4118300; 705900,
 4118700; 704600, 4119800; 703700,
 4120700; 703200, 4121100; 702800,
 4121700; 704200, 4121800; 703900,
 4122800; 703400, 4122800; 703300,
 4124500; 702000, 4125800; 700600,
 4127000; 700100, 4127600; 700500,
 4129200; 700500, 4130600; 701700,
 4130600; 701800, 4129200; 703300,
 4129200; 704200, 4129000; 704200,
 4128400; 703400, 4128400; 703500,
 4127800; 704200, 4127200; 704200,
 4126500; 703500, 4126600; 703500,
 4126100; 704500, 4126100; 704500,
 4125400; 707200, 4125400; 707900,
 4126100; 708300, 4126100; 708300,
 4125400; 709100, 4125400; 709800,
 4125700; 709800, 4126000; 710100,
 4126200; 711500, 4126200; 711500,
 4124600; 706700, 4124500; 706700,
 4122100; 706800, 4120900; 711600,
 4120700; 711600, 4119800; 712300,
 4119800; 712400, 4119600; 713200,
 4119500; 713100, 4118800; 711600,
 4118700; returning to 711600, 4118100.

(12) Map follows of all critical habitat
 units for *Neostapfia colusana* (Colusa
 grass).

BILLING CODE 4310-55-P



BILLING CODE 4310-55-P

Family Poaceae: *Orcuttia inaequalis*
(San Joaquin Valley Orcutt Grass).

(1) Critical habitat units are depicted
for Merced, Mariposa, Madera, Fresno

and Tulare counties, California, on the
map below.

(2) The primary constituent elements of critical habitat for *Orcuttia inaequalis* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia inaequalis* germination, growth and reproduction, including but not limited to vernal pools on alluvial fans, high and low stream terraces, and tabletop lava flows. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and;

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia inaequalis* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Unit 1*: Merced and Mariposa counties, California.

(i) From USGS 1:24,000 quadrangle maps Atwater, Haystack Mtn., Indian Gulch, Merced, Merced Falls, Owens Reservoir, Planada, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 734700, 4133300; 734700, 4133700; 734100, 4133900; 733100, 4133900; 733100, 4134600; 732700, 4134600; 732600, 4135000; 732300, 4135500; 730300, 4135400; 729900, 4135700; 729900, 4136500; 726500, 4136500; 726400, 4136100; 725900, 4136100; 725900, 4135300; 725600, 4135100; 725500, 4135100; 725300, 4135500; 725100, 4135400; 725000, 4135400; 725000, 4135600; 724800, 4135700; 724600, 4135700; 724600, 4134700; 724200, 4134700; 724200, 4135500; 723400, 4135500; 723400, 4135600; 722800, 4135600; 722800, 4135000; 722600, 4135000; 722600, 4134700; 722500, 4134700; 722200, 4137900; 722800, 4137900; 722800, 4139300; 721900, 4139300; 721900, 4140200; 721000, 4140200; 721000, 4140900; 717800, 4140900;

717800, 4137700; 717100, 4137700; 717000, 4138200; 714500, 4140900; 714100, 4141300; 714100, 4142200; 713600, 4142400; 713200, 4143000; 713000, 4143900; 713100, 4144300; 713700, 4144600; 714500, 4145300; 714500, 4145700; 715800, 4145800; 717000, 4145800; 718000, 4145400; 718200, 4145900; 718200, 4147600; 719700, 4148400; 720600, 4148600; 720600, 4149200; 719600, 4149200; 719600, 4149800; 720300, 4149800; 721300, 4150700; 721700, 4150700; 724400, 4153300; 725000, 4153500; 725500, 4154200; 725800, 4154800; 727200, 4155900; 727800, 4155900; 728500, 4155600; 730200, 4155600; 731600, 4155500; 732400, 4155400; 732600, 4155200; 733200, 4154700; 734100, 4154900; 734600, 4154800; 735600, 4156000; 735900, 4156000; 737100, 4155400; 737800, 4155000; 738200, 4154200; 738300, 4153300; 739000, 4152800; 739100, 4152200; 740200, 4151800; 740800, 4151500; 740800, 4150300; 741100, 4149900; 741700, 4149400; 742100, 4148500; 742100, 4147100; 743400, 4146100; 744000, 4145600; 744400, 4144600; 744300, 4143900; 743900, 4142700; 744000, 4142000; 744200, 4141700; 745500, 4140300; 745500, 4139600; 745500, 4139500; 745400, 4139400; thence southwest to y-coordinate 4139300 on Bear Creek; thence southwest along Bear Creek to y-coordinate 4133300; thence west to the point of beginning at 734700, 4133300.

(5) *Unit 2*: Merced, Mariposa and Madera counties, California.

(i) From USGS 1:24,000 quadrangle maps Le Grand, Owens Reservoir, Plainsburg, Planada, and Raynor Creek, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 745500, 4139300; 745500, 4139100; 745500, 4137700; 746600, 4137100; 747300, 4137300; 747200, 4135800; 747600, 4135300; 747600, 4134800; 748100, 4134400; 747800, 4133700; 748400, 4133300; 748600, 4133900; 749500, 4133400; 749600, 4132100; 750400, 4131600; 750100, 4129800; 753100, 4129800; 754000, 4129300; 753400, 4128400; 752500, 4126600; 752300, 4126400; 752200, 4125500; 752800, 4125600; 753900, 4125000; 755000, 4125700; 755100, 4125300; 755900, 4125200; 756100, 4124900; 757100, 4124900; 757300, 4124400; 756700, 4124000; 757000, 4123700; 757600, 4123900; 757900, 4123200; 758400, 4122900; 759200, 4122900; 760300, 4121300; 761000, 4121000; 761300, 4120300; 762100, 4119400; thence south to x-coordinate 762100 on the Chowchilla River; thence southwest along the Chowchilla River to Ash Slough; thence southwest along

Ash Slough to x-coordinate 751800; thence north to 751800, 4114900; 751600, 4115400; 752000, 4115800; 751900, 4116000; 751400, 4116100; 751100, 4116300; 751100, 4116700; 750700, 4116700; 749900, 4116500; 745100, 4116500; 745100, 4117700; 744500, 4117800; 744500, 4118500; 743500, 4118500; 743500, 4119100; 745300, 4119600; 744600, 4119600; 744600, 4120700; 745500, 4120700; 745800, 4121600; 745400, 4121600; 745400, 4121800; 746100, 4121800; 746200, 4122200; 747500, 4122400; 747500, 4123900; 747000, 4124700; 746900, 4125100; 743600, 4125000; 743600, 4127000; 742700, 4127000; 741900, 4127000; 741900, 4128700; 742700, 4128700; 743500, 4129600; 743500, 4132200; 744000, 4133400; 742700, 4133400; 742600, 4133500; 741500, 4132900; 740900, 4132200; 740800, 4132600; 740300, 4132600; 740300, 4133500; 741000, 4133500; 741000, 4133900; 741900, 4133900; 741800, 4135800; 741000, 4135800; 741000, 4136400; thence north to x-coordinate 741000 on Bear Creek; thence northeast along Bear Creek to y-coordinate 4139300; thence east to the point of beginning at 745500, 4139300.

(6) *Unit 3*: Madera County, California.

(i) From USGS 1:24,000 quadrangle maps Le Grand, Owens Reservoir, Plainsburg, Planada, and Raynor Creek, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 766600, 4105100; 764500, 4105000; 764500, 4106400; 764800, 4106300; 765200, 4106400; 765700, 4106500; 765900, 4106700; 766100, 4106700; 766100, 4106700; 766100, 4106500; 766300, 4106400; 766600, 4106300; 766700, 4106300; 766600, 4107800; 765200, 4107800; 764400, 4108600; 764100, 4109100; 763300, 4109500; 763200, 4109800; 764800, 4109900; 764700, 4112300; 766400, 4112300; thence east to UTM zone 11, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 233400, 4112300; 233500, 4112300; 234100, 4112200; 234700, 4112200; 235500, 4112900; 235700, 4112600; 235700, 4111500; 236200, 4111800; 236400, 4111800; 236800, 4111300; 236400, 4110800; 236400, 4109500; 237000, 4108700; 237600, 4108600; 238400, 4109300; 241300, 4109300; 242100, 4108700; 242100, 4107300; 242100, 4106800; 242300, 4106800; 244300, 4105600; 245200, 4104700; 245800, 4103600; 246100, 4102700; 246500, 4101800; 246800, 4101300; 247200, 4100900; 248300, 4100900; 248900, 4101400; 250200, 4101400; 250100, 4099500; 251400, 4097600; 251400, 4095900; 252000, 4096200; 252700, 4096200; 252700,

4095700; 252500, 4095700; 252100, 4095600; 252100, 4094800; 250500, 4094800; 250400, 4093200; 253300, 4093200; 253300, 4092800; 253600, 4091300; 253400, 4090500; 251100, 4089300; 251100, 4089300; 247000, 4089400; 245400, 4089400; 245400, 4090100; 245500, 4093000; 242300, 4093100; 242300, 4095000; 242500, 4095100; 244000, 4095000; 244000, 4096700; 244800, 4096600; 244900, 4098200; 245700, 4098200; 245700, 4099800; 242500, 4100000; 242400, 4095200; 242300, 4095200; 237600, 4095200; 237600, 4096200; 237700, 4098500; 239600, 4098400; 239700, 4100000; 236100, 4100100; 236100, 4100400; 237000, 4102700; 237000, 4104300; 237000, 4104900; 234800, 4105000; 234700, 4105300; 234600, 4105300; 234100, 4105100; 233200, 4105100; thence west to UTM zone 10 to the point of beginning at UTM 10 NAD 83 coordinates 766600, 4105100.

(7) *Unit 4*: Fresno County, California.

(i) From USGS 1:24,000 quadrangle map Friant, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 260100, 4086600; 259200, 4086600; 259200, 4087700; 259600, 4087500; 260000, 4087500; 260100, 4087900; 259700, 4088100; 258500, 4088200; 258000, 4088300; 258000, 4089100; 258500, 4089300; 258500, 4089800; 258300, 4089800; 257700, 4089200; 256600, 4089200; 256600, 4090200; 256800, 4090800; 256900, 4092700; 257200, 4094300; 257300, 4095500; 258600, 4096700; 258900, 4096700; 259600, 4096700; 259600, 4094700; 260300, 4094700; 260300, 4093300; 259400, 4091700; 260800, 4091700; 262200, 4091100; 262900, 4091100; 262900, 4090400; 263000, 4090100; 262700, 4089600; 262400, 4089500; 261800, 4089100; 261500, 4089500; 261400, 4088200; 261100, 4088200; 261100, 4087400; 260200, 4087400; returning to 260100, 4086600.

(8) *Subunit 5A*: Madera County, California.

(i) From USGS 1:24,000 quadrangle maps Millerton Lake East and North Fork, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 271200, 4106800; 270200, 4106800; 269900, 4107000; 269900, 4107600; 270100, 4108600; 269300,

4108300; 269000, 4108700; 268500, 4108700; 268300, 4110000; 268800, 4110400; 268900, 4111000; 268300, 4111300; 268500, 4111500; 268600, 4112300; 268800, 4112400; 270600, 4112400; 270800, 4112100; 270700, 4111300; 269600, 4110800; 269700, 4110500; 270000, 4110200; 270600, 4109700; 270800, 4108800; 271300, 4108400; 271500, 4107800; 271600, 4107300; returning to 271200, 4106800.

(9) *Subunit 5B*: Fresno County, California.

(i) From USGS 1:24,000 quadrangle maps Academy and Millerton Lake East, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 267300, 4097300; 266900, 4097300; 267000, 4097600; 267800, 4098300; 268100, 4098700; 268100, 4098900; 268000, 4099100; 267400, 4099800; 267400, 4100300; 267700, 4100800; 268100, 4101400; 268600, 4101400; 269100, 4101100; 269600, 4101100; 269800, 4101300; 269900, 4101500; 269600, 4102200; 269200, 4102400; 268600, 4102800; 268700, 4103800; 269100, 4103800; 269600, 4103100; 270200, 4103500; 270300, 4103500; 270700, 4102500; 270500, 4102400; 270300, 4102200; 270300, 4101900; 270500, 4101500; 270600, 4101100; 270500, 4101000; 270200, 4100700; 269400, 4100500; 268300, 4100500; 268100, 4100300; 268100, 4100100; 268400, 4099800; 268600, 4099500; 268700, 4099200; 268700, 4098900; 268600, 4098300; 268500, 4098100; 268400, 4097800; 268100, 4097600; 267800, 4097400; returning to 267300, 4097300.

(10) *Subunit 6A*: Tulare County, California.

(i) From USGS 1:24,000 quadrangle maps Monson and Traver, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 293800, 4034000; 292500, 4034000; 292600, 4035400; 291700, 4035400; 291700, 4035600; 290500, 4035700; 290500, 4036100; 289800, 4036100; 289800, 4035700; 289400, 4035700; 289400, 4034500; 288500, 4034500; 288500, 4034200; 287700, 4034200; 287700, 4034500; 287000, 4034600; 287000, 4035100; 288500, 4035100; 288500, 4035600; 287700, 4035700; 287700, 4036700; 289300, 4036700; 289400, 4037400; 291100, 4037400; 291100,

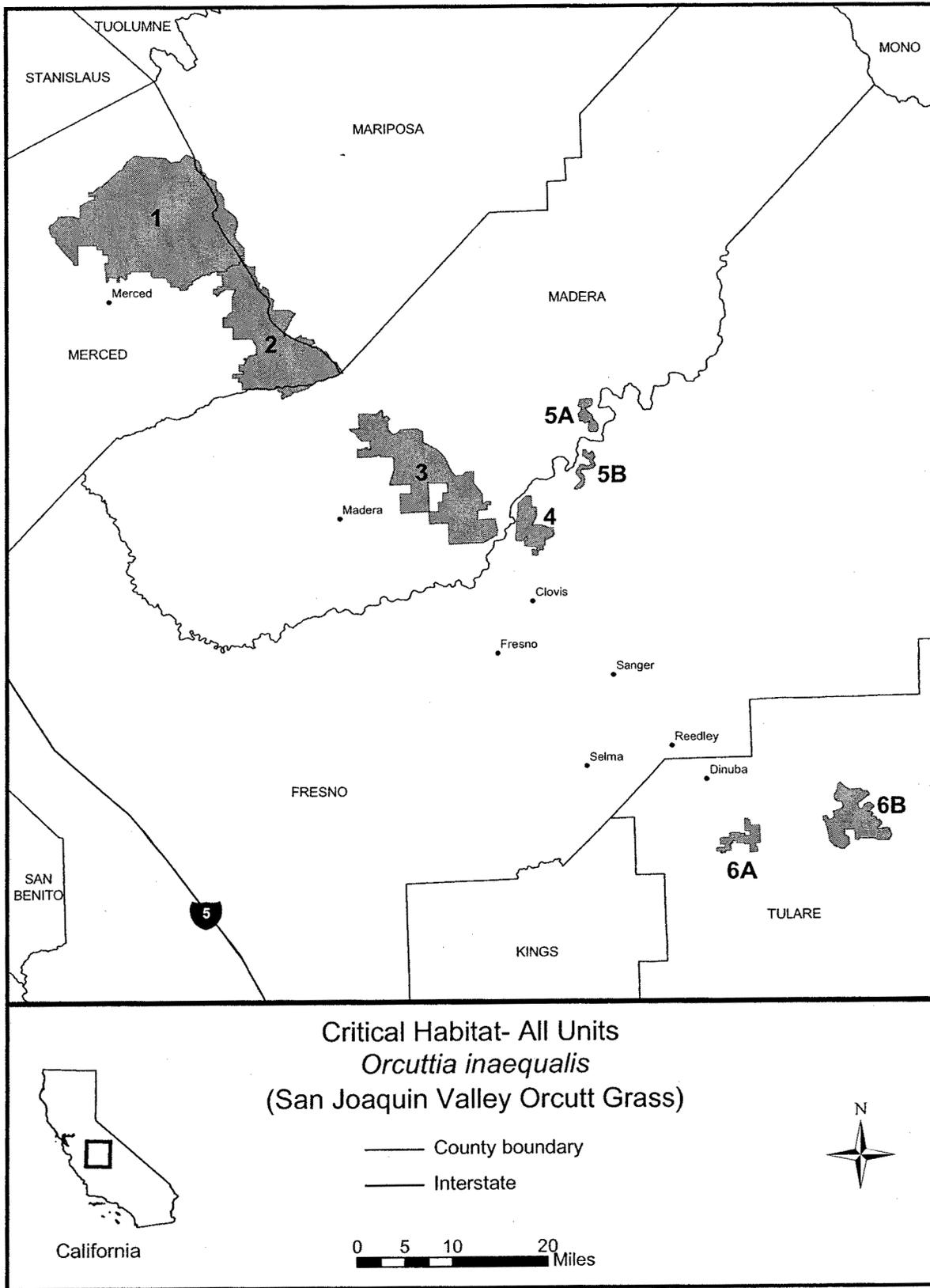
4037200; 291800, 4037200; 291900, 4036800; 292700, 4036800; 292700, 4037600; 291900, 4037700; 292000, 4039700; 292500, 4039700; 292500, 4039400; 292800, 4039400; 292800, 4038500; 294400, 4038500; 294300, 4035500; 293500, 4035500; 293500, 4034800; 293800, 4034800; returning to 293800, 4034000.

(11) *Subunit 6B*: Tulare County, California.

(i) From USGS 1:24,000 quadrangle maps Auckland, Ivanhoe, Stokes Mtn., and Woodlake, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 308300, 4033500; 307800, 4033500; 306600, 4034100; 305900, 4035100; 305700, 4036700; 305300, 4038400; 305000, 4038600; 305000, 4039200; 305300, 4039300; 305600, 4039300; 306000, 4038600; 306500, 4038600; 306900, 4039000; 306800, 4039900; 308100, 4040200; 308500, 4040700; 308200, 4041500; 307600, 4041500; 307100, 4042000; 307100, 4042600; 307700, 4043700; 307800, 4044500; 308200, 4044700; 309000, 4043900; 309600, 4043400; 311700, 4043400; 312100, 4043000; 312700, 4043000; 313000, 4042700; 313000, 4042300; 312500, 4042000; 311000, 4041000; 311000, 4040400; 311200, 4040000; 311700, 4040000; 312100, 4040700; 312700, 4041000; 313000, 4041000; 313600, 4040500; 313700, 4040300; 313100, 4039600; 312700, 4039600; 312700, 4039400; 313300, 4039400; 313500, 4039000; 313100, 4038600; 313700, 4038600; 313900, 4038500; 314100, 4038000; 314600, 4038000; 314800, 4037500; 314800, 4037200; 314000, 4036600; 314100, 4036400; 314900, 4036400; 315100, 4036600; 315500, 4036600; 316100, 4036400; 316400, 4035400; 316400, 4035200; 315900, 4034500; 314100, 4034600; 313400, 4034900; 311100, 4035100; 310700, 4034800; 310500, 4034800; 310200, 4035000; 310200, 4036600; 309800, 4036700; 308500, 4036700; 308400, 4035800; 309100, 4035400; 309100, 4034200; returning to 308300, 4033500.

(12) Map follows of all critical habitat units for *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass).

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

Family Poaceae: *Orcuttia pilosa*
(Hairy Orcutt Grass).

(1) Critical habitat units are depicted for Tehama, Butte, Glenn, Colusa, Stanislaus, Merced, Madera, Mariposa

and Fresno counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Orcuttia pilosa* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia pilosa* germination, growth and reproduction, including but not limited to features occurring on both acidic and saline-alkaline soils, with an iron-silica cemented hardpan or claypan, and that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia pilosa* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Unit 1*: Tehama and Butte counties, California.

(i) From USGS 1:24,000 quadrangle maps Acorn Hollow, Foster Island, Nord, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 583100, 4413100; 582900, 4413400; 582900, 4415900; 582000, 4418300; 581800, 4419200; 582000, 4419500; 581400, 4420000; 581400, 4420400; 581800, 4420700; 581600, 4421000; 583200, 4422600; 583500, 4423600; 585200, 4424500; 586000, 4424500; 587500, 4426100; 588200, 4426500; 588800, 4430200; 589500, 4429500; 589500, 4428600; 589500, 4428000; 589800, 4427100; 590500, 4426400; 590500, 4425300; 591200, 4424400; 591500, 4423300; 591600, 4422100; 590900, 4420900; 590700, 4419800; 588000, 4417000; 587500, 4416400; 587200, 4415500; 587200, 4414000; 586400, 4413800; 586200, 4413600; 586200, 4413400; 584200, 4413400; returning to 583100, 4413100.

(5) *Unit 2*: Butte County, California.

(i) From USGS 1:24,000 quadrangle map Hamlin Canyon, California, land

bounded by the following UTM 10 NAD 83 coordinates (E, N): 611100, 4387700; 610400, 4388500; 610300, 4388800; 609200, 4389800; 609100, 4390100; 610200, 4391100; 610300, 4391400; 611100, 4391400; 611500, 4391300; 612500, 4390200; 613300, 4389600; 613300, 4388900; 613200, 4388400; 612800, 4388000; 612100, 4387900; 611500, 4387900; returning to 611100, 4387700.

(6) *Unit 3*: Glenn and Colusa counties, California.

(i) From USGS 1:24,000 quadrangle maps Logandale, Maxwell, Moulton Weir, and Princeton, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 572900, 4357400; 571200, 4357400; 571200, 4358200; 570400, 4358200; 570400, 4359000; 569600, 4359000; 569500, 4360500; 569300, 4362200; 569500, 4363300; 569500, 4367200; 570000, 4367200; 569900, 4368400; 570300, 4368400; 571000, 4367600; 571000, 4367800; 570700, 4368500; 570900, 4368800; 571500, 4368800; 571900, 4368300; 571900, 4367600; 572100, 4367600; 572400, 4368100; 572400, 4368400; 572600, 4368900; 572800, 4368900; 573000, 4368100; 573400, 4368000; 573800, 4367600; 574100, 4367300; 574400, 4367200; 574500, 4366400; 574900, 4366400; 574900, 4365600; 574700, 4365500; 574400, 4364100; 575200, 4363900; 575600, 4363600; 575100, 4362400; 575600, 4361400; 575100, 4360700; 576000, 4359600; 575500, 4358900; 575700, 4358300; 575900, 4357700; 575300, 4357800; 575000, 4357700; 574700, 4357700; 573600, 4357800; 573500, 4358200; 572900, 4358200; returning to 572900, 4357400.

(7) *Unit 4*: Stanislaus, Merced and Mariposa counties, California.

(i) From USGS 1:24,000 quadrangle maps Cooperstown, La Grange, Merced Falls, Montpelier, Paulsell, Snelling, and Turlock Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 715900, 4154900; 715400, 4155600; 715300, 4156600; 715100, 4156600; 715000, 4156200; 714800, 4156100; 714800, 4155800; 714700, 4155600; 714200, 4155600; 714000, 4155400; 713800, 4155400; 712600, 4155200; 712600, 4157100; 711200, 4157100; 711100, 4161900; 706300, 4161800; 706100, 4165000; 702900, 4165100; 702500, 4165200; 702500, 4165900; 702600, 4166600; 703700, 4167200; 704600, 4168200; 704900, 4168200; 705300, 4167800; 705900, 4167800; 707000, 4167500; 707700, 4167600; 708100, 4167300; 709400, 4167300; 709600, 4167300; 710200, 4166800; 711000, 4167600; 711600, 4167800; 712600, 4167800;

713200, 4167600; 713200, 4167200; 712900, 4167200; 712600, 4166900; 711800, 4167000; 711600, 4166800; 711600, 4166600; 711800, 4166500; 711800, 4166600; 711900, 4166600; 712000, 4166300; 712100, 4166500; 712200, 4166500; 712300, 4166400; 712500, 4166400; 712500, 4166200; 712700, 4166200; 712700, 4166300; 712800, 4166300; 713000, 4166100; 712800, 4166000; 712700, 4165800; 712500, 4165800; 712500, 4165600; 712700, 4165600; 712600, 4165400; 712400, 4165500; 712300, 4165400; 712500, 4165300; 712500, 4165200; 712400, 4165100; 712600, 4165100; 712600, 4165000; 712600, 4164900; 712700, 4164800; 712600, 4164700; 712500, 4164800; 712400, 4164800; 712400, 4164300; 712800, 4164500; 713100, 4164300; 713200, 4164100; 712900, 4163800; 712900, 4163700; 713100, 4163800; 713500, 4164000; 713600, 4164000; 713600, 4164100; 713700, 4164300; 714200, 4164300; 714400, 4164500; 714500, 4164800; 714600, 4164800; 714800, 4164700; 714800, 4164200; 714400, 4164000; 714400, 4163600; 714500, 4163500; 715200, 4164000; 715300, 4164200; 715400, 4164200; 715300, 4163900; 715100, 4163700; 715000, 4163500; 714800, 4163300; 714900, 4163200; 715000, 4163200; 715700, 4163200; 715900, 4163100; 716000, 4162900; 716100, 4162800; 716200, 4162800; 716300, 4162900; 716400, 4163000; 716500, 4163100; 716600, 4163200; 716600, 4163500; 716500, 4163600; 716500, 4163800; 716600, 4164100; 716800, 4164500; 716700, 4164900; 716800, 4165300; 717200, 4165800; 717200, 4166100; 717000, 4166400; 716600, 4166400; 716400, 4166300; 716400, 4167000; 716600, 4167200; 716600, 4167300; 717000, 4167400; 717500, 4167400; 718100, 4167300; 718500, 4167100; 718600, 4166600; 718700, 4166400; 719100, 4166700; 719300, 4166800; 719800, 4166800; 719500, 4167400; 719500, 4167600; 719700, 4167800; 720500, 4167800; 720700, 4167700; 720900, 4167500; 721100, 4167400; 721300, 4167700; 721700, 4167700; 722000, 4167600; 722500, 4167600; 722900, 4167500; 723300, 4167400; 723000, 4168400; 723000, 4169200; 723300, 4169700; 723800, 4169800; 724100, 4169800; 724600, 4169200; 724700, 4168300; 725100, 4167900; 725300, 4167200; 726200, 4167100; 726500, 4166800; 726500, 4166600; 727300, 4166000; 727700, 4165800; 729000, 4165800; 730100, 4165400; 730400, 4165100; 730500, 4164900; 730700, 4164100; 731300, 4164100; 731700, 4163800; 731800, 4163400; 732200, 4162800;

732200, 4162500; 732700, 4162700;
 733000, 4162600; 733600, 4162100;
 733700, 4161500; 733600, 4161000;
 734600, 4160400; 734800, 4160200;
 734800, 4159500; 734400, 4158700;
 734300, 4158100; 734500, 4157900;
 734700, 4158000; 734900, 4158300;
 735000, 4158800; 735500, 4158800;
 735700, 4158600; 735600, 4158100;
 736200, 4157500; 736800, 4157300;
 736900, 4157100; 736900, 4156500;
 736300, 4156500; 736000, 4156300;
 735500, 4156300; 734100, 4156900;
 733400, 4157100; 731700, 4156900;
 730900, 4156500; 728900, 4156600;
 727100, 4156700; 726900, 4156400;
 725900, 4156400; 723900, 4155300;
 723300, 4155400; 722500, 4155000;
 722300, 4155000; 722300, 4157400;
 723800, 4157500; 723700, 4159000;
 722500, 4159000; 722200, 4159300;
 720900, 4159300; 720900, 4158500;
 719700, 4158500; 719700, 4158100;
 719100, 4158000; 718700, 4157600;
 718000, 4157700; 717800, 4157400;
 717900, 4157200; 718000, 4157000;
 718400, 4157300; 718700, 4156700;
 718700, 4156300; 717400, 4156300;
 717000, 4155800; 716600, 4155800;
 716300, 4155700; 716200, 4155000;
 returning to 715900, 4154900.

(8) *Unit 5: Madera County, California.*

(i) From USGS 1:24,000 quadrangle maps Daulton, Kismet, Raymond, and Raynor Creek, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 766500, 4107800; 765200, 4107800; 764700, 4108100; 764100, 4109200; 763400, 4109300; 763200, 4109800; 761500, 4109800; 761500, 4111300; 759800, 4111300; 759800, 4112500; 759700, 4117100; 760400, 4117100; 760500, 4118000; 762100, 4118900; 762800, 4118000; 763300, 4117200; 763500, 4117600; 763700, 4117600; 764100, 4117300; 764200, 4116800; 764500, 4115900;

765400, 4115900; 765400, 4116400;
 766100, 4116400; 766100, 4115800;
 765900, 4114300; thence southeast to
 UTM zone 11, land bounded by the
 following UTM 11 NAD 83 coordinates
 (E, N): 233400, 4114200; 233900,
 4114300; 234200, 4114300; 234200,
 4113900; 234300, 4112700; 234900,
 4112700; 235500, 4112900; 235700,
 4112600; 235700, 4111500; 236200,
 4111800; 236400, 4111800; 236800,
 4111300; 236400, 4110800; 236400,
 4109500; 237000, 4108700; 237600,
 4108600; 238400, 4109300; 241300,
 4109300; 242100, 4108700; 242100,
 4107300; 240900, 4106000; 239300,
 4104100; 238900, 4104300; 238500,
 4104600; 238100, 4104300; 237100,
 4104300; 237100, 4105800; 237000,
 4106800; 236000, 4107000; 235800,
 4107100; 234900, 4107100; 234300,
 4107200; 233900, 4108200; 233200,
 4108000; thence southwest to UTM
 zone 10 to the point of beginning at
 UTM 10 NAD 83 coordinates 766500,
 4107800.

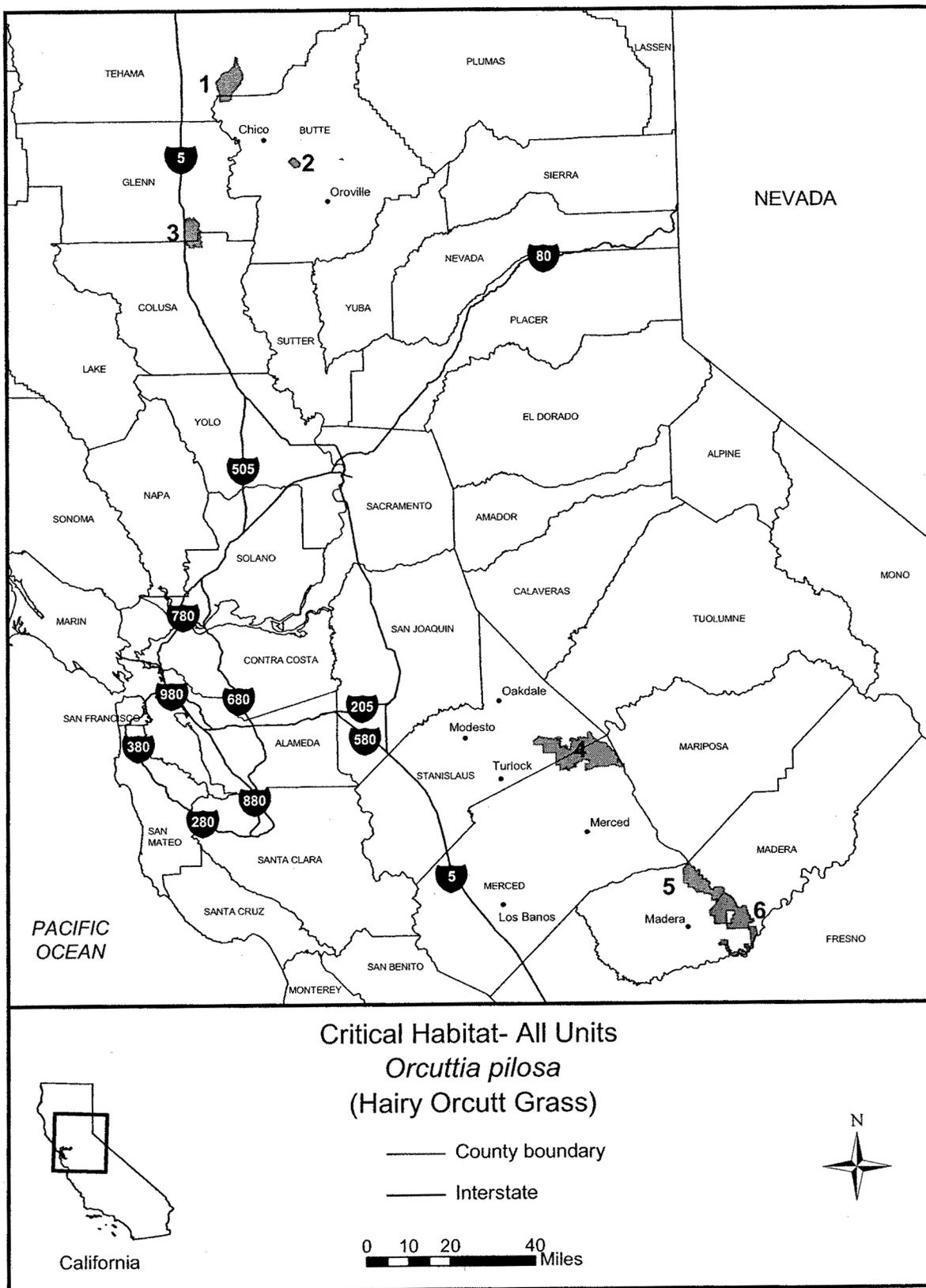
(9) *Unit 6: Madera and Fresno
 Counties, California.*

(i) From USGS 1:24,000 quadrangle maps Daulton, Fresno North, Gregg, Herndon, Lanes Bridge, and Little Table Mtn., California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 239300, 4104100; 240900, 4106000; 242100, 4107300; 242100, 4106800; 242300, 4106800; 244300, 4105600; 245200, 4104700; 245800, 4103600; 246100, 4102700; 246500, 4101800; 246800, 4101300; 247200, 4100900; 248300, 4100900; 248900, 4101400; 250200, 4101400; 250200, 4100200; 250700, 4098600; 250700, 4097700; 251400, 4097600; 251400, 4095900; 252000, 4096200; 252700, 4096200; 252800, 4095200; 252500, 4095700; 252100, 4095600; 252100, 4094800; 250500, 4094800; 250400,

4093200; 253300, 4093200; 253300,
 4092800; 253800, 4090400; 253200,
 4089700; 252600, 4089000; 252400,
 4087900; 252200, 4087700; 251900,
 4086900; 251800, 4086300; 250200,
 4085000; 250200, 4084300; 249300,
 4083200; 248600, 4082700; 248000,
 4082700; 246400, 4083400; 245900,
 4083400; 244700, 4082300; 244000,
 4082300; 243400, 4082800; 242500,
 4083300; 242500, 4084100; 242000,
 4084300; 242000, 4084700; 241700,
 4084700; 241700, 4085500; 241300,
 4085500; 241300, 4087100; 239100,
 4087100; 238800, 4087200; 238800,
 4087800; 239100, 4088100; 239600,
 4088100; 239600, 4088900; 242200,
 4088800; 242200, 4086000; 242600,
 4086000; 242600, 4084700; 243400,
 4084700; 243400, 4083500; 244400,
 4083500; 244500, 4083900; 246100,
 4083900; 246100, 4084500; 246500,
 4084900; 247000, 4084900; 247000,
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 4085300; 248500, 4085300; 248500,
 4086600; 250000, 4086600; 250000,
 4085900; 250300, 4085400; 251000,
 4086000; 251200, 4087100; 251100,
 4089300; 251000, 4092200; 250400,
 4092200; 250400, 4092800; 245500,
 4093000; 242300, 4093100; 242300,
 4095000; 242500, 4095100; 244000,
 4095000; 244000, 4096700; 244800,
 4096600; 244900, 4098200; 245700,
 4098200; 245700, 4099800; 242500,
 4100000; 242400, 4095200; 242300,
 4095200; 237600, 4095200; 237600,
 4096200; 237700, 4098500; 236100,
 4098500; 236100, 4100100; 236100,
 4100400; 237500, 4101900; 238400,
 4102700; 238800, 4103300; returning to
 239300, 4104100.

(10) Map follows of all critical habitat units for *Orcuttia pilosa* (hairy Orcutt grass).

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C
 Family Poaceae: *Orcuttia tenuis*
 (Slender Orcutt Grass).

(1) Critical habitat units are depicted for Siskiyou, Modoc, Shasta, Lassen, Tehama, Butte, Plumas, Lake, and

Sacramento counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Orcuttia tenuis* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia tenuis* germination, growth and reproduction, including but not limited to Northern Volcanic Ashflow and Northern Volcanic Mudflow vernal pools (Sawyer and Keeler-Wolf 1995) with iron-silica and bedrock hardpan impervious layers, and that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia tenuis* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Subunit 1A*: Siskiyou, Modoc and Shasta counties, California.

(i) From USGS 1:24,000 quadrangle maps Day and Timbered Crater, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 635000, 4555400; 633500, 4557100; 633000, 4558400; 631100, 4560000; 630400, 4560200; 627700, 4561300; 626000, 4561600; 626000, 4562200; 626200, 4562900; 625700, 4564200; 626100, 4565000; 627100, 4566500; 627900, 4567000; 628900, 4567000; 629500, 4566700; 630000, 4566600; 630300, 4566300; 630600, 4565700; 630800, 4565600; 630900, 4564900; 630600, 4563700; 630300, 4563500; 629900, 4563400; 630000, 4563000; 630300, 4562500; 630500, 4562700; 630800, 4562700; 631100, 4562600; 631400, 4562300; 632200, 4562100; 632600, 4561700; 632900, 4561700; 633200, 4561900; 633600, 4561800; 633900, 4561800; 634200, 4561500; 634500, 4561300; 634600, 4560900; 635000, 4560700; 635100, 4561000; 635300, 4561300; 635400, 4561600; 637300, 4560000; 637400,

4559300; 637000, 4557700; 636000, 4555600; returning to 635000, 4555400.

(5) *Subunit 1B*: Shasta County, California.

(i) From USGS 1:24,000 quadrangle maps Burney Falls and Dana, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 617200, 4548600; 616900, 4548600; 616800, 4549000; 615900, 4549500; 615700, 4549800; 615200, 4549900; 614900, 4550100; 614900, 4550500; 615400, 4550700; 615900, 4550800; 616100, 4550900; 616500, 4550600; 616800, 4550500; 617100, 4550000; 617300, 4549400; 617400, 4549100; 617500, 4548700; returning to 617200, 4548600.

(6) *Subunit 1C*: Shasta County, California.

(i) From USGS 1:24,000 quadrangle maps Burney and Burney Falls, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 614100, 4535000; 613400, 4535200; 612700, 4535200; 612500, 4535000; 612000, 4535200; 611700, 4535900; 611700, 4537000; 611500, 4538200; 611400, 4538600; 611900, 4538700; 612300, 4539200; 612400, 4539700; 613800, 4539100; 614300, 4539400; 614600, 4539200; 614400, 4538400; 614400, 4535300; returning to 614100, 4535000.

(7) *Subunit 1D*: Shasta County, California.

(i) From USGS 1:24,000 quadrangle map Burney, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 611800, 4528900; 611100, 4528900; 610800, 4529000; 610100, 4529600; 609500, 4529700; 609300, 4530000; 608200, 4530700; 607600, 4530900; 607200, 4532300; 605800, 4533500; 606300, 4533900; 606800, 4534500; 607500, 4535500; 608100, 4536000; 609700, 4536000; 610300, 4535500; 610500, 4535000; 610600, 4534600; 610500, 4533700; 610800, 4532700; 612400, 4531100; 612600, 4530600; returning to 611800, 4528900.

(8) *Subunit 1E*: Shasta County, California.

(i) From USGS 1:24,000 quadrangle maps Murken Bench and Old Station, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 634400, 4509200; 634000, 4510000; 633800, 4510700; 634100, 4510800; 634100, 4512300; 633600, 4512700; 633500, 4513000; 633600, 4513000; 633800, 4513100; 633900, 4513400; 634100, 4513500; 634400, 4513200; 634700, 4513200; 635000, 4513400; 635800, 4513400; 636000, 4513100; 636100, 4512800; 636200, 4512700; 636500, 4512700; 635900, 4512200; 635900, 4510600; 636300,

4509900; 635900, 4509600; returning to 634400, 4509200.

(9) *Subunit 1F*: Lassen County, California.

(i) From USGS 1:24,000 quadrangle maps Poison Lake and Swains Hole, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 644800, 4500100; 644300, 4500300; 643500, 4500400; 642400, 4500800; 641500, 4501500; 641200, 4502700; 641600, 4504500; 643500, 4505500; 645100, 4505200; 645300, 4506300; 646300, 4507900; 647300, 4508600; 648800, 4508600; 649100, 4508800; 650600, 4508800; 651400, 4508300; 652000, 4507200; 652200, 4505700; 651500, 4504500; 650700, 4504100; 650400, 4503700; 650900, 4502000; 650400, 4501200; 650200, 4501200; 649600, 4502800; 649100, 4503200; 647400, 4504400; 647200, 4504300; 646800, 4503400; 647500, 4501700; 647500, 4500700; 646800, 4500300; returning to 644800, 4500100.

(10) *Subunit 1G*: Lassen County, California.

(i) From USGS 1:24,000 quadrangle maps Bogard Buttes, Harvey Mtn., Pine Creek Valley, and Poison Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 661600, 4495200; 661300, 4495200; 660100, 4496700; 659300, 4497700; 657500, 4499000; 655500, 4500700; 655000, 4501200; 654900, 4501700; 654900, 4502100; 655600, 4501800; 656600, 4502800; 657700, 4503200; 659900, 4503700; 661400, 4504600; 662200, 4505200; 662900, 4505100; 663600, 4504700; 664200, 4504500; 664400, 4504300; 664400, 4503100; 664100, 4503000; 662800, 4502300; 661600, 4501100; 661300, 4499600; 661600, 4497900; 661800, 4497500; 662700, 4496800; returning to 661600, 4495200.

(11) *Subunit 1H*: Shasta County, California.

(i) From USGS 1:24,000 quadrangle maps Old Station and West Prospect Peak, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 631700, 4490800; 631300, 4491000; 630900, 4491600; 630300, 4491600; 630000, 4491600; 629800, 4491900; 629800, 4492700; 629900, 4493100; 629300, 4493500; 629100, 4493700; 629300, 4494200; 629500, 4494700; 629400, 4494800; 629400, 4495200; 629700, 4495500; 630500, 4495700; 630500, 4496500; 631700, 4497100; 631700, 4497600; 631800, 4498000; 631900, 4498200; 632000, 4498400; 632100, 4498400; 632400, 4498400; 633900, 4497900; 634300, 4496700; 634600, 4496000; 634700, 4495800; 635100, 4495200; 635400, 4494700; 635600, 4494500; 635500,

4493900; 635400, 4493400; 635600, 4492800; 635700, 4492500; 635600, 4492400; 634500, 4492400; 633800, 4492600; 632800, 4492600; 632400, 4492300; 632700, 4491800; 632800, 4491400; 632000, 4490900; and 631700, 4490800.

(12) *Subunit 1I*: Plumas County, California.

(i) From USGS 1:24,000 quadrangle map Almanor, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 655400, 4452100; 655000, 4452100; 654900, 4452500; 654400, 4452700; 654100, 4453000; 653900, 4453200; 653700, 4453200; 653400, 4453000; 652600, 4453000; 652300, 4453500; 651900, 4453700; 651600, 4454400; 651600, 4454700; 652000, 4455400; 652400, 4455500; 652700, 4455700; 653200, 4455300; 653000, 4455100; 653000, 4454800; 653300, 4454400; 653500, 4454100; 653900, 4453900; 654500, 4453700; 654900, 4453400; 655300, 4452900; 655400, 4452600; returning to 655400, 4452100.

(13) *Subunit 2A*: Shasta County, California.

(i) From USGS 1:24,000 quadrangle map Enterprise, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 558800, 4488900; 558500, 4488900; 557900, 4489000; 557900, 4489900; 558000, 4490000; 558000, 4490500; 557900, 4490800; 557900, 4491800; 558400, 4491800; 558500, 4491700; 558900, 4491600; 559100, 4491300; 559100, 4490700; 559000, 4490600; 559000, 4490400; 559200, 4490200; 559200, 4490000; 559400, 4489800; 559400, 4489300; 559200, 4489000; returning to 558800, 4488900.

(14) *Subunit 2B*: Shasta County, California.

(i) From USGS 1:24,000 quadrangle maps Balls Ferry, Cottonwood, Enterprise, and Palo Cedro, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 564200, 4480800; 564000, 4480800; 563600, 4480900; 563300, 4481000; 563100, 4480900; 562900, 4480900; 562500, 4481200; 562400, 4481500; 562400, 4481700; 562300, 4482400; 562000, 4482500; 561900, 4482800; 561800, 4483300; 561500, 4483700; 561000, 4484000; 560900, 4483900; 560900, 4483500; 560500, 4482600; 560100, 4482500; 559900, 4482000; 559400, 4482000; 558900, 4482400; 558900, 4482900; 558900, 4483600; 558300, 4483600; 558200, 4483900; 558200, 4484500; 558000, 4484800; 558000, 4485100; 558000, 4485300; 557800, 4485600; 557600, 4485900; 557300, 4486100; 557300, 4487400; 559200, 4487400; 559300, 4486800; 559800,

4486500; 560100, 4486500; 560300, 4485800; 560400, 4485600; 560600, 4485300; 560700, 4485400; 560700, 4486500; 560800, 4486700; 561000, 4486900; 561200, 4487000; 561300, 4487600; 561600, 4487900; 562000, 4487900; 562500, 4487400; 562700, 4487100; 562900, 4487200; 563200, 4487200; 563300, 4487000; 563300, 4486700; 563800, 4486400; 564300, 4484700; 564300, 4484400; 564700, 4483800; 564900, 4483600; 564900, 4483400; 564500, 4483000; 564500, 4482800; 564600, 4482700; 564600, 4482400; 564400, 4482100; 564500, 4481700; 564500, 4481000; returning to 564200, 4480800.

(15) *Subunit 2C*: Shasta County, California.

(i) From USGS 1:24,000 quadrangle maps Balls Ferry and Palo Cedro, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 566900, 4477300; 566700, 4477300; 566100, 4478200; 565900, 4478900; 565500, 4479200; 565500, 4479300; 565600, 4479600; 565300, 4479700; 565300, 4479900; 565400, 4480200; 566100, 4480400; 566100, 4480700; 565700, 4480800; 565700, 4481000; 565700, 4481300; 565700, 4481700; 565500, 4482500; 565100, 4482600; 564900, 4482900; 564900, 4483100; 565000, 4483300; 565400, 4483800; 565700, 4484900; 566400, 4485400; 567400, 4485000; 568100, 4483800; 568100, 4483300; 568400, 4483000; 568400, 4482100; 568200, 4481600; 567500, 4481300; 567500, 4480200; 567700, 4479400; 567700, 4478400; 567500, 4477800; returning to 566900, 4477300.

(16) *Unit 3*: Shasta and Tehama Counties, California.

(i) From USGS 1:24,000 quadrangle maps Balls Ferry, Bend, Dales, Red Bluff East, Shingletown, and Tuscan Buttes NE, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 570200, 4454800; 570200, 4455000; 570600, 4455900; 570000, 4456100; 569500, 4456300; 569300, 4456500; 568900, 4456500; 568600, 4456500; 568000, 4456800; 567900, 4457100; 567900, 4458000; 568400, 4458800; 569100, 4459800; 569600, 4460500; 569500, 4460800; 569000, 4460600; 568300, 4460700; 567500, 4460700; 566800, 4460000; 566400, 4460000; 565900, 4461100; 565800, 4461400; 565800, 4461700; 566000, 4462000; 565800, 4462300; 565300, 4463200; 566400, 4464000; 566700, 4464200; 566800, 4464100; 567600, 4463400; 568300, 4463200; 569800, 4463200; 570600, 4463900; 570800, 4464300; 572000, 4465200; 572000, 4466300; 572100, 4466600; 572800, 4467300; 573500, 4468600; 573400,

4469000; 573100, 4469400; 572900, 4469600; 572600, 4469600; 571800, 4468800; 571400, 4468100; 570700, 4467600; 570300, 4467700; 570300, 4467900; 570700, 4469000; 570700, 4469400; 569900, 4470200; 569600, 4470200; 569300, 4470200; 569000, 4470600; 569000, 4471300; 569400, 4472000; 569500, 4472400; 569900, 4472400; 570400, 4472300; 572100, 4472800; 572700, 4472500; 574100, 4473200; 575100, 4473200; 575600, 4473500; 576000, 4473900; 576600, 4473900; 577300, 4473900; 577700, 4474200; 578600, 4474200; 579300, 4474400; 580000, 4474400; 580600, 4474700; 581900, 4474700; 582400, 4475300; 583000, 4475400; 583200, 4475400; 583700, 4475000; 584200, 4475200; 584600, 4475200; 585400, 4474500; 586000, 4473600; 586100, 4473400; 585800, 4472600; 585500, 4472100; 584800, 4471900; 584500, 4471600; 584500, 4471400; 584700, 4471100; 584700, 4470800; 584500, 4470500; 583400, 4469700; 583100, 4469400; 582600, 4468500; 582600, 4467600; 582700, 4466900; 582700, 4466700; 581900, 4465800; 581000, 4465500; 580600, 4465200; 580400, 4464000; 580200, 4463300; 578900, 4462700; 578500, 4462300; 578100, 4462000; 577800, 4460900; 577700, 4460000; 576700, 4459300; 576600, 4458800; 576800, 4458300; 576800, 4457100; 576400, 4456700; 575500, 4456800; 574900, 4456800; 574100, 4455900; 573500, 4455600; 572300, 4455300; 572000, 4455300; 571600, 4455600; 571400, 4455400; 571100, 4454900; 570600, 4454900; returning to 570200, 4454800.

(17) *Unit 4*: Tehama and Butte counties, California.

(i) From USGS 1:24,000 quadrangle maps Acorn Hollow, Foster Island, Los Molinos, Nord, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 583100, 4413100; 582900, 4413400; 582900, 4415900; 582000, 4418300; 581800, 4419200; 582000, 4419500; 581400, 4420000; 581400, 4420400; 581800, 4420700; 581600, 4421000; 583200, 4422600; 583500, 4423600; 585200, 4424500; 584900, 4424900; 582900, 4424300; 581300, 4422800; 581000, 4422600; 580500, 4422800; 579800, 4424400; 579500, 4425400; 580300, 4426100; 581700, 4427000; 583400, 4427100; 584000, 4427200; 585000, 4428300; 586700, 4429000; 588800, 4430200; 589500, 4429500; 589500, 4428600; 589500, 4428000; 589800, 4427100; 590500, 4426400; 590500, 4425300; 591200, 4424400; 591500, 4423300; 591600, 4422100; 590900, 4420900; 590700, 4419800; 588000, 4417000;

587500, 4416400; 587200, 4415500;
587200, 4414000; 586400, 4413800;
586200, 4413600; 586200, 4413400;
584200, 4413400; returning to 583100,
4413100.

(18) *Subunit 5A*: Lake County,
California.

(i) From USGS 1:24,000 quadrangle
maps Kelseyville and The Geysers,
California, land bounded by the
following UTM 10 NAD 83 coordinates
(E, N): 520000, 4302900; 519600,
4302900; 519200, 4303200; 518600,
4303600; 518400, 4304000; 517700,
4304500; 517700, 4305500; 518000,
4305800; 518900, 4305800; 519400,
4305600; 519400, 4305200; 520600,
4304700; 520700, 4304400; 521200,
4303900; 521200, 4303500; 520900,
4303400; returning to 520000, 4302900.

(19) *Subunit 5B*: Lake County,
California.

(i) From USGS 1:24,000 quadrangle
map Middletown, California, land
bounded by the following UTM 10 NAD
83 coordinates (E, N): 540700, 4298300;
540200, 4298400; 539100, 4299100;
538800, 4299200; 538400, 4299200;
538100, 4299500; 538300, 4300200;
537900, 4300700; 537400, 4300600;
536900, 4299900; 536300, 4299700;
536000, 4299700; 535100, 4300400;
535000, 4300800; 535000, 4301200;
535100, 4301800; 535300, 4302200;
535700, 4302400; 536100, 4302400;
536900, 4302300; 538700, 4301200;
539100, 4300600; 540000, 4300000;
540700, 4299700; 541000, 4299300;
541100, 4298700; returning to 540700,
4298300.

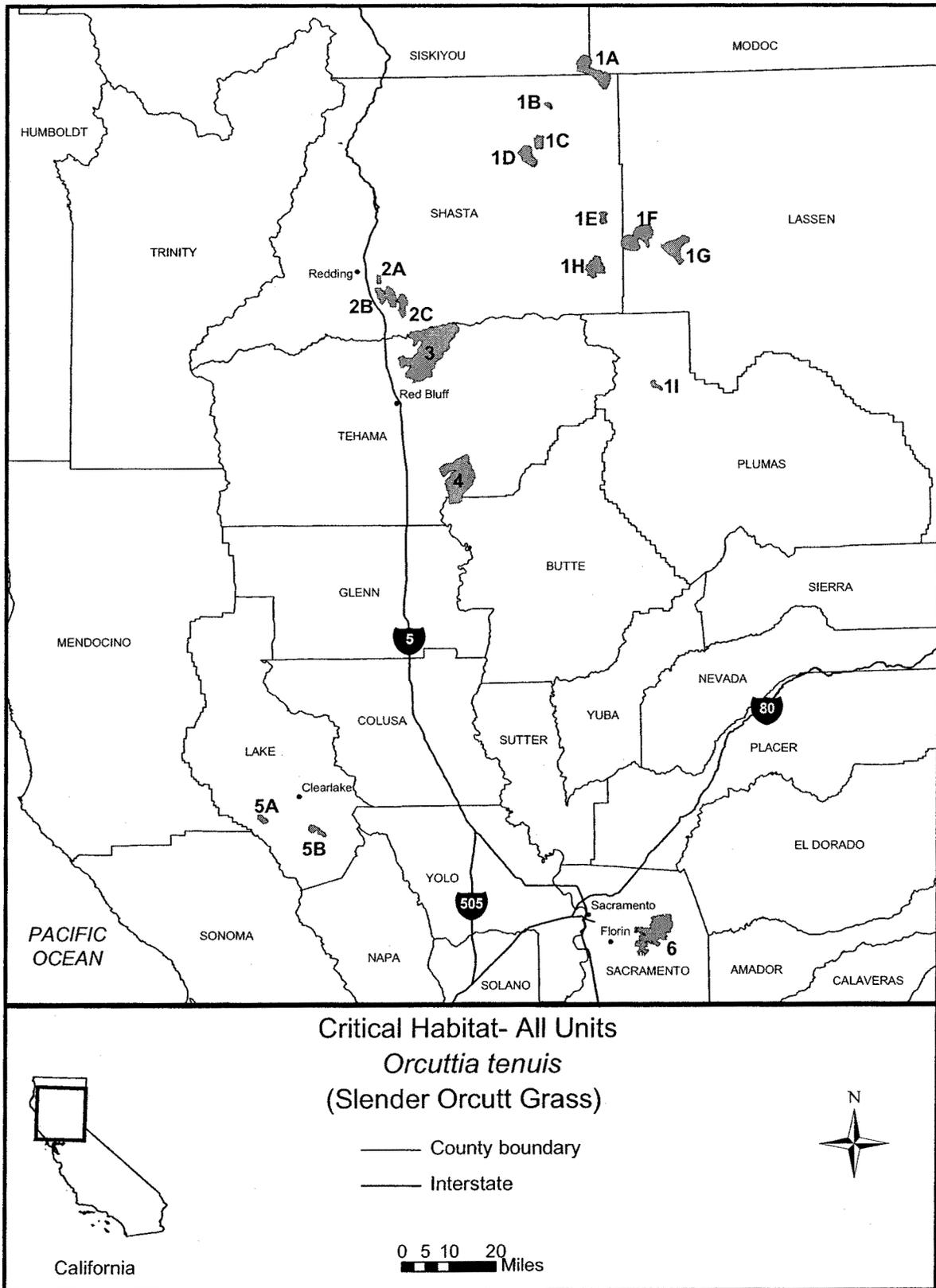
(20) *Unit 6*: Sacramento County,
California.

(i) From USGS 1:24,000 quadrangle
maps Buffalo Creek, Carmichael, Elk
Grove, and Sloughhouse, California,
land bounded by the following UTM 10
NAD 83 coordinates (E, N): 650200,
4257200; 650200, 4258300; 649600,
4258300; 649600, 4257400; 649400,
4257400; 649400, 4259000; 649100,
4259000; 649100, 4258500; 648500,
4258500; 648500, 4257400; 648200,
4257400; 648100, 4258300; 647700,
4258600; 647700, 4258900; 647900,
4258900; 648500, 4259400; 648500,
4260600; 647000, 4260600; 647000,
4261200; 647300, 4262300; 648400,
4262300; 648400, 4264000; 649000,
4264500; 649500, 4264500; 650200,
4264200; 650400, 4264200; 650400,
4264600; 649900, 4264700; 649900,
4265000; 648700, 4265000; 648700,
4265300; 647900, 4265300; 647900,
4265700; 647100, 4265200; 646700,
4265200; 646700, 4265400; 646900,
4265900; 647000, 4266200; 646800,
4266400; 646800, 4266700; 647000,
4267200; 647200, 4267100; 647400,
4266300; 647500, 4266300; 647700,
4267000; 649200, 4267100; 649200,
4266700; 651200, 4266600; 651500,
4266400; 652400, 4266900; 652400,
4267300; 652000, 4267700; 652000,
4267800; 652800, 4268900; 653000,
4269400; 652500, 4270300; 652600,
4270400; 652700, 4270500; 653100,
4270500; 653400, 4270800; 653600,
4270800; 653800, 4270400; 654400,
4270800; 654800, 4270900; 655200,

4271100; 655500, 4271100; 655800,
4270900; 656000, 4270900; 656200,
4271300; 656300, 4271300; 656500,
4271400; 656600, 4271400; 656600,
4271000; 656900, 4270800; 657300,
4270800; 657300, 4271400; 657500,
4271500; 657800, 4271400; 658000,
4271300; 658900, 4271300; 658900,
4271000; 659100, 4271000; 659200,
4270900; 659200, 4270800; 659100,
4269300; 659700, 4268900; 659700,
4268000; 659500, 4267000; 659300,
4266700; 659000, 4266400; 658800,
4265100; 658000, 4265500; 657600,
4265000; 657500, 4264300; 657900,
4263900; 657700, 4263600; 657200,
4263600; 657200, 4263100; 657600,
4263000; 657700, 4262900; 657700,
4262800; 657400, 4262700; 656700,
4262700; 656500, 4262700; 655400,
4263400; 654400, 4262200; 655500,
4261500; 655500, 4261100; 655200,
4260800; 655200, 4260700; 654900,
4260400; 653500, 4261300; 653200,
4261000; 653100, 4262300; 652800,
4262300; 652800, 4261400; 652600,
4261300; 652300, 4261400; 651700,
4261800; 651600, 4262100; 650700,
4262100; 650700, 4261800; 651100,
4261700; 651200, 4261400; 651200,
4260600; 651000, 4260400; 650400,
4260400; 650400, 4259300; 651600,
4259300; 651600, 4259100; returning to
650200, 4257200.

(21) Map follows of all critical habitat
units for *Orcuttia tenuis* (slender Orcutt
grass).

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

Family Poaceae: *Orcuttia viscida*
(Sacramento Orcutt Grass).

(1) Critical habitat units are depicted for Sacramento and Amador counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Orcuttia viscida* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Orcuttia viscida* germination, growth and reproduction, including but not limited to vernal pools on high terrace landforms on acidic soils such as Red Bluff, Redding, and Corning soil series. These habitats typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Orcuttia viscida* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Unit 1: Sacramento County, California.*

(i) From USGS 1:24,000 quadrangle map Folsom, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 655300, 4279300; 654900, 4279400; 654900, 4279800; 655100, 4279800; 655200, 4280200; 655400, 4280200; 655500, 4280000; 655300, 4279800; returning to 655300, 4279300.

(5) *Unit 2: Sacramento County, California.*

(i) From USGS 1:24,000 quadrangle maps Buffalo Creek, Carmichael, Elk Grove, and Sloughhouse, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 650200, 4257200; 650200, 4258300; 649600, 4258300; 649600, 4257400; 649400, 4257400; 649400, 4259000; 649100, 4259000; 649100, 4258500; 648500, 4258500; 648500, 4257400; 648200, 4257400; 648100, 4258300; 647700, 4258600; 647700, 4258900; 647900, 4258900; 648500, 4259400; 648500, 4260600; 647000, 4260600; 647000, 4261200; 647300, 4262300; 648400, 4262300; 648400, 4264000; 649000, 4264500; 649500, 4264500; 650200, 4264200; 650400, 4264200; 650400, 4264600; 649900, 4264700; 649900,

4265000; 648700, 4265000; 648700, 4265300; 647900, 4265300; 647900, 4265700; 647100, 4265200; 646700, 4265200; 646700, 4265400; 646900, 4265900; 647000, 4266200; 646800, 4266400; 646800, 4266700; 647000, 4267200; 647200, 4267100; 647400, 4266300; 647500, 4266300; 647700, 4267000; 649200, 4267100; 649200, 4266700; 651200, 4266600; 651500, 4266400; 652400, 4266900; 652400, 4267300; 652000, 4267700; 652000, 4267800; 652800, 4268900; 653000, 4269400; 652500, 4270300; 652600, 4270400; 652700, 4270500; 653100, 4270500; 653400, 4270800; 653600, 4270800; 653800, 4270400; 654400, 4270800; 654800, 4270900; 655200, 4271100; 655500, 4271100; 655800, 4270900; 656000, 4270900; 656200, 4271300; 656300, 4271300; 656500, 4271400; 656600, 4271400; 656600, 4271000; 656900, 4270800; 657300, 4270800; 657300, 4271400; 657500, 4271500; 657800, 4271400; 658000, 4271300; 658900, 4271300; 658900, 4271000; 659100, 4271000; 659200, 4270900; 659200, 4270800; 659100, 4269300; 659700, 4268900; 659700, 4268000; 659500, 4267000; 659300, 4266700; 659000, 4266400; 658800, 4265100; 658000, 4265500; 657600, 4265000; 657500, 4264300; 657900, 4263900; 657700, 4263600; 657200, 4263600; 657200, 4263100; 657600, 4263000; 657700, 4262900; 657700, 4262800; 657400, 4262700; 656700, 4262700; 656500, 4262700; 655400, 4263400; 654400, 4262200; 655500, 4261500; 655500, 4261100; 655200, 4260800; 655200, 4260700; 654900, 4260400; 653500, 4261300; 653200, 4261000; 653100, 4262300; 652800, 4262300; 652800, 4261400; 652600, 4261300; 652300, 4261400; 651700, 4261800; 651600, 4262100; 650700, 4262100; 650700, 4261800; 651100, 4261700; 651200, 4261400; 651200, 4260600; 651000, 4260400; 650400, 4260400; 650400, 4259300; 651600, 4259300; 651600, 4259100; returning to 650200, 4257200.

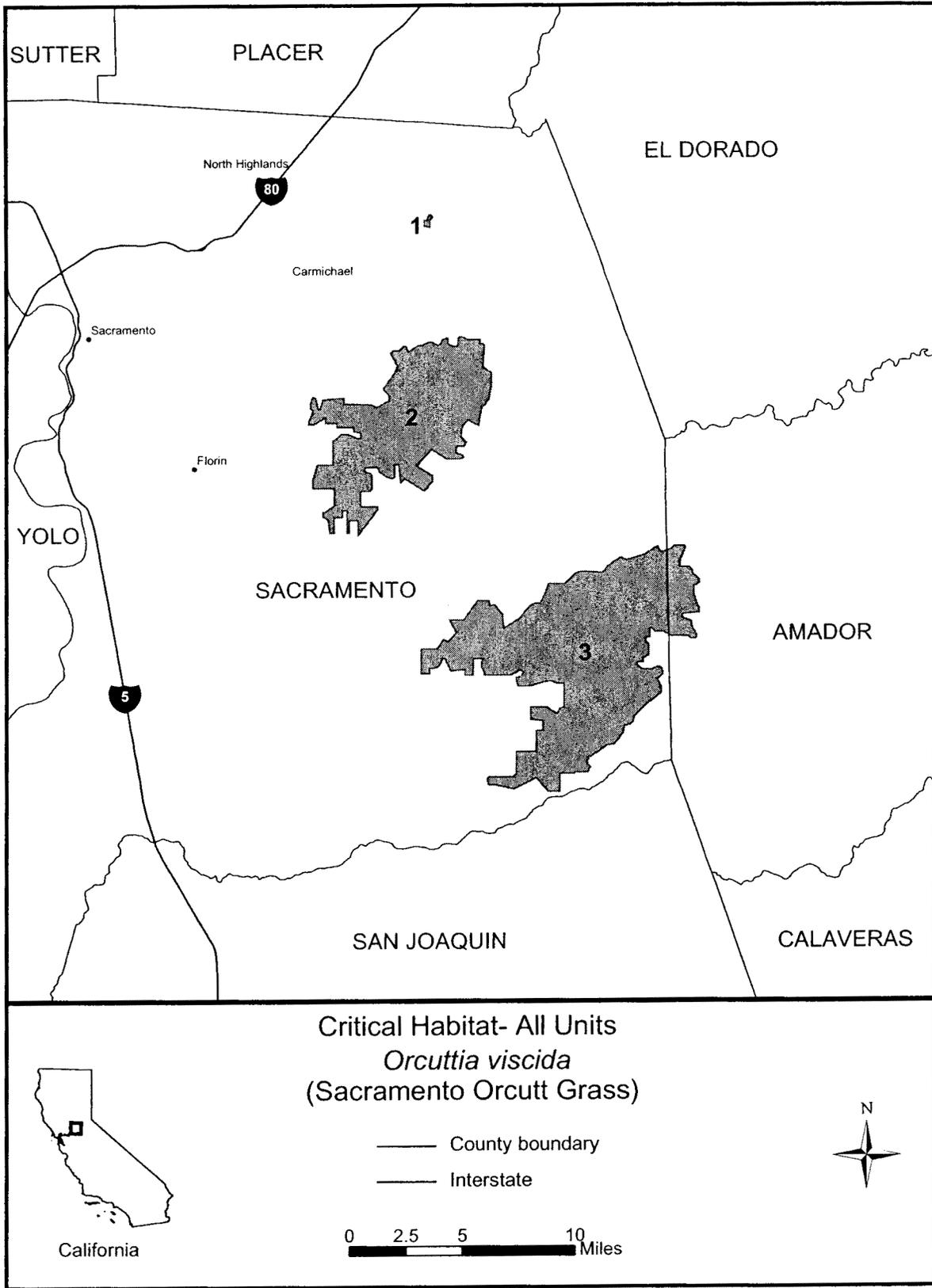
(6) *Unit 3: Sacramento and Amador counties, California.*

(i) From USGS 1:24,000 quadrangle maps Carbondale, Clay, Goose Creek, and Sloughhouse, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 664600, 4238700; 663800, 4238700; 662900, 4239700; 661300, 4238900; 660000, 4239200; 659500, 4239200; 659400, 4239600; 659500, 4239800; 661300, 4239800; 661300, 4239900; 661500, 4239900; 661500, 4241600; 662900, 4241600; 662900, 4243100; 663400, 4243100; 663400, 4243800; 662500, 4243900; 662500, 4244800; 663700, 4244800; 664400, 4244300; 664600, 4244700;

664900, 4244800; 664900, 4246500; 664400, 4246500; 663900, 4246700; 662500, 4246300; 661600, 4246300; 661500, 4246700; 661500, 4246900; 661800, 4247000; 662000, 4247300; 661800, 4247500; 661500, 4247300; 661100, 4247100; 659200, 4247100; 659200, 4247300; 659100, 4247500; 659000, 4247700; 659000, 4248000; 659100, 4248300; 658400, 4248300; 658400, 4247100; 657800, 4247100; 657800, 4247500; 656800, 4247400; 656400, 4248300; 656200, 4248300; 656100, 4248000; 656000, 4247800; 655900, 4247700; 655600, 4247600; 655300, 4247600; 655300, 4247200; 654700, 4247200; 654700, 4249000; 655800, 4249000; 656300, 4249700; 656600, 4249500; 657200, 4250200; 656700, 4251100; 657700, 4251100; 658700, 4252500; 659500, 4252500; 659600, 4252100; 659900, 4252200; 660500, 4251500; 660600, 4250500; 661700, 4251200; 662400, 4252100; 662800, 4252300; 663200, 4252300; 663400, 4252700; 663800, 4253700; 664900, 4253700; 665800, 4254500; 666200, 4254600; 667600, 4254500; 668000, 4255000; 668900, 4255600; 669300, 4255400; 670600, 4255800; 671500, 4256400; 671700, 4256000; 671900, 4256000; 672500, 4256200; 672700, 4256400; 673400, 4256400; 673500, 4256300; 673100, 4255300; 673100, 4254900; 673800, 4254900; 674000, 4254600; 674000, 4254400; 674500, 4254000; 674500, 4253700; 674100, 4253500; 674100, 4252900; 674300, 4252300; 674500, 4251900; 674500, 4251600; 673400, 4251500; 673300, 4251400; 673300, 4251200; 673900, 4251000; 674000, 4250500; 674300, 4250000; 674300, 4249800; 674200, 4249700; 673900, 4249700; 673600, 4249900; 672500, 4249900; 671900, 4250200; 671300, 4250200; 671100, 4250500; 671000, 4250500; 671000, 4249800; 670700, 4249800; 670700, 4249500; 670900, 4249300; 670900, 4249100; 670900, 4248500; 670500, 4248300; 670500, 4248000; 670100, 4248000; 670100, 4247800; 670500, 4247500; 671100, 4247500; 671600, 4247700; 671800, 4247600; 671900, 4247300; 671900, 4247100; 671500, 4246800; 671800, 4246200; 671800, 4245800; 670800, 4245000; 669900, 4244100; 669800, 4243700; 669500, 4243500; 669200, 4243400; 669100, 4242900; 668500, 4242100; 667900, 4242000; 667400, 4241600; 666800, 4241200; 666700, 4241200; 666600, 4240900; 666600, 4240700; 666800, 4240500; 666600, 4240100; 666400, 4240100; 665700, 4240100; 665700, 4240000; 664600, 4240000; returning to 664600, 4238700.

(7) Map follows of all critical habitat units for *Orcuttia viscida* (Sacramento Orcutt Grass).

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

Family Poaceae: *Tuctoria greenei*
(Greene's Tuctoria).

(1) Critical habitat units are depicted for Shasta, Tehama, Butte, Glenn, Colusa, Stanislaus, Tuolumne, Merced,

Mariposa and Madera counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Tuctoria greenei* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Tuctoria greenei* germination, growth and reproduction, including but not limited to Northern Claypan, Northern Hardpan and Northern Basalt flow vernal pools, that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Tuctoria greenei* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Unit 1*: Shasta County, California.

(i) From USGS 1:24,000 quadrangle map Murken Bench, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 631900, 4520300; 631500, 4520300; 630700, 4520600; 630000, 4521000; 628900, 4522800; 629200, 4523500; 629600, 4523900; 631000, 4524100; 631800, 4523500; 632700, 4522700; 632300, 4521000; returning to 631900, 4520300.

(5) *Unit 2*: Tehama and Butte counties, California.

(i) From USGS 1:24,000 quadrangle maps Acorn Hollow, Foster Island, Los Molinos, Nord, Richardson Springs NW, and Vina, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 583100, 4413100; 582900, 4413400; 582900, 4415900; 582000, 4418300; 581800, 4419200; 582000, 4419500; 581400, 4420000; 581400, 4420400; 581800, 4420700; 581600, 4421000; 583200, 4422600; 583500, 4423600; 585200, 4424500; 584900, 4424900; 582900, 4424300; 581300, 4422800; 581000, 4422600; 580500, 4422800; 579800, 4424400; 579500, 4425400; 580300, 4426100; 581700, 4427000; 583400, 4427100;

584000, 4427200; 585000, 4428300; 586700, 4429000; 588800, 4430200; 589500, 4429500; 589500, 4428600; 589500, 4428000; 589800, 4427100; 590500, 4426400; 590500, 4425300; 591200, 4424400; 591500, 4423300; 591600, 4422100; 590900, 4420900; 590700, 4419800; 588000, 4417000; 587500, 4416400; 587200, 4415500; 587200, 4414000; 586400, 4413800; 586200, 4413600; 586200, 4413400; 584200, 4413400; returning to 583100, 4413100.

(6) *Unit 3*: Butte County, California.

(i) From USGS 1:24,000 quadrangle map Hamlin Canyon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 611100, 4387700; 610400, 4388500; 610300, 4388800; 609200, 4389800; 609100, 4390100; 610200, 4391100; 610300, 4391400; 611100, 4391400; 611500, 4391300; 612500, 4390200; 613300, 4389600; 613300, 4388900; 613200, 4388400; 612800, 4388000; 612100, 4387900; 611500, 4387900; returning to 611100, 4387700.

(7) *Unit 4*: Butte County, California.

(i) From USGS 1:24,000 quadrangle maps Biggs and Shippee, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 612800, 4370600; 612100, 4370700; 612100, 4371500; 611900, 4371900; 611100, 4372000; 611100, 4372200; 611200, 4372600; 611300, 4373100; 612700, 4373100; 612900, 4372400; 612900, 4370900; returning to 612800, 4370600.

(8) *Unit 5*: Glenn and Colusa counties, California.

(i) From USGS 1:24,000 quadrangle maps Logandale, Maxwell, Moulton Weir, and Princeton, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 572900, 4357400; 571200, 4357400; 571200, 4358200; 570400, 4358200; 570400, 4359000; 569600, 4359000; 569500, 4360500; 569300, 4362200; 569500, 4363300; 569500, 4367200; 570000, 4367200; 569900, 4368400; 570300, 4368400; 571000, 4367600; 571000, 4367800; 570700, 4368500; 570900, 4368800; 571500, 4368800; 571900, 4368300; 571900, 4367600; 572100, 4367600; 572400, 4368100; 572400, 4368400; 572600, 4368900; 572800, 4368900; 573000, 4368100; 573400, 4368000; 573800, 4367600; 574100, 4367300; 574400, 4367200; 574500, 4366400; 574900, 4366400; 574900, 4365600; 574700, 4365500; 574400, 4364100; 575200, 4363900; 575600, 4363600; 575100, 4362400; 575600, 4361400; 575100, 4360700; 576000, 4359600; 575500, 4358900; 575700, 4358300; 575900, 4357700; 575300, 4357800; 575000, 4357700; 574700, 4357700; 573600, 4357800; 573500, 4358200;

572900, 4358200; returning to 572900, 4357400.

(9) *Unit 6*: Stanislaus and Tuolumne counties, California.

(i) From USGS 1:24,000 quadrangle maps Cooperstown, Keystone, Knights Ferry, La Grange, Oakdale, Paulsell, and Waterford, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 718900, 4168000; 718700, 4168000; 717900, 4168500; 715500, 4168200; 715400, 4168300; 712500, 4168900; 710900, 4168400; 710400, 4168500; 710500, 4169100; 709300, 4169100; 709100, 4169500; 709100, 4169700; 708900, 4169700; 708800, 4169900; 708700, 4169900; 708600, 4169800; 708500, 4169900; 708400, 4170000; 708700, 4170200; 708800, 4170300; 708900, 4170400; 709100, 4170500; 709200, 4170600; 709400, 4170600; 709400, 4170800; 709300, 4170800; 709200, 4170900; 709100, 4170800; 708800, 4170700; 708800, 4170600; 708500, 4170500; 708400, 4170300; 708100, 4170200; 707900, 4170200; 707900, 4170300; 708100, 4170500; 708200, 4170500; 708200, 4170600; 708000, 4170600; 708200, 4170800; 708200, 4170900; 708100, 4170900; 707900, 4170700; 707700, 4170700; 707700, 4170800; 707600, 4170900; 707400, 4170900; 707100, 4171100; 707100, 4171200; 707200, 4171300; 707300, 4171200; 707500, 4171300; 707800, 4171600; 707900, 4171600; 708100, 4171600; 708200, 4171700; 708100, 4171800; 708100, 4171900; 708300, 4171900; 708300, 4172100; 708400, 4172100; 708500, 4172200; 708500, 4172300; 708700, 4172400; 708800, 4172500; 708800, 4172600; 708700, 4172700; 708500, 4172700; 708400, 4172800; 708300, 4172700; 708200, 4172700; 708100, 4172600; 708000, 4172500; 707900, 4172500; 707800, 4172700; 707600, 4172600; 707400, 4172500; 707400, 4172600; 707200, 4172700; 707100, 4172300; 707000, 4172200; 706700, 4172200; 706700, 4172300; 706500, 4172300; 706400, 4172300; 706400, 4172400; 706200, 4172600; 706300, 4172700; 706400, 4172800; 706300, 4172800; 706200, 4172800; 706100, 4172900; 705900, 4173100; 705800, 4173300; 705800, 4173500; 706000, 4173800; 705900, 4173900; 705800, 4174100; 705700, 4174200; 705500, 4174200; 705400, 4174100; 705400, 4173700; 705300, 4173500; 705200, 4173200; 705100, 4173200; 705100, 4172600; 704900, 4172400; 704800, 4172100; 704600, 4172100; 704500, 4171900; 704400, 4171800; 704500, 4171600; 704600, 4171400; 704700, 4171500; 704900, 4171200; 704700, 4171100; 704900, 4171000; 704800, 4170900; 704600, 4170900;

704600, 4170700; 704800, 4170200;
 705300, 4170200; 705800, 4169700;
 705900, 4169300; 706000, 4168900;
 706000, 4168800; 705400, 4168900;
 704400, 4169000; 703000, 4168900;
 702200, 4168200; 700500, 4168400;
 700400, 4169700; 700100, 4169800;
 700100, 4170700; 699500, 4171100;
 698500, 4171200; 698500, 4172000;
 697800, 4172300; 697100, 4171200;
 696000, 4171200; 694000, 4171200;
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 694500, 4174500; 696300, 4174500;
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 697300, 4176200; 697700, 4176200;
 697700, 4179300; 696600, 4179300;
 696400, 4180000; 695800, 4180000;
 695500, 4179500; 695000, 4179300;
 694400, 4179300; 694400, 4179800;
 694800, 4180400; 694500, 4180800;
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 694500, 4181600; 694500, 4181900;
 695100, 4182200; 696100, 4182200;
 696200, 4181800; 695700, 4181600;
 696300, 4180500; 697000, 4180100;
 697400, 4180100; 697600, 4180400;
 697600, 4182600; 700300, 4182600;
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 699400, 4184100; 700800, 4185100;
 704100, 4186300; 705300, 4187700;
 705700, 4187700; 706300, 4188200;
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 710100, 4188200; 709900, 4186700;
 708900, 4185800; 708800, 4185000;
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 710300, 4182900; 711400, 4182100;
 712400, 4182100; 713200, 4182000;
 714100, 4182600; 715100, 4182600;
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 717100, 4182500; 717100, 4182000;
 716900, 4181300; 717200, 4180900;
 717200, 4180600; 716900, 4179900;
 717700, 4180100; 718500, 4180000;
 718700, 4179200; 719300, 4178700;
 719700, 4177600; 720300, 4177700;
 720700, 4177700; 720800, 4176400;
 721400, 4175900; 722200, 4175300;
 722700, 4175200; 722800, 4173600;
 723000, 4173500; 723200, 4173600;
 723700, 4173600; 724000, 4173300;
 724100, 4172300; 722800, 4172200;
 721700, 4171200; 721400, 4169900;
 720500, 4168700; returning to 718900,
 4168000.

(10) *Unit 7*: Merced, Mariposa and Madera counties, California.

(i) From USGS 1:24,000 quadrangle maps Atwater, Haystack Mtn., Illinois Hill, Indian Gulch, Le Grand, Merced, Merced Falls, Owens Reservoir, Plainsburg, Planada, Raynor Creek, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 751800, 4114900; 751600,

4115400; 752000, 4115800; 751900,
 4116000; 751400, 4116100; 751100,
 4116300; 751100, 4116700; 750700,
 4116700; 749900, 4116500; 746800,
 4116500; 744700, 4116500; 744600,
 4117600; 743600, 4117800; 743300,
 4118600; 742800, 4118600; 742800,
 4118900; 742300, 4119000; 742300,
 4119800; 742900, 4119900; 743300,
 4120600; 745500, 4120700; 745800,
 4121600; 745400, 4121600; 745400,
 4121800; 746100, 4121800; 746200,
 4122200; 747500, 4122400; 747500,
 4123900; 747000, 4124700; 746900,
 4125100; 743600, 4125000; 743600,
 4127000; 742700, 4127000; 742600,
 4126600; 742300, 4126300; 741700,
 4126300; 741200, 4126800; 741200,
 4128600; 740400, 4128600; 740400,
 4130300; 739000, 4130300; 739000,
 4130600; 738400, 4131100; 737500,
 4131200; 737800, 4131700; 737700,
 4132600; 737700, 4132900; 737100,
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 4134200; 736100, 4133900; 735600,
 4133300; 734700, 4133300; 734700,
 4133700; 734100, 4133900; 733100,
 4133900; 733100, 4134600; 732700,
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 4135500; 730300, 4135400; 729900,
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 4140900; 717800, 4140900; 717800,
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 4138200; 714500, 4140900; 714100,
 4141300; 714100, 4142200; 713600,
 4142400; 713200, 4143000; 713000,
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 4144600; 714500, 4145300; 714500,
 4145700; 715800, 4145800; 717000,
 4145800; 718000, 4145400; 718200,
 4145900; 718200, 4147600; 719700,
 4148400; 720600, 4148600; 720600,
 4149200; 719600, 4149200; 719600,
 4149800; 720300, 4149800; 721300,
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 4155900; 727800, 4155900; 728500,
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 4154900; 734600, 4154800; 735600,
 4156000; 735900, 4156000; 737100,
 4155400; 737800, 4155000; 738200,

4154200; 738300, 4153300; 739000,
 4152800; 739100, 4152200; 740200,
 4151800; 740800, 4151500; 740800,
 4150300; 741100, 4149900; 741700,
 4149400; 742100, 4148500; 742100,
 4147100; 743400, 4146100; 744000,
 4145600; 744400, 4144600; 744300,
 4143900; 743900, 4142700; 744000,
 4142000; 744200, 4141700; 745500,
 4140300; 746100, 4139500; 746800,
 4138500; 747700, 4137700; 748500,
 4135800; 748700, 4135100; 749500,
 4134000; 750100, 4132800; 750700,
 4131700; 751600, 4130500; 752000,
 4130200; 752800, 4130100; 753300,
 4130400; 753500, 4130400; 753900,
 4130200; 754000, 4129300; 753400,
 4128400; 753900, 4127700; 754400,
 4127700; 754600, 4127400; 755300,
 4128400; 755400, 4128400; 755600,
 4127700; 756900, 4126400; 757800,
 4125800; 758400, 4126300; 758500,
 4126300; 758600, 4126000; 757900,
 4125100; 757400, 4125100; 757800,
 4124400; 757800, 4124000; 758200,
 4124000; 758500, 4123600; 758800,
 4123600; 759000, 4123900; 759300,
 4123900; 759700, 4123500; 759700,
 4123400; 759200, 4122900; 760300,
 4121300; 761000, 4121000; 761300,
 4120300; 762100, 4119400; thence south
 to x-coordinate 762100 on the
 Chowchilla River; thence southwest
 along the Chowchilla River to Ash
 Slough; thence southwest along Ash
 Slough to y-coordinate 4114900; thence
 west to the point of beginning at
 751800, 4114900.

(11) *Unit 8*: Madera County, California.

(i) From USGS 1:24,000 quadrangle maps Daulton, Kismet, Raymond, and Raynor Creek, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 761900, 4100100; 761800, 4102500; 761700, 4105900; 762100, 4105900; 762900, 4106300; 763300, 4106200; 764100, 4106700; 764100, 4109200; 763400, 4109300; 763200, 4109800; 761500, 4109800; 761500, 4111300; 759800, 4111300; 759800, 4112200; 758300, 4112200; 758300, 4112800; 756600, 4112800; 756500, 4115300; 759700, 4115300; 759700, 4117100; 760400, 4117100; 760500, 4118000; 762100, 4118900; 762800, 4118000; 763300, 4117200; 763500, 4117600; 763700, 4117600; 764100, 4117300; 764500, 4115900; 765400, 4115900; 765400, 4116400; 766100, 4116400; 766100, 4115800; 765900, 4114300; 766400, 4114200; thence south to UTM zone 11, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 233400, 4113000; 233600, 4113000; 233900, 4112800; 234000, 4112300; 234300, 4112400; 234700, 4112500; 235000, 4112400; 235200, 4112300; 235200, 4111800;

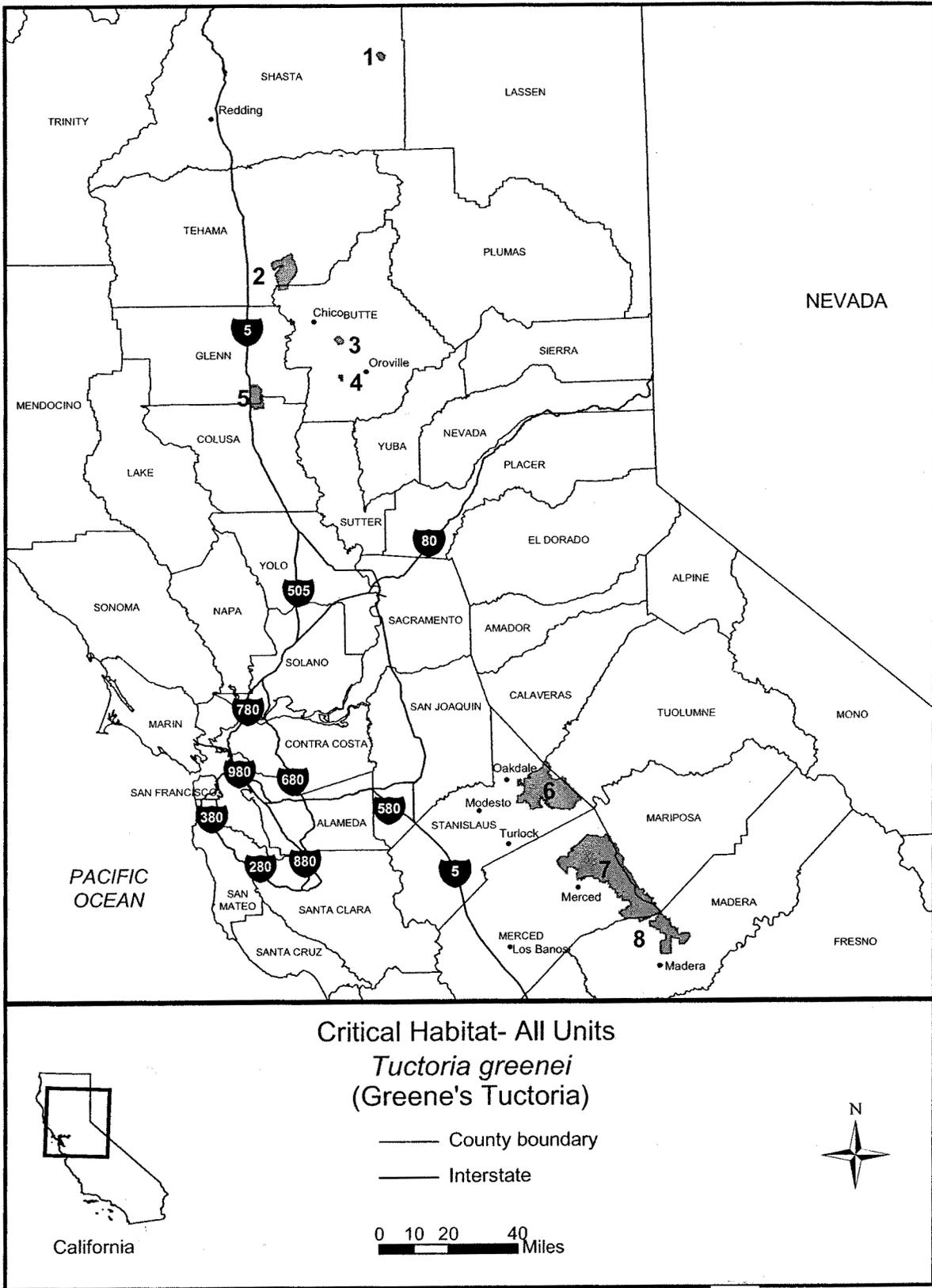
235700, 4111400; 236400, 4111800;
236800, 4111300; 236400, 4110800;
236400, 4109500; 237000, 4108700;
237600, 4108600; 238400, 4109300;
241300, 4109300; 242100, 4108700;
242100, 4107300; 240900, 4106000;
239300, 4104100; 239300, 4104100;
238900, 4104300; 238500, 4104600;

238100, 4104300; 237100, 4104300;
237100, 4105800; 237000, 4106800;
236000, 4107000; 235800, 4107100;
234900, 4107100; 234300, 4107200;
233900, 4108200; 233300, 4108000;
thence south to UTM zone 10, land
bounded by the following UTM 10 NAD
83 coordinates (E, N): 766800, 4100200;

766000, 4100200; returning to 761900,
4100100.

(12) Map follows of all critical habitat
units for *Tuctoria greenei* (Greene's
Tuctoria).

BILLING CODE 4310-55-P



Family Poaceae: *Tuctoria mucronata* (Solano Grass).

(1) Critical habitat units are depicted for Solano and Yolo counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Tuctoria mucronata* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Tuctoria mucronata* germination, growth and reproduction, including but not limited to Northern Claypan vernal pools (Sawyer and Keeler-Wolf 1995) on saline-alkaline clay or silty clay in the Pescadero soil series that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and

extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Tuctoria mucronata* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Unit 1*: Yolo County, California.

(i) From USGS 1:24,000 quadrangle maps Davis and Saxon, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 615400, 4260700; 614500, 4260700; 614500, 4261500; 614200, 4261500; 614200, 4261800; 614000, 4261800; 614000, 4262400; 615400, 4262400; returning to 615400, 4260700.

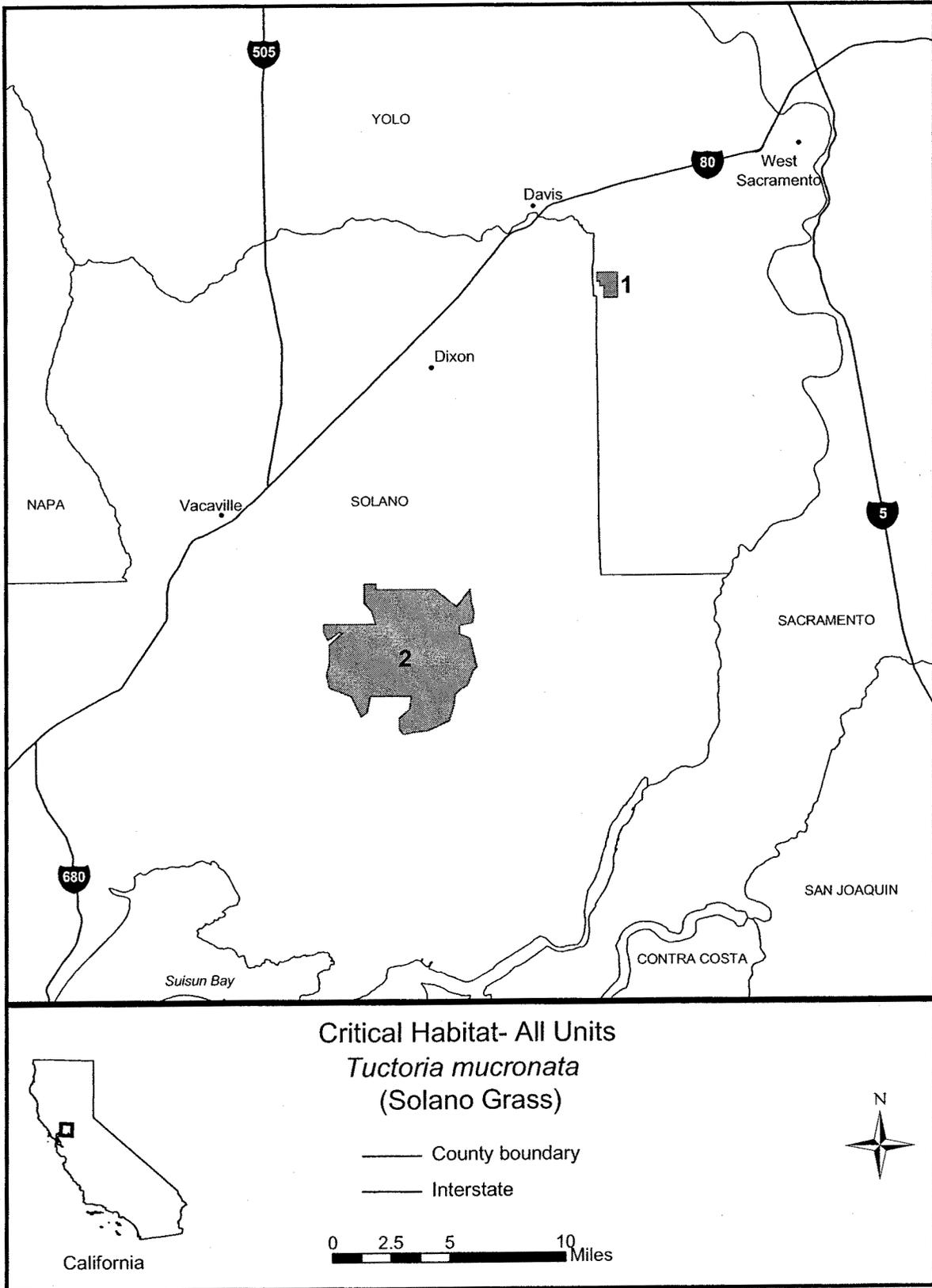
(5) *Unit 2*: Solano County, California.

(i) From USGS 1:24,000 quadrangle maps Birds Landing, Denverton, Dozier,

and Elmira, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 600700, 4230600; 600400, 4230900; 600400, 4231700; 601100, 4232300; 601200, 4233200; 598400, 4233200; 598200, 4232100; 597800, 4231800; 597100, 4233200; 595600, 4233800; 595400, 4234700; 595600, 4235500; 595600, 4236800; 596500, 4237600; 596300, 4237700; 595500, 4237100; 595200, 4237700; 595200, 4238200; 598800, 4238200; 598500, 4239100; 598000, 4239700; 598000, 4241000; 598800, 4241000; 598800, 4240600; 600400, 4240600; 602800, 4240600; 604300, 4239400; 605200, 4240600; 605300, 4239700; 605500, 4239000; 605400, 4238300; 604500, 4238100; 604500, 4237500; 605200, 4237200; 605700, 4235200; 605400, 4234900; 605000, 4233900; 604600, 4233700; 604200, 4233300; 604100, 4232500; 603800, 4231500; 602300, 4230800; 601400, 4230700; returning to 600700, 4230600.

(6) Map follows of all critical habitat units for *Tuctoria mucronata* (Solano Grass).

BILLING CODE 4310-55-P



Family Scrophulariaceae: *Castilleja campestris* ssp. *succulenta* (Succulent Owl's Clover).

(1) Critical habitat units are depicted for San Joaquin, Sacramento, Stanislaus, Tuolumne, Merced, Mariposa, Madera and Fresno Counties, California, on the map below.

(2) The primary constituent elements of critical habitat for *Castilleja campestris* ssp. *succulenta* are the habitat components that provide:

(i) Vernal pools, swales, and other ephemeral wetlands and depressions of appropriate sizes and depths and the adjacent upland margins of these depressions that sustain *Castilleja campestris* ssp. *succulenta* germination, growth and reproduction, including but not limited to hardpan vernal pools on alluvial terraces and San Joaquin, Redding, Corning, Keyes, and Pentz soils series, among others, and northern basalt flow vernal pools on Hideaway soils series, that typically become inundated during winter rains, but are dry during the summer and do not necessarily fill with water every year; and

(ii) The associated watershed(s) and hydrologic features, including the pool basin, swales, and surrounding uplands (which may vary in extent depending on pool size and depth, soil type and depth, hardpan or claypan type and extent, topography, and climate) that contribute to the filling and drying of the vernal pool or ephemeral wetland, and that maintain suitable periods of pool inundation, water quality, and soil moisture for *Castilleja campestris* ssp. *succulenta* germination, growth and reproduction, and dispersal, but not necessarily every year.

(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Unit 1*: San Joaquin and Sacramento Counties, California.

(i) From USGS 1:24,000 quadrangle maps Clay and Lockford, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 653700, 4232600; 653600, 4232600; 653500, 4233600; 653600, 4234100; 654100, 4234800; 655100, 4234800; 655500, 4234500; 655900, 4234700; 657600, 4234700; 657900, 4235000; 658800, 4235200; 659000, 4234900; 660500, 4235300; 661000, 4235300; 661200, 4234900; 660700, 4234400; 660000, 4234300; 659600, 4233400; 656900, 4233400; 654100, 4233200; 654100, 4232700; returning to 653700, 4232600.

(5) *Unit 2*: Stanislaus and Tuolumne counties, California.

(i) From USGS 1:24,000 quadrangle maps Cooperstown, Keystone, Knights Ferry, La Grange, and Paulsell, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 710900, 4168400;

710350.6875000 4168525; 710500, 4169100; 709300, 4169100; 709100, 4169500; 709100, 4169700; 708900, 4169700; 708800, 4169900; 708700, 4169900; 708600, 4169800; 708500, 4169900; 708400, 4170000; 708700, 4170200; 708800, 4170300; 708900, 4170400; 709100, 4170500; 709200, 4170600; 709400, 4170600; 709400, 4170800; 709300, 4170800; 709200, 4170900; 709100, 4170800; 708800, 4170700; 708800, 4170600; 708500, 4170500; 708400, 4170300; 708100, 4170200; 707900, 4170200; 707900, 4170300; 708100, 4170300; 708100, 4170500; 708200, 4170500; 708200, 4170600; 708000, 4170600; 708200, 4170800; 708200, 4170900; 708100, 4170900; 707900, 4170700; 707700, 4170700; 707700, 4170800; 707600, 4170900; 707400, 4170900; 707100, 4171100; 707100, 4171200; 707200, 4171300; 707300, 4171200; 707500, 4171300; 707800, 4171600; 707900, 4171600; 708100, 4171600; 708200, 4171700; 708100, 4171800; 708100, 4171900; 708300, 4171900; 708300, 4172100; 708400, 4172100; 708500, 4172200; 708500, 4172300; 708700, 4172400; 708800, 4172500; 708800, 4172600; 708700, 4172700; 708500, 4172700; 708400, 4172800; 708300, 4172700; 708200, 4172700; 708100, 4172600; 708000, 4172500; 707900, 4172500; 707800, 4172700; 707600, 4172600; 707400, 4172500; 707400, 4172600; 707200, 4172700; 707100, 4172300; 707000, 4172200; 706700, 4172200; 706700, 4172300; 706500, 4172300; 706400, 4172300; 706400, 4172400; 706200, 4172600; 706300, 4172700; 706400, 4172800; 706300, 4172800; 706200, 4172800; 706100, 4172900; 705900, 4173100; 705800, 4173300; 705800, 4173500; 706000, 4173800; 705900, 4173900; 705800, 4174100; 705700, 4174200; 705500, 4174200; 705400, 4174100; 705400, 4173700; 705300, 4173500; 705200, 4173200; 705100, 4174700; 705400, 4175400; 705000, 4175900; 705300, 4176300; 705700, 4176700; 705700, 4177000; 705700, 4177700; 705200, 4177900; 705000, 4178100; 705400, 4178900; 706200, 4178400; 706600, 4177600; 707200, 4177300; 707300, 4176800; 706800, 4176200; 706900, 4175800; 707600, 4175800; 708000, 4176500; 708500, 4176400; 709800, 4176600; 710200, 4176200; 710700, 4176600; 711200,

4176900; 711500, 4177100; 711600, 4178100; 711700, 4178700; 710600, 4178800; 710300, 4179200; 709900, 4179500; 709500, 4179600; 709100, 4180800; 709200, 4182200; 709700, 4182700; 710300, 4182900; 711400, 4182100; 712400, 4182100; 713200, 4182000; 714100, 4182600; 715100, 4182600; 715500, 4183400; 715800, 4183400; 716000, 4182700; 716900, 4182700; 717100, 4182500; 717100, 4182000; 716900, 4181300; 717200, 4180900; 717200, 4180600; 716900, 4179900; 717700, 4180100; 718500, 4180000; 718700, 4179200; 719300, 4178700; 719700, 4177600; 720300, 4177700; 720700, 4177700; 720800, 4176400; 720500, 4175200; 719500, 4174100; 720700, 4173500; 720700, 4172500; 719800, 4171900; 717700, 4170900; 717300, 4170700; 716800, 4171000; 716700, 4171800; 716500, 4171800; 716200, 4170900; 715500, 4170500; 714000, 4169800; 712500, 4168900; returning to 710900, 4168400.

(6) *Subunit 3A*: Merced and Mariposa counties, California.

(i) From USGS 1:24,000 quadrangle maps Merced Falls and Snelling, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 722500, 4155000; 722300, 4155000; 722300, 4157400; 724200, 4157400; 724100, 4160000; 724400, 4160600; 730600, 4160700; 730500, 4162200; 730800, 4162200; 731000, 4162100; 731400, 4162100; 731600, 4162500; 731800, 4162500; 731900, 4162400; 732100, 4162400; 732200, 4162500; 732700, 4162700; 733000, 4162600; 733600, 4162100; 733700, 4161500; 733600, 4161000; 734600, 4160400; 734800, 4160200; 734800, 4159500; 734400, 4158700; 734300, 4158100; 734500, 4157900; 734700, 4158000; 734900, 4158300; 735000, 4158800; 735500, 4158800; 735700, 4158600; 735600, 4158100; 736200, 4157500; 736800, 4157300; 736900, 4157100; 736900, 4156500; 736300, 4156500; 736000, 4156300; 735500, 4156300; 734100, 4156900; 733400, 4157100; 731700, 4156900; 730900, 4156500; 728900, 4156600; 727100, 4156700; 726900, 4156400; 725900, 4156400; 723900, 4155300; 723300, 4155400; returning to 722500, 4155000.

(7) *Subunit 3B*: Merced and Mariposa counties, California.

(i) From USGS 1:24,000 quadrangle maps Atwater, Haystack Mtn., Indian Gulch, Le Grand, Merced, Merced Falls, Owens Reservoir, Plainsburg, Planada, Snelling, Winton, and Yosemite Lake, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 743600, 4125000; 743600, 4127000; 742700, 4127000; 742600, 4126600; 742300, 4126300; 741700,

4126300; 741200, 4126800; 741200, 4128600; 740400, 4128600; 740400, 4130300; 739000, 4130300; 739000, 4130600; 738400, 4131100; 737500, 4131200; 737800, 4131700; 737700, 4132600; 737700, 4132900; 737100, 4132900; 737100, 4134200; 736700, 4134200; 736100, 4133900; 735700, 4133300; 734700, 4133300; 734700, 4133700; 734100, 4133900; 733100, 4133900; 733100, 4134600; 732700, 4134600; 732600, 4135000; 732300, 4135500; 730300, 4135400; 729900, 4135700; 729900, 4136500; 726500, 4136500; 726400, 4136100; 725900, 4136100; 725900, 4135300; 725600, 4135100; 725500, 4135100; 725300, 4135500; 725100, 4135400; 725000, 4135400; 725000, 4135600; 724800, 4135700; 724600, 4135700; 724600, 4134700; 724200, 4134700; 724200, 4135500; 723400, 4135500; 723400, 4135600; 722800, 4135600; 722800, 4135000; 722600, 4135000; 722600, 4134700; 722500, 4134700; 722200, 4137900; 722800, 4137900; 722800, 4139300; 721900, 4139300; 721900, 4140200; 721000, 4140200; 721000, 4140900; 717800, 4140900; 717800, 4137700; 717100, 4137700; 717000, 4138200; 714500, 4140900; 714100, 4141300; 714100, 4142200; 713600, 4142400; 713200, 4143000; 713000, 4143900; 713100, 4144300; 713700, 4144600; 714500, 4145300; 714500, 4145700; 715800, 4145800; 717000, 4145800; 718000, 4145400; 718200, 4145900; 718200, 4147600; 719700, 4148400; 720600, 4148600; 720600, 4149200; 719600, 4149200; 719600, 4149800; 720300, 4149800; 721300, 4150700; 721700, 4150700; 724400, 4153300; 725000, 4153500; 725500, 4154200; 725800, 4154800; 727200, 4155900; 727800, 4155900; 728500, 4155600; 730200, 4155600; 731600, 4155500; 732400, 4155400; 732600, 4155200; 733200, 4154700; 734100, 4154900; 734600, 4154800; 735600, 4156000; 735900, 4156000; 737100, 4155400; 737800, 4155000; 738200, 4154200; 738300, 4153300; 739000, 4152800; 739100, 4152200; 740200, 4151800; 740800, 4151500; 740800, 4150300; 741100, 4149900; 741700, 4149400; 742100, 4148500; 742100, 4147100; 743400, 4146100; 744000, 4145600; 744400, 4144600; 744300, 4143900; 743900, 4142700; 744000, 4142000; 744200, 4141700; 745500, 4140300; 746100, 4139500; 746800, 4138500; 747700, 4137700; 748500, 4135800; 748700, 4135100; 749500, 4134000; 750700, 4131700; 751600, 4130500; 752000, 4130200; thence east to y-coordinate 4130200 on Mariposa Creek; thence southwest along Mariposa Creek to y-coordinate 4125000; thence

west to the point of beginning at 743600, 4125000.

(8) *Unit 4: Madera, Merced and Fresno Counties, California.*

(i) From USGS 1:24,000 quadrangle maps Daulton, Friant, Gregg, Kismet, Lanes Bridge, Little Table Mtn., Millerton Lake West, Raymond, and Raynor Creek, California, land bounded by the following UTM 10 NAD 83 coordinates (E, N): 766600, 4106700; 766500, 4107800; 765200, 4107800; 764700, 4108100; 764100, 4109200; 763400, 4109300; 763200, 4109800; 761500, 4109800; 761500, 4111300; 759800, 4111300; 759800, 4112500; 759300, 4112500; 759200, 4112300; 758300, 4112300; 758300, 4112900; 756600, 4112900; 756500, 4117000; thence north to x-coordinate 756500 on Ash Slough; thence northeast along Ash Slough to the Chowchilla River; thence northeast along the Chowchilla River to y-coordinate 41194000; thence east to 762300, 4119400; 762700, 4118600; 762800, 4118000; 763300, 4117200; 763500, 4117600; 763700, 4117600; 764100, 4117300; 764200, 4116800; 764500, 4115900; 765400, 4115900; 765400, 4116400; 766100, 4116400; 766100, 4115800; 765900, 4114300; 766300, 4114200; thence northeast to UTM zone 11, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 233900, 4114300; 234200, 4114300; 234200, 4113900; 234300, 4112700; 234900, 4112700; 235500, 4112900; 235700, 4112600; 235700, 4111500; 236200, 4111800; 236400, 4111800; 236800, 4111300; 236400, 4110800; 236400, 4109500; 237000, 4108700; 237600, 4108600; 238400, 4109300; 241300, 4109300; 242100, 4108700; 242200, 4109300; 241100, 4110700; 241100, 4111300; 241500, 4111300; 242000, 4110400; 243000, 4110300; 243000, 4109800; 245200, 4109700; 245900, 4108600; 247600, 4107500; 248000, 4106400; 248000, 4105900; 247400, 4105400; 247400, 4105200; 249100, 4104400; 251600, 4103800; 251900, 4103300; 251900, 4102600; 252300, 4102200; 252300, 4101400; 252900, 4101000; 253700, 4101600; 254500, 4101600; 255700, 4102000; 257800, 4102000; 258900, 4101100; 259000, 4098800; 259200, 4098400; 259200, 4098000; 258200, 4096900; 257400, 4096300; 256600, 4095600; 256200, 4095100; 255900, 4093800; 255700, 4092600; 255900, 4092200; 255900, 4092000; 255400, 4091700; 254600, 4090800; 253800, 4090400; 253300, 4089700; 252700, 4089000; 252500, 4088000; 251500, 4087100; 251500, 4087100; 251100, 4089300; 251200, 4092200; 250600, 4092200; 250600, 4093000; 251200, 4093500; 251300,

4094900; 250500, 4094900; 250400, 4092900; 245500, 4093000; 242300, 4093100; 242300, 4095000; 242500, 4095100; 244000, 4095000; 244000, 4096700; 244800, 4096600; 244900, 4098200; 245700, 4098200; 245700, 4099800; 242500, 4100000; 242400, 4095200; 242300, 4095200; 239500, 4095200; 239600, 4098400; 239700, 4100000; 240100, 4100000; 240200, 4100200; 240200, 4100400; 240200, 4100600; 240400, 4100700; 240600, 4100900; 240600, 4101200; 239700, 4102100; 239700, 4102200; 239900, 4102500; 239900, 4102700; 239800, 4102800; 239800, 4103000; 240000, 4103600; 240000, 4103900; 240700, 4104400; 241200, 4105300; 241200, 4106300; 240100, 4105200; 238900, 4104300; 238400, 4104100; 237100, 4104200; 237100, 4105700; 235500, 4105800; 235500, 4106600; 233200, 4106700; thence west to UTM zone 10 to the point of beginning at UTM 10 NAD 83 coordinates 766600, 4106700.

(9) *Unit 5: Fresno County, California.*

(i) From USGS 1:24,000 quadrangle maps Academy, Clovis, Friant, and Round Mountain, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 273000, 4076600; 271300, 4076700; 271400, 4076900; 271700, 4077100; 271800, 4077300; 271800, 4077500; 271500, 4077700; 271100, 4077700; 271100, 4078200; 271300, 4078400; 271600, 4078900; 271800, 4079100; 271900, 4079800; 271100, 4079900; 267900, 4080000; 266300, 4080000; 266300, 4080400; 266500, 4080500; 266500, 4080700; 266300, 4080800; 266300, 4081700; 265500, 4081800; 264000, 4081800; 265900, 4083100; 265900, 4083300; 263200, 4083300; 263100, 4082700; 262300, 4082700; 262300, 4083300; 261500, 4083400; 261500, 4083800; 260900, 4083800; 260900, 4084300; 261100, 4084300; 261100, 4084400; 260700, 4084700; 260700, 4085100; 260900, 4085300; 262100, 4085800; 262200, 4085900; 262200, 4086200; 262800, 4086200; 262600, 4086600; 262100, 4087000; 262100, 4087300; 262400, 4087500; 262400, 4088200; 261100, 4088200; 261100, 4087400; 260200, 4087400; 260100, 4086600; 259200, 4086600; 259200, 4087700; 259600, 4087500; 260000, 4087500; 260100, 4087900; 259700, 4088100; 258500, 4088200; 258000, 4088300; 258000, 4089100; 258500, 4089300; 258500, 4089800; 258300, 4089800; 257700, 4089200; 256600, 4089200; 256600, 4090200; 256800, 4090800; 256900, 4092700; 257200, 4094300; 257300, 4095500; 258600, 4096700; 258900, 4096700; 259600, 4096700; 259600, 4094700; 260300, 4094700; 260300, 4093300; 259400, 4091700;

260800, 4091700; 262200, 4091100;
262900, 4091100; 262900, 4090400;
263200, 4089800; 263100, 4089400;
264700, 4088700; 265000, 4087900;
265300, 4087600; 265900, 4087600;
265900, 4086800; 267000, 4086800;
267600, 4087000; 267800, 4086500;
267200, 4085500; 267400, 4085100;
268100, 4085300; 268300, 4085800;
269100, 4085800; 269800, 4085400;
270300, 4084900; 271100, 4084800;
271900, 4085100; 272200, 4085600;
272800, 4086200; 273000, 4087300;
273300, 4087700; 273200, 4088500;
273200, 4089600; 274700, 4089600;
275400, 4090000; 275600, 4090500;
275900, 4090800; 276500, 4090900;
277100, 4090900; 277100, 4090200;
276100, 4088900; 276100, 4087900;
276000, 4087500; 275400, 4087200;
275100, 4086600; 274900, 4086000;
274400, 4085500; 274000, 4084900;
273400, 4084400; 273400, 4083800;
273600, 4083400; 273600, 4083000;
272900, 4082900; 272800, 4082200;
272800, 4081400; 273000, 4080800;
273200, 4080500; 273500, 4080100;
273700, 4079700; 273800, 4079100;

274200, 4078600; 274300, 4078100;
273300, 4078100; 273300, 4077100;
returning to 273000, 4076600.

(10) *Subunit 6A*: Fresno County, California.

(i) From USGS 1:24,000 quadrangle maps Academy and Millerton Lake East, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 267300, 4097300; 266900, 4097300; 267000, 4097600; 267800, 4098300; 268100, 4098700; 268100, 4098900; 268000, 4099100; 267400, 4099800; 267400, 4100300; 267700, 4100800; 268100, 4101400; 268600, 4101400; 269100, 4101100; 269600, 4101100; 269800, 4101300; 269900, 4101500; 269600, 4102200; 269200, 4102400; 268600, 4102800; 268700, 4103800; 269100, 4103800; 269600, 4103100; 270200, 4103500; 270300, 4103500; 270700, 4102500; 270500, 4102400; 270300, 4102200; 270300, 4101900; 270500, 4101500; 270600, 4101100; 270500, 4101000; 270200, 4100700; 269400, 4100500; 268300, 4100500; 268100, 4100300; 268100, 4100100; 268400, 4099800; 268600, 4099500; 268700, 4099200; 268700,

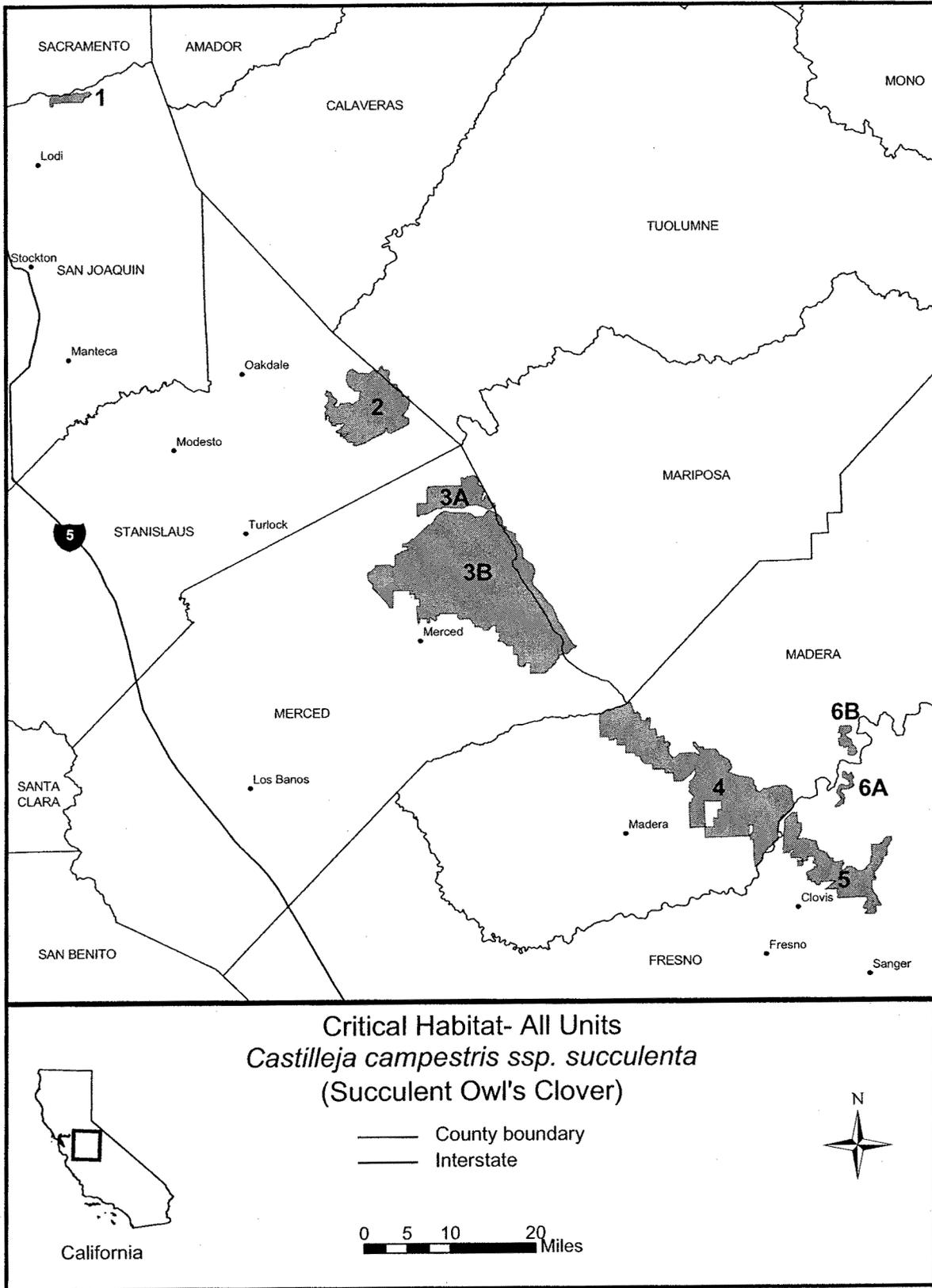
4098900; 268600, 4098300; 268500, 4098100; 268400, 4097800; 268100, 4097600; 267800, 4097400; returning to 267300, 4097300.

(11) *Subunit 6B*: Madera County, California.

(i) From USGS 1:24,000 quadrangle maps Millerton Lake East and North Fork, California, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 271200, 4106800; 270200, 4106800; 269900, 4107000; 269900, 4107600; 270100, 4108600; 269300, 4108300; 269000, 4108700; 268500, 4108700; 268300, 4110000; 268800, 4110400; 268900, 4111000; 268300, 4111300; 268500, 4111500; 268600, 4112300; 268800, 4112400; 270600, 4112400; 270800, 4112100; 270700, 4111300; 269600, 4110800; 269700, 4110500; 270000, 4110200; 270600, 4109700; 270800, 4108800; 271300, 4108400; 271500, 4107800; 271600, 4107300; returning to 271200, 4106800.

(12) Map follows of all critical habitat units for *Castilleja campestris* ssp. *succulenta* (Succulent Owl's Clover).

BILLING CODE 4310-55-P



Dated: September 6, 2002.

Craig Manson,

*Assistant Secretary for Fish and Wildlife and
Parks.*

[FR Doc. 02-23241 Filed 9-23-02; 8:45 am]

BILLING CODE 4310-55-C



Federal Register

**Tuesday,
September 24, 2002**

Part III

**Federal Election
Commission**

**11 CFR Parts 100, et al.
Coordinated and Independent
Expenditures; Proposed Rule**

FEDERAL ELECTION COMMISSION**11 CFR Parts 100, 102, 104, 105, 109, 110, and 114****[Notice 2002–16]****Coordinated and Independent Expenditures****AGENCY:** Federal Election Commission.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on proposed changes to its rules relating to payments for communications that are coordinated with a candidate, a candidate's authorized committee, or a political party committee. The proposed rules would also address independent expenditures and expenditures by political party committees that are made either in coordination with, or independently from, candidates. These regulations would implement several requirements in the Bipartisan Campaign Reform Act of 2002 ("BCRA") that significantly amend the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"). Further information is contained in the Supplementary Information that follows. Please note that the Commission has not made a final decision on any of these proposals.

DATES: Comments must be received on or before October 11, 2002. The Commission will hold a hearing on these proposed rules on October 23 and 24, 2002, at 9:30 a.m. Commenters wishing to testify at the hearing must submit written or electronic comments no later than October 11, 2002, and must so indicate in their comments.

ADDRESSES: All comments should be addressed to Mr. John Vergelli, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to BCRACoord@fec.gov and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to

post public comments on its website within ten (10) business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John Vergelli, Acting Assistant General Counsel, or Attorneys Mark Allen (coordinated party expenditures), Richard Ewell (coordinated communications paid for by other political committees and other persons), Tony Buckley (electioneering communications), or Cheryl Fowle (reporting requirements), 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107–155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), 2 U.S.C. 431 *et seq.* This is one of a series of Notices of Proposed Rulemakings ("NPRM") the Commission is publishing over the next several months in order to meet the rulemaking deadlines set out in BCRA. The deadline for the promulgation of these rules is 270 days after the date of enactment of BCRA, or December 22, 2002.

This NPRM primarily addresses communications that are made independently from, or in coordination with, a candidate, an authorized committee of a candidate, or a political party committee. The proposed regulations would set forth the meaning of "coordination." They would also set forth statutory requirements for political party committees with respect to the permitted timing of independent and coordinated expenditures, and transfers and assignments.

Introduction*I. Statutory Overview*

FECA limits the amount of contributions to Federal candidates, their authorized committees, and other political committees. 2 U.S.C. 441a(a). Under FECA and the Commission's regulations, these contributions may take the form of money or "anything of value" (the latter would be an "in-kind contribution" provided to a candidate or political committee. *See* 11 CFR 100.52(d)(1). Candidates must disclose all contributions they receive. 2 U.S.C. 434(b)(2). Since the recipient does not actually receive a cash payment from an in-kind contribution, the recipient must report the value of an in-kind contribution as both a contribution

received and an expenditure made so that the receipt of the contribution will be reported without overstating the cash-on-hand in the committee's treasury. *See* 11 CFR 104.13.

II. Overview of BCRA Changes to FECA and Commission Regulations

In BCRA, Congress revised FECA's definition of "independent expenditure." 2 U.S.C. 431(17). The revision added a reference to political party committees and their agents and reworked other aspects of the former language. Corresponding revisions would be made to the regulations in 11 CFR 100.16.

Congress repealed the Commission's pre-BCRA regulations regarding "coordinated general public political communications" (at pre-BCRA 11 CFR 100.23) and directed the Commission to adopt new regulations on "coordinated communications" in their place. Pub. L. 107–155, sec. 214(b), (c) (March 27, 2002). The Commission proposes a new section 11 CFR 109.21 to implement the Congressional mandate.

In addition, the proposed rules would implement several new restrictions found in BCRA on the timing of independent and coordinated expenditures made by committees of political parties. 2 U.S.C. 441a(d)(4). Those regulations would be in new 11 CFR part 109, subpart D. Similarly, Congress established new restrictions on transfers between committees of a political party. 2 U.S.C. 441a(d)(4). Those changes, as well as amendments to the rules on the assignment of coordinated party expenditure authority in pre-BCRA 11 CFR 110.7, would also be reflected in new 11 CFR part 109, subpart D.

Finally, Congress established new reporting obligations for independent expenditures. 2 U.S.C. 434(a)(5) and (g). *See* proposed 11 CFR 100.19, 104.4, 104.5, 105.2, and 109.10.

Definition of Independent Expenditure

The Commission proposes several changes to the definition of "independent expenditure" in 11 CFR 100.16 in light of several Congressional changes to the statutory definition of the same term at 2 U.S.C. 431(17). Most significantly, the statutory definition of "independent expenditure" was modified to exclude coordination with a political party committee or its agents (in addition to the pre-BCRA exclusion of coordination with candidates). *Ibid.*

Proposed section 100.16 would contain two paragraphs. Proposed paragraph (a) would include the revised pre-BCRA section 100.16. The first sentence of proposed paragraph (a)

would be changed by adding a reference to political party committees and their agents, tracking BCRA's changes in 2 U.S.C. 431(17).

In BCRA, Congress deleted the term "consultation" from the list of activities that compromise the independence of expenditures. See 2 U.S.C. 431(17)(B). Proposed paragraph (a), however, would retain the term because it remains, post-BCRA, in other related provisions of the Act. Expenditures that are made in "cooperation, consultation, or concert with, or at the request or suggestion of" candidates, political committees, and agents thereof are contributions. See 2 U.S.C. 441a(a)(7)(B)(i) (emphasis added). Most importantly, the term "consultation" is used in a closely related provision added by BCRA itself. See 2 U.S.C. 441a(7)(B)(ii) as amended by Pub. L. 107-155, sec. 214(a) (expenditures made in "cooperation, consultation, or concert, with, or at the request or suggestion of, a national, State, or local committee of a political party"). Thus, the proposed rules would retain the term "consultation" as an element in the regulatory definition of "independent expenditure."

Similarly, the Commission notes that while Congress referred to expenditures "not made in concert or cooperation with . . . a political party committee or its agents" in 2 U.S.C. 431(17) (emphasis added), it did not refer to agents of a party committee in 2 U.S.C. 441a(7)(B)(ii) when describing coordination with a party committee. The Commission would include agents of political party committees as persons who might take actions that would cause a communication to be coordinated with that party committee.

In BCRA, Congress repealed the pre-BCRA regulatory definition of "coordinated general public political communication." See 11 CFR 100.23, repealed by Pub. L. 107-155, section 214(b) (March 27, 2002). Therefore, proposed paragraph (a) of section 100.16 would delete the term "coordinated general public political communication," and replace it with references to "coordinated communications" from proposed section 109.21 and "party coordinated communications" from proposed section 109.37.

The Commission would move to proposed paragraph (b) of section 100.16, without other changes, the rule that expenditures made by a candidate's authorized committee on behalf of that candidate would never qualify as an independent expenditure. This rule, which is found at pre-BCRA 11 CFR 109.1(e), clarifies the basic definition of "independent expenditure."

Proposed Reorganization of 11 CFR Part 109

The Commission proposes to reorganize 11 CFR part 109 into four subparts. Subpart A would explain the scope of part 109 and define a key term. Subpart B would address reporting of independent expenditures. Subpart C would address coordination between a candidate or a political party and a person making a communication. Subpart D would set forth provisions applicable only to political party committees, including some pertaining to independent expenditures and support of candidates through coordinated party expenditures. See 2 U.S.C. 441a(d). The special authority for coordinated expenditures by political party committees, previously set forth in pre-BCRA 11 CFR 110.7, would be relocated to proposed 11 CFR 109.32 and other sections in subpart D.

Proposed Subpart A of Part 109: Scope and Definitions

Proposed new section 109.1 would introduce the scope of part 109. A definition found in pre-BCRA section 109.1 would be revised and moved to proposed section 109.3. The Commission would move the reporting requirements of pre-BCRA 11 CFR 109.2 to proposed 11 CFR 109.10, reserving section 109.2 to avoid potential confusion regarding this move.

Proposed 11 CFR 109.3 would define the term "agent" for use throughout part 109. This definition of "agent" would be based on the same concept that the Commission used in framing the definition of "agent" in the non-Federal funds or "Soft Money" rulemaking completed earlier this year. Final Rules and Explanation and Justification, "Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money," 67 FR 49081 (July 29, 2002). The definition identifies the principal and enumerates particular activities in which the agent may engage on behalf of the principal. In order to preclude confusion with other regulatory definitions of "agent" (e.g., 11 CFR 300.2(b)), this definition would be explicitly limited to 11 CFR part 109. The definition would differ in several respects from its pre-BCRA form in 11 CFR 109.1(b)(5). The proposed definition would encompass political party committees because the Act, as amended by BCRA, specifically covers, in the context of coordination, payments made by a person on behalf of political party committees. See 2 U.S.C. 441a(a)(7)(B)(ii).

The proposed revised definition of "agent" would focus on whether a

purported agent has "actual authority, either express or implied," to engage in one or more specified activities on behalf of specified principals. The specified activities would vary slightly depending on whether the agent engages in those activities on behalf of a national, State, district, or local committee of a party committee, or on behalf of a Federal candidate or officeholder. See proposed 11 CFR 109.3(a) and (b), respectively. The activities specified in the proposed rule would closely parallel activities associated with coordinated communications, as described in proposed 11 CFR 109.21(b), and would include requesting or suggesting that a communication be created, produced, or distributed, making or authorizing certain campaign-related communications, and material involvement in decisions regarding specific aspects of communications. See proposed 11 CFR 109.3(a)(1) through (5) and (b)(1) through (5). Thus, a person would be an agent when (1) expressly authorized by a specific principal to engage in specific activities; (2) engages in those activities on behalf of that specific principal; and (3) those activities would result in a coordinated communication if done directly by the candidate or a political party official.

The Commission seeks comments on whether the scope of the definition of "agent" should explicitly state that a person must be "acting within the scope of his or her authority as an agent" while engaged in the action in question (e.g., making a request, participating in a substantial discussion) before he or she is considered an agent. Should the person be required to convey information that was only available to that person because of his or her role as an agent for the candidate or political party committee? Should a person be considered an agent if he or she bases his or her recommendations to a third party on information that was gained only due to that person's role as an agent for the campaign? The Commission also seeks comments on whether, and if so, under what circumstances, a person who is authorized by a candidate or political party committee to solicit or receive contributions or other transfers of funds, and who holds a formal or honorary position or title with the candidate's campaign or a political party committee, should be considered *per se* to be an agent of that candidate, an authorized committee of that candidate, or political party committee.

The Commission's pre-BCRA regulations include a special definition of "person" for part 109. 11 CFR

109.1(b)(1). The Commission has not included this separate definition of the term "person" in this Notice of Proposed Rulemaking because the term is already defined in pre-BCRA 11 CFR 100.10. Furthermore, the Commission is concerned that a separate definition of "person" in part 109 might be confusing or misinterpreted to permit labor organizations, corporations not qualified under 11 CFR 114.10(c), or other entities or individuals to pay for coordinated communications or to make independent expenditures where these entities and individuals are otherwise prohibited from making contributions or expenditures under the Act and Commission regulations. *See, e.g.*, 11 CFR 110.4 and 114.2. While the Commission would propose to specifically address these prohibitions in proposed 11 CFR 109.22, below, the Commission seeks comment on whether, and if so, how, the term "person" should be defined separately for the purposes of part 109.

Proposed Subpart B of Part 109: Independent Expenditures; Other Reporting Rules; Disclaimers

Under the Act, independent expenditures must be reported as follows: Political committees must report all independent expenditures on their regularly scheduled reports. In contrast, persons other than political committees must report independent expenditures that aggregate in excess of \$250 in a calendar year. 2 U.S.C. 434(b)(4)(H)(iii), (c), (d), and (g). Political committees and other persons must file additional reports of independent expenditures ("24-hour reports") when independent expenditures totaling \$1,000 or more are made less than 20 days but more than 24 hours before an election (*i.e.*, primary, general, special, or runoff; *see* 11 CFR 100.2). BCRA moved the 24-hour reporting provisions from 2 U.S.C. 434(c)(2)(C) to 2 U.S.C. 434(g)(1). These reports must be received within 24 hours of the time the independent expenditures aggregate \$1,000 or more. 2 U.S.C. 434(g)(1).

BCRA also adds a third type of report for certain independent expenditures. New "48-hour reports" are required when independent expenditures made at any time during the campaign, up to and including the 20th day before an election, aggregate \$10,000 or more. 2 U.S.C. 434(g)(2). To implement BCRA's new reporting requirements for independent expenditures, the Commission is proposing changes to pre-BCRA 11 CFR 100.19, 104.4, 104.5, 105.2, and 109.2, which are discussed below.

I. When Must Reports of Independent Expenditures be Filed?

A. 11 CFR 100.19 File, Filed, or Filing (2 U.S.C. 434(a))

The Commission's regulations at 11 CFR 100.19 define *file*, *filed*, and *filing*. Paragraph (a) of section 100.19 would be unaffected by this rulemaking. Proposed paragraph (b) of section 100.19 would retain the pre-BCRA general rule that a document is considered timely filed if it is: (1) Delivered to the appropriate filing office (either the Commission or the Secretary of the Senate), or (2) sent by registered or certified mail and postmarked by 11:59 p.m. Eastern Standard/Daylight Time of the prescribed filing date—except for pre-election reports. The proposed revisions to paragraph (b) of section 100.19 would clarify that paragraph (b) is the general rule, but does not apply to reports addressed by paragraph (c) through proposed new paragraph (f). In pre-BCRA paragraph (b), the Commission notes that this general rule does not apply to 24-hour reports of independent expenditures, although the other exceptions are not mentioned.

Those exceptions would be as follows: Paragraph (c) for electronic filing—"filed" means received by the Commission at or before 11:59 p.m. Eastern Standard/Daylight Time on the filing date; paragraph (d) for 24-hour and 48-hour reports of independent expenditures—"filed" means received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following (24-hour reports) or the second day following (48-hour reports) the date on which the spending threshold is reached in accordance with 11 CFR 104.4(f); paragraph (e) for 48-hour notices of last-minute contributions—"filed" means received by the Commission or the Secretary of the Senate within 48 hours of the receipt of a "last-minute" contribution of \$1,000 or more.

Paragraph (c) of section 100.19 would remain unchanged.

Proposed revisions to paragraph (d) of section 100.19 would also require that the new 48-hour reports of independent expenditures, like the 24-hour reports, must be *received* rather than *filed* by the filing deadline. The proposed 48-hour reporting provision would allow filers to submit their reports using facsimile machines or electronic mail, as long as they are not required under 11 CFR 104.18 to file electronically. Under pre-BCRA paragraph (d) of section 100.19, 24-hour reports of independent expenditures are only considered timely filed if they are received by the Commission or Secretary of the Senate

within 24 hours of the time the expenditure is made.¹ Thus, sending 24-hour reports by mail is not a viable option because it is unlikely that these reports will be received by the Commission within 24 hours of the making of the expenditure. *See Final Rules and Explanation and Justification for 11 CFR 100.19*, 67 FR 12834 (March 20, 2002.) Pre-BCRA paragraph (d) also states that 24-hour reports may be filed by facsimile machine or electronic mail, in addition to other permissible means of filing (*e.g.*, hand delivery or overnight courier). Because the reasons behind the handling of 24-hour reports apply equally to the essentially similar 48-hour reports, the Commission is proposing this parallel rule.

Additional proposed changes to 11 CFR 100.19 are being addressed by the Commission in a separate rulemaking. *See "Electioneering Communications" Notice of Proposed Rulemaking*, 67 FR 51131 (Aug. 7, 2002).

B. 11 CFR 104.5 Filing Dates (2 U.S.C. 434(a)(2))

Proposed paragraph (g) of 11 CFR 104.5 would move the pre-BCRA contents of paragraph (g) to proposed paragraph (g)(2) with revisions, and would add a new paragraph (g)(1), which would require that 48-hour reports of independent expenditures must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Pre-BCRA paragraph (g) of 11 CFR 104.5 states that 24-hour reports of independent expenditures must be received by the appropriate officers no later than 24 hours after such independent expenditure is made.

II. Where Must Reports be Filed? 11 CFR 105.2 Place of Filing; Senate Candidates, their Principal Campaign Committees, and Committees Supporting Only Senate Candidates (2 U.S.C. 434(g)(3))

The Commission's pre-BCRA regulations require that 24-hour reports of independent expenditures supporting or opposing Senate candidates be filed with the Secretary of the Senate. *See* pre-BCRA 11 CFR 104.4(c), 109.2(b). In BCRA, Congress establishes the

¹ Note that BCRA, as passed on February 14, 2002, in the House and on March 20, 2002, in the Senate, would have required 24-hour reports to be *filed* rather than *received* within 24 hours of the time the independent expenditure was made. In technical corrections to BCRA, Congress amended section 212 of BCRA by reinstating the *received* requirement. H. Con. Res. 361.

Commission as the place of filing for both 24- and 48-hour reports of independent expenditures, regardless of the office being sought by the clearly identified candidate. 2 U.S.C. 434(g)(3)(A). The proposed revisions to section 105.2 would place the text of pre-BCRA 11 CFR 105.2 in proposed paragraph (a), adding the heading, "General Rule." New proposed paragraph (b) of 11 CFR 105.2 would be headed, "Exceptions," and would state that 24- and 48-hour reports of independent expenditures, and electioneering communications, see 11 CFR 104.19, must be filed with the Commission even if the candidate supported or opposed is running for the Senate. 2 U.S.C. 434(f).

III. 11 CFR 104.4 Independent Expenditures by Political Committees (2 U.S.C. 434(b), (g))

The Commission has established reporting requirements for political committees making independent expenditures in accordance with 2 U.S.C. 434(b) and (g). See pre-BCRA 11 CFR 104.4. Paragraph (a) of section 104.4 would be unaffected, other than the addition of a new heading, a grammatical correction and an updated cross-reference.

Proposed new paragraph (b) would address reports of independent expenditures made at any point in the campaign up to and including the 20th day before an election. Proposed paragraph (b)(1) would address independent expenditures aggregating less than \$10,000 with respect to a given election during the calendar year, up to and including the 20th day before an election. This calendar year aggregation would be based on 2 U.S.C. 434(b)(4), which requires calendar year aggregation for reports of independent expenditures by political committees. The Commission requests comments on whether a different time period, such as an election cycle, should be employed instead of the calendar year period.

Under this calendar year approach, political committees would report the independent expenditures on Schedule E of FEC Form 3X, filed no later than the regular reporting date under 11 CFR 104.5. The Commission would interpret 2 U.S.C. 434(g), added to the Act by BCRA, to require aggregation toward the various thresholds for independent expenditure reporting to be done on a per election basis within the calendar year. For example, if a political committee made \$5,000 in independent expenditures with respect to a Senate race, and \$5,000 in independent expenditures with respect to a House race, and both of these events occurred

before the twentieth day before the election, that political committee would not be required to file 48-hour reports, but would be required to disclose the independent expenditures in its regularly scheduled reports. If the political committee makes \$5,000 in independent expenditures with respect to a clearly identified candidate in the primary, and an additional \$5,000 in independent expenditures with respect to the same candidate in the general election, no 48-hour reports would be required; but again the committee would be required to disclose the independent expenditures in its regularly scheduled reports.

Paragraph (b)(2) would address independent expenditures aggregating \$10,000 or more during the calendar year up to and including the 20th day before an election. These reports would also be filed on Schedule E of FEC Form 3X. However, these reports would be required to be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication which constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Further, political committees would have to file an additional 48-hour report each time subsequent independent expenditures reach the \$10,000 threshold with respect to the same election to which the first report related.

The Commission proposes revisions to renumbered paragraph (c) (i.e., pre-BCRA 11 CFR 104.4(b)) stating that 24-hour reports must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which the \$1,000 threshold is reached during the final twenty days before the election. Further, proposed revisions to this paragraph would specifically state that additional 24-hour reports must be filed each time during the 24-hour reporting period that subsequent independent expenditures reach or exceed the \$1,000 threshold with respect to the same election to which the previous report related.

Proposed paragraph (d) would contain the report verification information currently found in pre-BCRA paragraph (b) of section 104.4. There would be non-substantive grammatical changes to conform this paragraph to other changes in the overall section.

Proposed paragraph (e) would largely restate pre-BCRA paragraph (c) of section 104.4. The most significant proposed change to this paragraph would be to make the Commission and not the Secretary of the Senate the place

of filing for 24- and 48-hour reports of independent expenditures relating to Senate candidates. 2 U.S.C. 434(g)(3). See the discussion of 11 CFR 105.2, above.

Proposed paragraph (f) of 11 CFR 104.4 would address aggregation of independent expenditures for reporting purposes. The provisions of pre-BCRA 11 CFR 109.1(f) would be redesignated and revised to explain when and how political committees and other persons making independent expenditures must aggregate independent expenditures for purposes of determining whether 48-hour and 24-hour reports must be filed. Note that this proposed aggregation rule would apply to independent expenditures by political committees, as well as other persons; proposed 11 CFR 109.10 (c) and (d) would cross-refer to this paragraph. Proposed paragraph (f) would establish that every date on which a communication that constitutes an independent expenditure is "publicly distributed" or otherwise publicly disseminated serves as the date that every person must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts (\$1,000 for 24-hour reports or \$10,000 for 48-hour reports). The term "publicly distributed" would have the same meaning as in proposed 11 CFR 100.29(b)(6), which the Commission has proposed as part of a separate rulemaking. See "Electioneering Communications" Notice of Proposed Rulemaking, 67 FR 51131 (Aug. 7, 2002). Thus, proposed paragraph (f) would set the same date as the starting date from which a person would have one or two days, where applicable, to file a 24-hour or 48-hour report on independent expenditures.

In addition, Congress changed the reporting requirements by adding the phrase "or contracts to make" to the statute. 2 U.S.C. 434(g)(1), (2). BCRA ties 24-hour and 48-hour reporting of independent expenditures to the time when a person "makes or contracts to make independent expenditures * * *" aggregating at or above the \$1,000 and \$10,000 thresholds, respectively. 2 U.S.C. 434(g)(4). Therefore, under proposed 11 CFR 104.4(f), each person would be required to include as of the proposed trigger date, in the calculation of the aggregate amount of independent expenditures both disbursements for independent expenditures and all contracts obligating funds for disbursement for independent expenditures. Under this approach and the proposed timing requirements described above, once a communication

that constitutes an independent expenditure is publicly distributed or disseminated as explained above, the person who paid for, or who contracted to pay for, the communication would be able to determine whether the communication satisfied the “express advocacy” requirement of the definition of an independent expenditure (*See* 11 CFR 100.16) and would be therefore be able to determine whether the disbursement for that communication constituted an independent expenditure. A person reaching or exceeding the applicable reporting threshold would be responsible for submitting a report by 11:59 p.m. Eastern Standard/Daylight Time of the day after, for 24-hour reporting, or two days after, for 48-hour reporting, the date of the public distribution or dissemination of that communication.

The Commission seeks comment on its proposed interpretation of BCRA’s “makes or contracts to make” language and the triggering mechanism for 24-hour and 48-hour reports. Specifically, the Commission seeks comment on an alternative interpretation that would make the actual disbursement or the execution of the contract to make the disbursement for an independent expenditure, rather than the public distribution or dissemination of the resulting communication, the triggering mechanism for the reporting requirements once the disbursements and obligations equal or exceed the respective thresholds. This change would require earlier reporting than is currently required or proposed (i.e., when the communication is publicly disseminated). The policy reasons for adopting this alternative interpretation would be similar to those described in the NPRM on reporting of electioneering communications. *See* “*Electioneering Communications*” *Notice of Proposed Rulemaking*, 67 FR 51131 (Aug. 7, 2002).

IV. Proposed 11 CFR 109.10 How Do Persons Other Than Political Committees Report Independent Expenditures (2 U.S.C. 434(c), (d), and (g))?

Proposed new section 109.10 would set forth the revised reporting requirements of pre-BCRA section 109.2. Under proposed new section 109.10, persons other than political committees would have to report their independent expenditures on either FEC Form 5 or in a signed statement containing certain information regarding the person who made the independent expenditure and the nature of the expenditure itself.

Proposed paragraph (a) of 11 CFR 109.10 would provide a cross-reference to 11 CFR 104.4 for political committees, under which they must report independent expenditures. Paragraph (a) of pre-BCRA 11 CFR 109.2 would be moved to proposed paragraphs (b) and (c) of section 109.10.

Proposed paragraph (c) would address reports of independent expenditures aggregating \$10,000 or more with respect to a given election from the beginning of the calendar year up to and including the 20th day before an election. This proposed paragraph would require that 48-hour reports of independent expenditures be *received* rather than *filed* by 11:59 pm of the second day after the date on which the \$10,000 threshold is reached. *See* discussion of *received* versus *filed* in section 100.19, above. Pre-BCRA paragraph (b) of section 109.2 indicates that 24-hour reports must be received after a disbursement is made for an independent expenditure, but no later than 24 hours after an independent expenditure is “made” under pre-BCRA paragraph 109.1(f). *See* the discussion of proposed 11 CFR 104.4(f), above. Under the proposed rules, paragraph (b) of pre-BCRA section 109.2 would be moved to new paragraph (d) of 11 CFR 109.10 and revised to reflect the modification to the aggregation and filing requirements in proposed 11 CFR 100.19(d) and 104.4 that are discussed above.

Proposed revisions to paragraph (d) of 11 CFR 109.10 (pre-BCRA 11 CFR 109.2(b)) would also mirror the changes in 11 CFR 104.4(c) as to when 24-hour reports of independent expenditures aggregating \$1,000 or more after the 20th day before the election.

Proposed paragraph (e) of 11 CFR 109.10 (i.e., pre-BCRA 11 CFR 109.2(a)(1) and (c)) would address the contents and verification of statements filed in lieu of FEC Form 5. Proposed paragraph (e) would include one significant change from pre-BCRA 109.2(a)(1) and (c): a person making an independent expenditure would now be required to certify that the expenditure was made independently from a political party committee and its agents, in addition to the pre-BCRA requirement of certification that the expenditure was not coordinated with a candidate, the candidate’s authorized committee, or an agent of either of the foregoing. This change reflects the addition of political party committees to the definition of “independent expenditure” in 2 U.S.C. 431(17) and the description of coordination in 2 U.S.C. 441a(a)(7)(B)(ii) under BCRA. For the same reasons explained with reference to the definition of

“independent expenditure” in proposed 11 CFR 100.16, the Commission would continue to include “consultation” in the description of activity that would cause an expenditure to lose its independence (i.e., “in cooperation, *consultation*, or concert with” a candidate or political party committee) even though the statutory definition in 2 U.S.C. 431(17) does not retain the term.

Section 109.11 Non-Authorization Notice (Disclaimers) (2 U.S.C. 441d)

The Commission would move the disclaimer requirement for independent expenditure communications from pre-BCRA 11 CFR 109.3 to proposed section 109.11. There would be no substantive changes to this section. Proposed changes to 11 CFR 110.11 itself will be forthcoming in a separate rulemaking, in light of BCRA’s changes to the statutory disclaimer requirement. *See* 2 U.S.C. 441d.

Proposed Subpart C of Part 109 Coordination

I. Proposed 11 CFR 109.20 What Does “Coordinated” Mean?

Congress did not define the term “coordinated” directly in FECA or in BCRA, but it did provide that an expenditure is considered to be a contribution to a candidate when it is “made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of,” that candidate, the authorized committee of that candidate, or their agents. 2 U.S.C. 441a(a)(7)(B)(i). Likewise, in BCRA, Congress added a new paragraph to section 441a(a)(7)(B) to require that expenditures “made by any person (other than a candidate or candidate’s authorized committee) in cooperation, consultation, or concert, with, or at the request or suggestion of, a national, State, or local committee of a political party shall be considered to be contributions made to such party committee.” 2 U.S.C. 441a(a)(7)(B)(ii). Also, as explained above, an expenditure would not be “independent” if it is “made in cooperation, consultation, or concert, with, or at the request or suggestion of,” a candidate or a political party committee. *See* proposed 11 CFR 100.16.

Proposed section 109.20 would incorporate the language in 2 U.S.C. 441a(a)(7)(B)(i) and (ii) into the Commission’s regulations. While the definition of “coordinated” in proposed paragraph 109.20(a) would potentially encompass a variety of payments made by a person on behalf of a candidate or

party committee, the Commission recognizes that the majority of issues regarding coordination involve communications. Therefore, the proposed regulations in 11 CFR 109.21 and 109.37 would specifically address the meaning of the phrase “made in cooperation, consultation, or concert, with, or at the request or suggestion of” in the context of communications.

In addition, proposed paragraph 109.20(b) would address expenditures that are not made for communications but that are coordinated with a candidate or political party committee. The Commission proposes to move pre-BCRA 11 CFR 109.1(c), to proposed paragraph (b). This provision would also be revised to make it clear that these other expenditures, when coordinated, are also in-kind contributions (or coordinated party expenditures, if a political party committee so elects) to the candidate or political party committee with whom or with which they are coordinated. The exceptions contained in 11 CFR part 100, subpart C (exceptions to the definition of “contribution”) and subpart E (exceptions to the definition of “expenditure”) would continue to apply. The Commission requests comment on whether these non-communication expenditures should be further addressed in a later rulemaking.

II. Background: The Commission’s Pre-BCRA Coordination Regulations

Prior to the enactment of BCRA, the Commission initiated a series of rulemakings in response to the Supreme Court’s ruling on the appropriate application of the so-called “coordinated party expenditure” provisions of FECA. See *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 U.S. 604 (1996) (“Colorado I”). For example, the Commission addressed the issue of coordination when it promulgated 11 CFR 100.23 in December 2000. See *Explanation and Justification of General Public Political Communications Coordinated with Candidates and Party Committees; Independent Expenditures*, 65 Fed. Register 76138 (Dec. 6, 2000). Section 100.23 defined a new term, “coordinated general public political communication,” drawing from judicial guidance in *Federal Election Commission v. The Christian Coalition*, 52 F.Supp.2d 45, 85 (D.D.C. 1999) (“*Christian Coalition*”), to determine whether expenditures for communications by unauthorized committees, advocacy groups, and individuals were coordinated with candidates or qualified as independent

expenditures. Consistent with *Christian Coalition*, *id.* at 92, the Commission’s regulations stated that such coordination could be found when candidates or their representatives influenced the creation or distribution of the communications by making requests or suggestions regarding, or exercising control or decision-making authority over, or engaging in “substantial discussion or negotiation” regarding, various aspects of the communications. 11 CFR 100.23(c)(2). The regulations explained that “substantial discussion or negotiation may be evidenced by one or more meetings, conversations or conferences regarding the value or importance of the communication for a particular election.” 11 CFR 100.23(c)(2)(iii).

III. Proposed 11 CFR 109.21 What is a “Coordinated Communication”?

In BCRA, Congress expressly repealed 11 CFR 100.23, Pub. L. 107–155, sec. 214(b) (March 27, 2002), and instructed the Commission to promulgate new regulations on “coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees.” Pub. L. 107–155, sec. 214(c) (March 27, 2002). Congress also mandated that the new regulations address four specific aspects of coordinated communications: republication of campaign materials; the use of a common vendor; communications directed or made by a former employee of a candidate or political party; and communications made after substantial discussion about the communication with a candidate or party. See Pub. L. 107–155, sec. 214(c)(1) through (4) (March 27, 2002).

A. Basic Elements of a “Coordinated Communication”

Proposed paragraph (a) of section 109.21 would set forth the three required elements of a “coordinated communication,” which would comprise a three-part test. For a communication to be “coordinated” under the proposed rule, all three parts of the test would have to be satisfied. While no one of these elements standing alone fully answers the question of whether a communication is for the purpose of influencing a Federal election, see 11 CFR 100.52(a), 100.111(a), the Commission proposes that the satisfaction of all of the three specific tests set out in the proposed regulation justifies the conclusion that payments for the coordinated communication are for the purpose of influencing a Federal election.

The first part of the three-part test, in proposed paragraph (a)(1), would be that the communication would have to be paid for by someone other than a candidate, an authorized committee, or a political party committee. However, a person’s status as a candidate would not exempt him or her from the coordination regulations with respect to payments he or she makes on behalf of a different candidate. Under proposed paragraph (a)(2), the second part of the three-part test would be a “content standard” regarding the subject matter of the communication. The content standards would be addressed in detail in proposed paragraph (c) of this section. Under proposed paragraph (a)(3), the final part of the test would be a “conduct standard” regarding the interactions between the person paying for the communication and the candidate or political party committee. The conduct standards would be addressed in detail in proposed paragraph (d).

B. Treatment of Coordinated Communications as In-Kind Contributions

Proposed paragraph (b) of section 109.21 would provide that a payment for a coordinated communication would be made “for the purpose of influencing” an election for Federal office, a phrase used by Congress in the definition of both “expenditure” and “contribution.” 2 U.S.C. 431(8)(A) and (9)(A). Thus, the Commission would make a determination that satisfying the content and conduct standards of proposed 11 CFR 109.21 would, in turn, satisfy the statutory requirements for an expenditure and a contribution.

Proposed paragraph (b)(1) would state the general rule that a payment for a coordinated communication would constitute an in-kind contribution to the candidate or political party committee with whom or with which it is coordinated, unless excepted under subpart C of 11 CFR part 100. Please note that this section encompasses communications described in 11 CFR 100.29(a)(1) (electioneering communications) in addition to other communications. Congress expressly provided that when these communications are coordinated with a candidate or political party committee, they must be treated like other coordinated communications in that disbursements for these communications are in-kind contributions to the candidate or party committee with whom or which they were coordinated. See 2 U.S.C. 441a(a)(7)(C).

Proposed paragraph (b)(2) would create an exception to the general rule of proposed paragraph (b)(1). Under the general rule in proposed paragraph (b)(1), a candidate or a political party committee would be deemed to receive an in-kind contribution, subject to the contribution limits, prohibitions, and reporting requirements of the Act. As explained below, two of the conduct standards, found in proposed paragraphs (d)(4) and (d)(5) of section 109.21, would not focus on the conduct of the candidate, his or her authorized committee, or his or her agents, but would focus on the conduct of the person paying for the communication, a common vendor, or a former employee. To avoid the result where a candidate or political party committee might be held responsible for receiving or accepting an in-kind contribution that did not result from its conduct or the conduct of its agents, the Commission proposes to explicitly provide that the candidate or political party committee would not receive or accept in-kind contributions that result from conduct described in the proposed conduct standards of paragraphs (d)(4) and (d)(5) of section 109.21. This treatment would be generally analogous to the handling of republished campaign materials under the Commission's current regulations. See 11 CFR 109.1(d)(1). However, please note that the person paying for a communication that is coordinated because of conduct described in proposed paragraphs (d)(4) or (d)(5) would still be responsible for making an in-kind contribution for purposes of the contribution limitations, prohibitions, and reporting requirements of the Act.

Proposed paragraph (b)(3) of 11 CFR 109.21 would provide that a political committee, other than a political party committee (which would be covered in proposed subpart D), must report payments for coordinated communications as in-kind contributions to the candidate or political party committee with whom or which they are coordinated. Proposed paragraph (b) would also clarify that a political party committee with which a communication is coordinated must report that communication as an in-kind contribution received under 11 CFR 104.13. The recipient political party committee must also report making a corresponding expenditure in the same amount. 11 CFR 104.13.

C. Content Standards

The Commission proposes to include "content standards" in the definition of "coordinated communication." Such content standards would serve to limit 11 CFR 109.21 to communications

whose subject matter is reasonably related to an election. The purpose of the content standards would not be to definitively decide if the content of the communication is for the purpose of influencing a Federal election. Answering that larger question would be the purpose of the three-part test of which the content standard would be one part.

Proposed paragraph (c) would set out four possible content standards. A communication that satisfies any one of the four would be deemed to satisfy the "content" requirement of the proposed regulation.

Under proposed paragraph (c)(1), the first content standard would be whether the communication satisfies the requirements of a communication described in proposed 11 CFR 100.29 or communication that would otherwise be "electioneering communication." Notice of Proposed Rulemaking, "Electioneering Communications," 67 FR 51131 (Aug. 7, 2002).

The second proposed content standard addresses the Congressional requirement that the Commission's new rules on coordinated communications address the "republishing of campaign materials." See Pub. L. 107-155, sec. 214(c)(1) (March 27, 2002). The Commission proposes to satisfy this mandate by providing, in proposed paragraph (c)(2) of section 109.21 that the republication of candidate materials in a communication would satisfy the content standard if the republication, dissemination, or distribution, in whole or in part, amounts to a contribution under proposed 11 CFR 100.57 (discussed below).

In light of the candidate's initial role in preparing the campaign material that is subsequently incorporated into a different, "republished" communication, it is possible that the candidate's involvement in the original preparation of part or all of that content might be construed as triggering one or more of the proposed conduct standards in paragraph (d) of this section. To avoid this result, the Commission would clarify that the candidate's actions in preparing the *original* campaign materials are not to be considered in the conduct analysis of proposed paragraph (d). Instead, the proposed rules in 11 CFR 109.21(d)(6) would only focus on the conduct of the candidate that occurs after the initial preparation of the campaign materials. For example, if a candidate requests or suggests that a supporter pay for the republication of a campaign ad, the resulting communication paid for by the supporter would satisfy both a content standard (republishing) and conduct

standard (request or suggestion, see discussion of proposed 11 CFR 109.21(d)(1) below) and would therefore be a coordinated communication. The Commission also proposes a second sentence in proposed paragraph (a)(3) of section 109.21 indicating that the republication content standard of proposed paragraph (c)(2) is evaluated under the conduct standard in proposed paragraph (d)(6).

The third content standard in proposed paragraph (c)(3) of section 109.21 would state that a communication would also satisfy the content standard if it "expressly advocates" the election or defeat of a clearly identified candidate for Federal office.

In addition to electioneering communications described in proposed 11 CFR 100.29, communications that republish campaign materials, and communications that "expressly advocate" the election or defeat of a clearly identified candidate, the Commission is considering a number of other possible content standards. In this NPRM, the Commission presents and discusses three other possible content standards, which are labeled Alternatives A through C in the proposed rules. Any, all, or none of these alternatives could be adopted in the final rules.

Each of these alternatives is framed in terms of a "public communication," a term added to the Act by BCRA, 2 U.S.C. 431(22); 11 CFR 100.26. The use of the term "public communication" would provide consistency within the regulations and would distinguish covered communications from, for example, private correspondence and internal communications between a corporation or labor organization and its restricted class. In addition, although the term "public communication" covers a broad range of communications, it does not cover some forms of communications, such as those transmitted using the Internet and electronic mail. 11 CFR 100.26. The Commission seeks comment on whether it is appropriate to limit the scope of coordinated communications through the use of the term "public communication," or whether it would be adequate for this purpose to require only that the communication be "made available to the public." The Commission also seeks comment on these three alternatives, as well as any other possible standards.

Alternative A

The first alternative, labeled "Alternative A" in the proposed rules, would require that the communication

be a public communication, as defined in 11 CFR 100.26, and that it clearly identify a Federal candidate. The terms "clearly identified" and "candidate" are defined in 11 CFR 100.17 and 100.3, respectively. This alternative would seem to cover the widest range of public communications of all the alternatives.

Alternative B

The second alternative, labeled "Alternative B" in the proposed rules, would require that the communication promote or support or attack or oppose a clearly identified candidate. This standard would be modeled on one of the definitions of "Federal election activity" added to the Act by BCRA. 2 U.S.C. 431(20)(A)(iii), 11 CFR 100.24. A public communication that refers to a clearly identified Federal candidate, and "that promotes or supports * * * or attacks or opposes" the candidate or his or her opponent is one type of Federal election activity. The phrase "promote or support, or attack or oppose" is also the key component of the alternative statutory definition of "electioneering communication." See 2 U.S.C. 434(f)(3)(A)(ii).

The content standards set out in proposed paragraph (c) would apply to any person who or which pays for a communication, including political party committees. See proposed 11 CFR 109.37(a)(2), discussed below, which would cover coordination of communications paid for by political party committees. The Commission seeks comment on whether, in the context of coordination, communications paid for by political party committees should be analyzed under different or additional content standards. For example, should the promote-or-support or attack-or-oppose content standard set out in Alternative B apply only to communications paid for by political party committees, and not to other persons? Should it be the only content standard applicable to communications paid for by political party committees?

Alternative C

The third alternative, labeled "Alternative C" in the proposed rules, would represent a new approach. This possible content standard would attempt to focus as much as possible on the face of the public communication or on facts on the public record. This latter point is important. The intent would be to require as little characterization of the meaning or the content of communication, or inquiry into the subjective effect of the communication on the reader, viewer, or listener as possible. See *Buckley v. Valeo*, 424 U.S.

1, 42-44 (1975). For example, it should not require inquiry into whether the communication "garners or diminishes support" for the candidate or was designed to urge the public to elect a certain candidate or party. Cf. AO 1984-15 and 1985-14 (the former "electioneering message" standard). Alternative C would be applied by asking if certain things are true or false about the face of the public communication or with limited reference to external facts on the public record.

The proposed content standard would consist of a test based on three factors. If the public communication satisfies all three factors of the test, it would be deemed to satisfy the content standard.

The first factor would be proximity in time to a Federal election. Proposed paragraph (c)(4)(i) would require that the public communication must be made 120 days or fewer before either a primary election or a general election in which a Federal candidate appears on the ballot. The 120-day time-frame would be borrowed from 2 U.S.C. 431(20)(A)(i) (see 11 CFR 100.24(b)(1)), and it would have several advantages. First, it would be a "bright-line" rule. Second, it would focus the regulation on activity reasonably close to an election, but not so distant from the election as to implicate political discussion at other times. The Commission seeks comment on what, if any, regulation should apply more than 120 days from an election in this context.

The second factor would relate to the intended audience of the public communication. Proposed paragraph (c)(4)(ii) would provide that a public communication must be "directed to voters in the jurisdiction of the clearly identified Federal candidate." For example, a public communication that otherwise makes express statements about promoting or attacking Representative X or Senator Y for their stance on the "X-Y Bill" would not satisfy this requirement if it were only broadcast in Washington, DC, and not in either member's district or State. For purposes of this paragraph, "jurisdiction" would mean a member of Congress' district, the State of a U.S. Senator, and the entire United States for the President and Vice President in the general election or before the national nominating convention.

The third factor, which would be in paragraph (c)(4)(iii), would focus on public communications that are specifically linked to a clearly identified candidate. This factor would look to whether the public communication, on its face, makes express statements about the record or position or views on an

issue, or the character, or the qualifications or fitness for office, or party affiliation of a clearly identified candidate. If this factor is satisfied, in a context where the factors in proposed paragraphs (c)(4)(i) and (ii) are also satisfied, the combination of these factors would lead to the conclusion that the public communication satisfies the content standard.

The Commission seeks comment on whether the third factor in Alternative C should be deleted from this proposed content standard. By deleting the third factor, the resulting content standard would resemble the "electioneering communication" content standard in proposed paragraph (c)(1), but with a broader time frame (120 days compared with 30 or 60 days) and with a different "targeting" requirement. Eliminating the third factor from Alternative C would allow for coordination to be established in the case of a communication that does not refer to a candidate's position on an issue, but rather refers specifically to a candidate along with his or her party's position on the issue or with the stand of another politician on the issue.

The Commission notes that most of the proposed content standards would require that a communication refer to a clearly identified candidate. The Commission seeks comment on whether a person whose interactions with a political party committee satisfy the conduct standard, and who pays for a communication that merely says "Vote Democratic" or "Vote Republican," should be deemed to have made a coordinated communication, even though no specific candidate is mentioned. Should proposed 11 CFR 109.21(c) include a content standard that would cover this type of communication?

D. Conduct Standards

Proposed paragraph (d) of section 109.21 would list special types of conduct that would satisfy the "conduct standard" of the proposed, three-part coordination formula. Under the proposed rules, if one of these types of conduct is present, and the other requirements described in paragraphs (a) and (c) are satisfied, the communication would not be made "totally independently" from the candidate or party committee, see *Buckley*, 424 U.S. at 47, and thus would be coordinated. The Commission emphasizes that the conduct standards in proposed paragraph (d) would only apply if the communication in question also satisfies one or more of the "content standards" in proposed paragraph (c) of section 109.21. The introductory sentence of proposed

paragraph (d) would implement a Congressional mandate in BCRA that the coordination regulation not require "agreement or formal collaboration." Pub. L. 107-155, sec. 214(c) (March 27, 2002); see more complete discussion below.

1. Request or Suggestion

Under the Act, as amended by BCRA, an expenditure made by any person at the "request or suggestion" of a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing is a contribution to the candidate or political party committee. 2 U.S.C. 441a(a)(7)(B)(i), (ii). The first proposed conduct standard, in proposed 11 CFR 109.21(d)(1), would implement this "request or suggestion" statutory language, which would have two prongs. Satisfying either prong would satisfy the proposed conduct standard.

The first prong, in proposed paragraph (d)(1)(i), would be satisfied if the person creating, producing, or distributing the communication does so at the request or suggestion of a candidate, authorized committee, political party committee, or agent of any of the foregoing. The *Buckley* court originally drew on the 1974 House and Senate reports accompanying the 1974 Amendments to the Act when it upheld language in that Act that distinguished a communication made "at the request or suggestion" of the candidate or political party committee from those that are made "totally independently from the candidate and his campaign." *Buckley*, 424 U.S. at 47 (citing H.R. Rep. No. 93-1239, p. 6 (1974) and S. Rep. No. 93-689, p. 18 (1974)). A "request or suggestion" is therefore a form of coordination under the Act, as approved by *Buckley*. A request or suggestion encompasses the most direct form of coordination, given that the candidate or political party committee communicates desires to another person who effectuates them.

The Commission notes that this provision, for example, would not apply to general appeals for support, such as a speech at a campaign rally, but, in appropriate cases, would apply to requests or suggestions to specific individuals or small groups for the creation, production, or distribution of communications.

The second prong of the proposed "request or suggestion" conduct standard (proposed paragraph (d)(1)(ii)) would be satisfied if a person paying for the communication suggests the creation, production, or distribution of the communication to the candidate, authorized committee, political party

committee, or agent of any of the foregoing, and the candidate or political party committee assents to the suggestion. This second prong of the proposed conduct standard would be intended to prevent circumvention of the statutory "request or suggestion" language (2 U.S.C. 441a(a)(7)(B)(i), (ii)) by, for example, the expedient of implicit understandings that a candidate or political party committee never formally requests or suggests a communication, but nonetheless creates the expectation that the suggestion should be made by a person paying for the communication.

The requirement of assent would limit the reach of the proposed regulation. A candidate or a political party committee would have accepted an in-kind contribution only if there is assent to the suggestion; by rejecting the suggestion, the candidate or political party committee may unilaterally avoid any coordination. The Commission requests comments on whether "express" assent should be required. Should the rule cover situations where assent is implied, and if so, how?

As discussed above, the *Buckley* Court expressly recognized a request or suggestion by a candidate as a direct form of coordination resulting in a contribution. *Buckley*, 424 U.S. at 47. The Commission seeks comment on whether this unique nature of requests or suggestions by candidates or political party committees indicates that such conduct should be handled differently under the proposed coordination regulations. Specifically, should a request or suggestion for a communication by a candidate or political party committee be viewed as a special case, and as sufficient, in and of itself and without reference to a "content standard," to establish coordination?

2. Materially Involved in Decisions

The second conduct standard proposed 11 CFR 109.21(d)(2), would address situations in which a candidate, authorized committee, or a political party committee is "materially involved in decisions" regarding specific aspects of a public communication paid for by someone else. Those specific aspects would be listed in proposed paragraphs (i) through (vi) of paragraph (d)(2): (i) The content of the communication; (ii) the intended audience; (iii) the means and mode of the communication; (iv) the specific media outlet used; (v) the timing or frequency of the communication; or (vi) the size or prominence of a printed communication or duration of a communication on a

television, radio, or cable station or by telephone.

In this proposed regulation, "material" would have its ordinary legal meaning, which is "important; more or less necessary; having influence or effect; going to the merits." *Black's Law Dict.* (6th ed. 1990) p. 976. Thus, the term "materially involved in decisions" would not be intended to encompass all interactions, only those which are important to the communication. In addition to the materiality of the candidate's involvement in decisions regarding the communication under proposed paragraph (d)(3) through (d)(5), the Commission would focus on the materiality of the information conveyed, and its specific use.

A candidate or political party committee would be considered "materially involved" in the decisions enumerated in paragraph (d)(2) if either shares material information about campaign plans, projects, activities, or needs with the person making the communication. Likewise, a candidate or political party committee would be "materially involved in decisions" if the candidate, political party committee, or agent conveys approval or disapproval of the other person's plans. The Commission notes, however, that as with the "request or suggest" standard, the "materially involved" standard would not apply to general appeals for support, such as a speech, but specifically to the creation, production, or distribution of communications.

The Commission invites comments on the wording and scope of this standard. In particular, the Commission welcomes comment on whether, and if so, how, the phrases "materially involved" and "decisions" should be further defined in the rules.

3. Substantial Discussion

In BCRA, Congress also directed the Commission to address "payments for communications made by a person after substantial discussion about the communication with a candidate or political party." Pub. L. 107-155, sec. 214(c)(4) (March 27, 2002). Under proposed paragraph (d)(3) of 11 CFR 109.21, a communication would meet the conduct standard if it is created, produced, or distributed after one or more substantial discussions between the person paying for the communication, or the person's agents, and the candidate clearly identified in the communication, his or her authorized committee, his or her opponent, or the opponent's authorized committee, a political party committee, or their agents. Proposed paragraph (d)(3) would explain that a "discussion"

would be “substantial” if information about the plans, projects, activities, or needs of the candidate or political party committee that is material to the creation, production or distribution of the communication is conveyed to a person paying for the communication. “Discuss” would have its plain and ordinary meaning, which the Commission understands to mean an interactive exchange of views or information. “Material” would have the meaning explained above in the context of proposed paragraph (d)(2) of section 109.21 (“material involvement”). In other words, the substantiality of the discussion would be measured by the materiality of the information conveyed in the discussion. The Commission seeks comments as to whether additional explanation or examples should be provided to further refine the term “substantial discussion.”

4. *Employment of Common Vendor*

In BCRA, Congress required the Commission to address “the use of a common vendor” in the context of coordination. Pub. L. 107–155, sec. 214(c)(2) (March 27, 2002). Proposed paragraph (d)(4) of section 109.21 would create a conduct standard to implement this Congressional mandate. It would explain what a common vendor is, and provide that the use of a common vendor in the creation, production, or distribution of a communication satisfies the conduct standard if three conditions are all met.

The first condition, in proposed paragraph (d)(4)(i), would be that the person paying for the communication, or the agent of such a person, must contract with, or employ, a “commercial vendor” to create, produce, or distribute the communication. The term “commercial vendor” is defined in the Commission’s pre-BCRA regulations as “any person[] providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease, or provision of those goods or services.” 11 CFR 116.1(c). Thus, this standard would only apply to a vendor whose usual and normal business includes the creation, production, or distribution of communications, and would not apply to the activities of persons who do not create, produce, or distribute communications as a commercial venture.

The second condition, in proposed paragraph (d)(4)(ii), would be that the commercial vendor must have a previous or current relationship with the candidate or political party committee that puts the commercial vendor in a position to acquire material

information about the plans, projects, activities, or needs of the candidate or political party committee. This previous or current relationship would be defined in terms of nine specific services related to campaigning and campaign communications, which would be enumerated in proposed paragraphs (d)(4)(ii)(A) through (I). Note that these services would have to have been rendered during the current election cycle. Such a previous or current relationship, as defined, would put the “common vendor” in a position to convey material information about the plans, projects, activities, or needs of the candidate or political party committee to the person paying for the communication.

The proposed regulation refers to the current election cycle as a temporal limit on the operation of the regulation. “Election cycle” would have the meaning defined in 11 CFR 100.3. The Commission seeks comment on whether a different time period, such as a fixed two-year period, would more accurately align the proposed rule with existing campaign practices. Or, should the time limit be the “the current election cycle, but not more than the previous two years of that election cycle”?

The third condition, in proposed paragraph (d)(4)(iii), would require that the commercial vendor make use of or convey material information about, the plans, projects, activities, or needs of the candidate or political party committee, or material information used by the commercial vendor in serving the candidate or political party committee, to the person paying for the communication. This requirement would be intended to encompass situations in which the vendor assumes the role of a conduit of information between a candidate or political party committee and the person making or paying for the communication, as well as situations in which the vendor makes use of the information received from the candidate or political party committee without actually transferring that information to another person.

The Commission seeks comment about whether the conduct standard in proposed paragraph (d)(4) would adequately address the Congressional mandate in section 214(c)(2) of BCRA. The Commission also seeks comment on whether purchasing advertising time slots for television, radio, or other media should be added to the list of common vendor services covered in proposed paragraph (d)(4)(ii).

5. *Former Employee/Independent Contractor*

In BCRA, Congress required the Commission to address “persons who previously served as an employee of” a candidate or political party committee in the context of coordination. Pub. L. 107–155, sec. 214(c)(3) (March 27, 2002). Proposed paragraph (d)(5) of section 109.21 would create a conduct standard to implement this Congressional mandate.

Proposed paragraph (d)(5) would apply to communications paid for by a person who was previously an employee or an independent contractor of a candidate, authorized committee, or political party committee, or by the employer of such a person. Note that this employment or independent contractor relationship would have to exist during the current election cycle, as a temporal limit on the operation of the regulation. “Election cycle” would have the meaning defined in 11 CFR 100.3. As discussed above with regard to proposed paragraph (d)(4) on common vendors, the Commission requests comments on whether this time period should be a fixed two-year period, or the same election cycle, but not more than two years.

This proposed conduct standard would expressly extend to a person who had previously served as an “independent contractor” of a candidate or political party committee to preclude circumvention of the rule by the expedient of characterizing an “employee” as an “independent contractor” where the characterization makes no difference in the person’s relationship with the candidate or political party committee. This proposed coordination standard would also apply to the employer of a person who was an employee or independent contractor of a candidate, authorized committee, or political party committee. The Commission interprets the Congressional intent behind section 214(c)(3) of BCRA to encompass situations in which former employees, who by virtue of their former employment have been in a position to acquire material information about the plans, projects, activities, or needs of the candidate or political party committee, may subsequently use that information or convey it to a person paying for a communication.

Proposed paragraph (d)(5) would require that the former employee actually make use of, or convey material information about, the plans, projects, activities, or needs of the candidate or political party committee, or material information used by the former

employee in serving the candidate or political party committee, to the person paying for the communication. As with the proposed conduct standard covering common vendors, this requirement would be intended to encompass both situations in which the former employee assumes the role of a conduit of information and situations in which the former employee makes use of the information but does not share it with the person who is paying for the communication.

The Commission proposes this conduct standard to address what it understands to be Congress' primary concern, which is a situation in which a former employee of a candidate goes to work for a third party that pays for a communication that promotes or supports the former employer/candidate or attacks or opposes the former employer/candidate's opponent. The conduct standard, as proposed, does not require that the former employee act under the continuing direction or control of, at the behest of, or on behalf of, his or her former employer. This is because a former employee who acts under such circumstances is a present agent, and would presumably be regulated as an agent, not as a former employee. To give effect to the statutory language that mandates the Commission's coordination regulations address "former employees" (*see* Pub. L. 107-155, sec. 214(c)(3)) the Commission assumes that a "former employee," as that term is used in the statute, must be different from "agent."

The Commission seeks comment on whether a requirement of continuing direction or control by the former employer/candidate should be added to the proposed conduct standard. Consider, for example, an employee of a candidate in a contested primary who leaves the employment of that candidate to work for a third-party organization that makes a communication satisfying one or more of the proposed content standards. Under the proposed conduct standard, that third-party organization could be found to make an in-kind contribution. Assuming that the former employee is not acting under the continuing direction or control of, at the behest of, or on behalf of, his or her former employer, it can be argued that the third-party organization is making an independent expenditure or a non-coordinated disbursement for an electioneering communication, albeit with the windfall of the former employee's knowledge. Should the regulation provide that the third-party organization does not make an in-kind contribution in this specific circumstance?

The Commission also seeks comment on a related situation illustrated by the following example. Consider an employee, disgruntled or otherwise, of a candidate in a contested primary who leaves the employment of that candidate to work for a third-party organization that makes a communication satisfying one or more of the proposed content standards. Under the proposed conduct standard, that third-party organization could be found to make an in-kind contribution. But suppose the third-party organization uses information gained by the employee to run ads critical of the former employer or that favor the opponent of the former employer? Assume also that the third-party organization has no contact with the opponent, his campaign or any agent of the opponent. Should the Commission consider those communications to be in-kind contributions to the candidate who is the intended beneficiary? Or, assuming that the communication would otherwise qualify as an independent expenditure or electioneering communication, should the Commission merely consider this third-party communication to be either an independent expenditure or a non-coordinated disbursement for an electioneering communication?

The Commission seeks comment about whether this proposed conduct standard should be extended to volunteers, such as "fundraising partners," who by virtue of their relationship with a candidate or a political party committee, have been in a position to acquire material information about the plans, projects, activities, or needs of the candidate or political party committee.

E. No Requirement of Agreement or Formal Collaboration

When Congress, in BCRA, required the Commission to promulgate new regulations on coordinated communications, it specifically barred any regulatory requirement of "agreement or formal collaboration" to establish coordination. Pub. L. 107-155, sec. 214(c) (March 27, 2002). The proposed regulation at 11 CFR 109.21(e) would explicitly implement that Congressional mandate. Although Congress did not define this term, the Commission notes that earlier versions of BCRA stated that "collaboration or agreement" would not be required to show coordination. *See* S. 27, 107th Cong., 1st Sess. (as passed by the Senate and transferred to the House, 478 Cong. Rec. H2547 (May 22, 2001)). The phrase "agreement or formal collaboration" reached its final form through a

substitute amendment to H.R. 2356 offered by Representative Shays. *See* H. Amdt. 417, 478 Cong. Rec. H393 through H492 (February 13, 2002).

The Commission would therefore attach significance to the addition of the term "formal" as it modifies the term "collaboration." Thus, the conduct standards proposed in paragraph (d) of section 109.21 would require some degree of collaboration. However, proposed paragraph (e) would state that this collaboration need not be "formal," in the sense of being planned or systematically approved or executed.

Under proposed paragraph (e), the word "agreement" would be explained as well. A finding of coordination under proposed section 109.21 would not require a showing of a mutual understanding or meeting of the minds as to all, or even most, of the material aspects of a communication. Even a minimal amount of agreement would mean the communication would not be made "totally independently" from the candidate or party. *See Buckley*, 424 U.S. at 47. In the case of a request or suggestion under proposed paragraph (d)(1) of section 109.21, agreement is not required at all.

F. Should Exceptions Apply to the Content and Conduct Standards?

Proposed 11 CFR 109.21 does not include any exceptions. The Commission seeks comment on whether exceptions to the proposed content or conduct standards should be included in the final rule. For example, should there be an exception to the content standards for communications that refer to the "popular name" of a bill or law that includes the name of a Federal candidate who was a sponsor of the bill or law? Should there be an exception to the conduct standards for a candidate's response to an inquiry about his or her position on legislative or policy issues?

IV. Proposed 109.22 Who Is Prohibited From Making Coordinated Communications?

The Commission proposes a separate section to make it clear that any person who is otherwise prohibited from making a contribution or expenditure is also prohibited from making a coordinated communication. The Commission seeks comment on whether it is necessary to include this separate section.

Proposed Subpart D of Part 109— Special Provisions for Political Party Committees

I. Proposed 11 CFR 109.30 How are Political Party Committees Treated for Purposes of Coordinated and Independent Expenditures?

National, State, and subordinate committees of political parties may make expenditures up to prescribed limits in connection with the general election campaigns of Federal candidates without counting such expenditures against the committees' contribution limits. See 2 U.S.C. 441a(d). These expenditures are commonly referred to as "coordinated party expenditures." Political party committees, however, need not demonstrate actual coordination with their candidates to avail themselves of this additional spending authority.

In BCRA, Congress sets certain new restrictions on these "coordinated party expenditures" and related restrictions on political party committee independent expenditures. There are also certain new restrictions on transfers and assignments of coordinated party expenditure authorizations between party committees. 2 U.S.C. 441a(d)(4)(A) through (C).

The Commission proposes an introduction to subpart D of part 109 that would state how political party committees are treated for purposes of coordinated and independent expenditures. Proposed section 109.30 would first clarify that party committees may make independent expenditures subject to the provisions of proposed sections 109.35 and 109.36. (See discussion below.) Second, proposed section 109.30 would explain that political party committees may support candidates with "coordinated party expenditures," a term that would be defined at proposed 11 CFR 109.31, and would state that these coordinated party expenditures are subject to limits that are separate from and in addition to the contribution limits at 11 CFR 110.1 and 110.2.

II. Proposed 11 CFR 109.31 What Is a "Coordinated Party Expenditure"?

FECA provides a special expenditure authority for coordinated party expenditures that is available only to certain political party committees. 2 U.S.C. 441a(d). The Commission would, in proposed section 109.31, define "coordinated party expenditures" to include payments made by a national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, for something of

value in connection with the general election campaign of a candidate. Proposed section 109.31 would also introduce the term "party coordinated communication" (which would be defined in proposed section 109.37) as an example of something of value for which political party committees may make a coordinated party expenditure.

III. Proposed 11 CFR 109.32 What Are the Coordinated Party Expenditure Limits?

The Commission proposes to move the coordinated party expenditure limits found at pre-BCRA 11 CFR 110.7(a) and (b) to proposed section 11 CFR 109.32. This new section would retain the basic organizational structure of paragraphs (a) and (b) of pre-BCRA section 110.7.

The Commission would set forth in proposed paragraph (a), in amended fashion, the coordinated party expenditure limit for the national committee of a political party for presidential elections that appears at pre-BCRA section 110.7(a). Because political party committees may also make independent expenditures, *Colorado I*, 518 U.S. at 618, the Commission would clarify that the "expenditures" referred to in proposed section 109.32 are "coordinated party expenditures." This change also appears in proposed paragraphs (a)(1), (2), (3), and (4) of section 109.32. In addition, proposed paragraph (a)(2), setting out the coordinated party expenditure limit at two cents multiplied by the voting age population of the United States, would state that this limit shall be increased in accordance with 11 CFR 110.17, which would amend pre-BCRA 11 CFR 110.9(c). See *Notice of Proposed Rulemaking, Contribution Limitations and Prohibitions*, 67 FR 54366 (August 22, 2002.) In addition, proposed paragraph (a)(2) of section 109.32 would refer to the term "voting age population" at proposed 11 CFR 110.18, discussed below.

Further, proposed 11 CFR 109.32(a)(4), to which pre-BCRA 11 CFR 110.7(a)(6) would be moved, would provide that coordinated party expenditures on behalf of presidential candidates do not count against the candidate's expenditure limitations under 11 CFR 110.8. Proposed paragraph (a)(4) of section 109.32 would also state that the national party committee may make such expenditures and may assign their spending authority to other political party committees to do so under proposed section 109.33, which is discussed below.

Proposed paragraph (b) would set forth, and make minor changes to, the regulations, pre-BCRA, at 11 CFR

110.7(b) addressing coordinated party expenditure limits of the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, for Federal elections other than presidential elections. As in proposed paragraph (a) above, proposed paragraph (b) would specify that the "expenditures" referred to in paragraphs (b)(1), (2), and (4) are coordinated party expenditures. In addition, proposed paragraph (b)(2), setting out the coordinated party expenditure limits of two cents multiplied by the voting age population of the United States and dollar figures of \$10,000 and \$20,000, would be subject to proposed paragraphs (b)(3) and (b)(4) regarding inflation adjustments and the relationship with contribution limits.

IV. Proposed 11 CFR 109.33 May a Political Party Committee Assign Its Coordinated Party Expenditure Authority to Another Political Party Committee?

Proposed 11 CFR 109.33 would continue the pre-BCRA rule permitting assignment of coordinated party expenditure authority between political party committees by consolidating the authorizing provisions found in the pre-BCRA regulations at 11 CFR 110.7(a)(4) and (c). Such assignments, however, would be prohibited under certain circumstances in which the assigning political party committee had made coordinated party expenditures (using part of the spending authority) and the intended assignee political party committee had made or intends to make independent expenditures with respect to the same candidate during an election cycle. See 2 U.S.C. 441a(d)(4)(C) and proposed 11 CFR 109.35(c).

Proposed paragraph (a) of section 109.33 would also restate the Commission's longstanding policy that a political party committee with authority to make coordinated party expenditures may assign all or part of that authority to other political party committees, and that this interpretation extends to both national and State committees of political parties. See *Campaign Guide for Political Party Committees* at p.16 (1996). Proposed paragraph (a) of section 109.33 would also state that coordinated party expenditure authority may be assigned only to other political party committees. See 2 U.S.C. 441a(d), and pre-BCRA 11 CFR 110.7(a)(4), which indicates that coordinated expenditures may be made "through any designated agent, including State and subordinate party committees." The Commission makes this change to

preclude confusion, and possible circumvention of the restrictions on transfers and assignments between political party committees found in BCRA. 2 U.S.C. 441a(d)(4)(B), (C).

Proposed paragraph (a) would provide that whenever a political party committee authorized to make coordinated party expenditures assigns another political party committee to use part or all of its spending authority, the assignment must be in writing, must specify a dollar amount, and must be made before the assigned party committee actually makes the coordinated party expenditure. *See Campaign Guide for Political Party Committees* at p.16 (1996). This would apply to both national and State party committees.

Proposed paragraph (b) of section 109.33 would continue the pre-BCRA rule in 11 CFR 110.7(c) that, for purposes of the coordinated spending limits, a State committee includes subordinate committees of the State committee. Proposed paragraph (b) of section 109.33 would add district and local political party committees (*see* 11 CFR 100.14(b)) to the extent that they are assigned authority to make coordinated party expenditures by another political party committee.

Finally, proposed paragraphs (b)(1) and (2) of section 109.33 would contain the pre-BCRA rule in 11 CFR 110.7(c)(1) and (2) setting out State committees' methods of administering the coordinated party expenditure authority.

The Commission seeks comments on whether to require political party committees to attach copies of written assignments to reports they file with the Commission, or to fax or e-mail them if they are electronic filers.

V. Proposed 11 CFR 109.34 *When May a Political Party Committee Make Coordinated Party Expenditures?*

Proposed 11 CFR 109.34 would continue the pre-BCRA rule in 11 CFR 110.7(d) permitting a political party committee to make coordinated party expenditures in connection with the general election campaign before or after its candidate has been nominated. All pre-nomination coordinated expenditures would continue to be subject to the coordinated party expenditure limitations, whether or not the candidate on whose behalf they are made receives the party's nomination.

VI. Proposed 11 CFR 109.35 *What are the Restrictions on a Political Party Committee Making Both Independent Expenditures and Coordinated Party Expenditures in Connection with a Candidate's Campaign?*

Under BCRA, Congress prohibits political party committees, under certain conditions, from making coordinated party expenditures, independent expenditures, and transfers and assignments to other political party committees. 2 U.S.C. 441a(d)(4). Congress plainly intended to combine certain political party committees into a collective entity or entities for purposes of these prohibitions. 2 U.S.C. 441a(d)(4)(B). The statutory language and legislative history raise a significant threshold question of statutory interpretation: Whether an entire, nationwide political party is to be treated as a single entity or as separate national and State political party entities for the purposes of these restrictions. The Commission would adopt the latter approach in proposed 11 CFR 109.35. This interpretation, in turn, raises additional issues regarding which political party committees are to be included in certain defined groups of political party committees for the purposes of the new restrictions in BCRA.

A. Applicability of Prohibitions

1. Statutory Interpretation

Congress provided that for the purposes of these new prohibitions, shall "all political committees established and maintained by a national political party (including all Congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee." 2 U.S.C. 441a(d)(4)(B).

One reading of this statutory provision would combine all committees established and maintained by a political party at all levels into "a single political committee" for the purposes of the prohibitions discussed below. An alternative reading would provide that all committees established and maintained by a national political party, including Congressional campaign committees, would be "a single political committee," while all committees established and maintained by a given State political party, including any subordinate committee of a State committee, would be another "single political committee." The Commission notes that the Senate sponsors of BCRA stated that all

national and State committees of a political party are considered to be one entity for the purposes of the prohibitions codified at 2 U.S.C. 441a(d)(4). *See* 148 Cong. Rec. S1993 (daily ed. March 18, 2002) (section-by-section analysis included by Sen. Feingold in the Record); 148 Cong. Rec. S2144 (daily ed. March 20, 2002) (statement of Sen. McCain).

One of the new prohibitions, regarding political party committee transfers and assignments, would appear to imply that political parties are inherently divisible into different groups of political committees. *See* 2 U.S.C. 441a(d)(4)(C). This is because, without more than one group of political party committees, no transfers or assignments *between* political party committee groups could occur. In other words, if there were only a single group, there could be no transfers or assignments and thus this provision would be without effect. *See Colautti v. Franklin*, 439 U.S. 379, 392 (1979) (it is an "elementary canon of construction that a statute should be interpreted so as not to render one part inoperative"). Therefore, to give the transfers and assignments provision effect, the Commission believes that BCRA may contemplate multiple groups of political party committees. *See* 2 U.S.C. 441a(d)(4). The Commission seeks comment on this interpretation of the statute.

2. Proposed Rule

In light of the foregoing statutory interpretation, proposed 11 CFR 109.35 would contemplate multiple political party committee groups. Proposed paragraphs (a)(1) and (a)(2) would apply this interpretation by combining all political committees established and maintained by a national political party into one group and all political committees established and maintained by a given State political party into another group. *See* 2 U.S.C. 441a(d)(4)(B). The Commission would use these "political party groups" to implement the prohibitions discussed below.

Under proposed paragraph (a)(1), the national "political party group" would combine the national committee of a given political party, all Congressional campaign committees of that political party, and all political committees established, financed, maintained, or controlled by any of the foregoing. The Commission notes that the phrase, shall "established, financed, maintained, or controlled" would differ from the statutory phrase, "established and maintained." The proposed formulation, however, would be

consistent with, and serve the same purposes as, the analogous anti-proliferation provision in FECA. 2 U.S.C. 441a(a)(5). Under section 441a(a)(5), for the purposes of the contribution limitations, all contributions made by political committees "established or financed or maintained or controlled" by the same person or entity shall be considered to have been made by a single political committee. 2 U.S.C. 441a(a)(5).

A State "political party group" would combine the State committee of a given political party in a given State, all subordinate committees of that State committee, and all district or local committees of that political party within that State that meet the definition of "political committee" under 11 CFR 100.5. See proposed 11 CFR 109.35(a)(2). Subordinate committees are expressly mentioned in the statute. 2 U.S.C. 441a(d)(4)(B).

The Commission notes that the prohibitions discussed below would appear to apply to district or local committees because those prohibitions apply to any "committee of a political party." See 2 U.S.C. 441a(d)(4)(A) and (C). The regulatory definition of district and local committee includes the requirement that the organization be part of the "official party structure." 11 CFR 100.14(b).

The Commission notes that the phrase "established, financed, maintained, or controlled" would differ from the statutory phrase "established and maintained." See 2 U.S.C. 441a(d)(4)(B). The proposed rule would be based on the Commission's definitions of "State committee" and "subordinate committee" at 11 CFR 100.14(a) and (c), which both use the phrase "established, financed, maintained, or controlled," given that both would be included in the proposed State political party group.

The Commission seeks comment on the proposed combinations of committees of a political party into a national political party group and into State political party groups. For example, should the State political party group in a given State include district or local committees in that State only to the extent that the State party exercises functional control over them?

B. Prohibition on Certain Coordinated and Independent Expenditures

Congress provided in BCRA that on or after the date on which a political party nominates a candidate, no "committee of the political party" may make: (1) Any coordinated expenditure under 2 U.S.C. 441a(d) with respect to the candidate during the election cycle at any time after "it" makes any

independent expenditure with respect to the candidate during the election cycle; or (2) any independent expenditure with respect to the candidate during the election cycle at any time after "it" makes any coordinated expenditure under 2 U.S.C. 441a(d) with respect to the candidate during the election cycle. 2 U.S.C. 441a(d)(4)(A).

Arguably, the use of the pronoun "it" in the statute is ambiguous in that it could be construed to refer either to the entire political party or to only a committee within the party. However, as explained above, the Commission would interpret the statute in terms of national and State "political party groups." In the terms of this proposed interpretation, "it" would be construed to mean a given "political party group." Thus, the Commission would interpret the prohibition on making both independent and coordinated expenditures with respect to a given candidate after nomination as applying to the "political party groups" defined above, and not to the party as a whole.

The language of proposed paragraph (b) would generally track the statutory language, but would employ new terms in places to clarify its application. Proposed 11 CFR 109.35(b)(1) would prohibit a political committee within a political party group from making any post-nomination coordinated party expenditure under section 109.32 in connection with the general election campaign of a candidate at any time after any committee within that political party group makes any post-nomination independent expenditure with respect to that candidate. 2 U.S.C. 441a(d)(4). Proposed paragraph (b)(2) would prohibit a political committee within a political party group from making any post-nomination independent expenditure with respect to a candidate at any time after any political committee within that political party group makes any post-nomination coordinated expenditure under section 109.32 in connection with the general election campaign of that candidate. As soon as a political committee within a political party group makes an independent expenditure or a coordinated party expenditure with respect to a candidate after nomination, all political committees within that political party group are bound during the remainder of the election cycle to whichever type of expenditure the first political committee makes. 2 U.S.C. 441a(d)(4).

The restrictions in proposed paragraphs (b)(1) and (b)(2) would apply "during the remainder of the election cycle." See 2 U.S.C. 441a(d)(4)(A). This would clarify that proposed paragraph

(b) would apply to exclusively post-nomination events through the end of the election cycle. The prohibitions would apply to political committees within a political party group upon the first post-nomination independent or coordinated expenditure by a committee within that political party group and would run until the end of the election cycle.

The Commission notes that coordinated party expenditures and independent expenditures made by a political committee within a political party group *before* nomination would have no bearing on the application of proposed paragraph (b).

Under proposed paragraph (d)(2) of section 109.35, the term "election cycle" has the meaning in 11 CFR 100.3(b), except that the election cycle ends on the date of the general election runoff, if one is held. For purposes of 11 CFR 109.35, "election cycle" would thus begin on the first day following the date of the previous general election for the office or seat which the candidate seeks and ending on the date on which the general election for the office or seat that the individual seeks is held, or on the date of any general election runoff is held. Since proposed paragraph (b) of section 109.35 would only apply after nomination, see 2 U.S.C. 441a(d)(4), the "election cycle" period for this provision would effectively extend from nomination through the general election or general election runoff. Finally, the Commission notes that the political party of a candidate running in a general election runoff would not be permitted an additional coordinated party expenditure authority with respect to that candidate for the runoff. See *Democratic Senatorial Campaign Committee v. FEC*, No. 93-1321 (D.D.C., November 14, 1994.)

In proposed paragraph (d)(1), the Commission would define when independent expenditures that are made by a political party committee are "with respect to" a candidate, for purposes of section 109.35. Independent expenditures made "with respect to" a candidate would include those independent expenditures expressly advocating the defeat of any other candidate seeking nomination for election, or election, to the Federal office sought by that party's candidate. The Commission's proposed definition would facilitate the appropriate coverage, and help avoid circumvention, of the prohibitions at proposed paragraph (b) of section 109.35 discussed above and proposed paragraph (c) of section 109.35 discussed below. See proposed 11 CFR 100.16 (definition of express advocacy

that includes communications expressly advocating the “election or defeat” of a clearly identified candidate).

C. Prohibition on Certain Transfers and Assignments

Congress provided in BCRA that a “committee of a political party” that makes coordinated party expenditures with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated party expenditures under 2 U.S.C. 441a(d) to, or receive a transfer of funds from, a “committee of the political party” that has made or intends to make an independent expenditure with respect to the candidate. 2 U.S.C. 441a(d)(4)(C). Congress apparently intended to prevent a circumvention of the prohibition against making both coordinated and independent expenditures by means of transfers or assignments. On its face, this prohibition applies only to a “committee of a political party” that is making coordinated party expenditures with respect to a candidate. Although Congress prohibits transfers in either direction between a party committee making coordinated party expenditures and a political party committee making or intending to make independent expenditures with respect to the same candidate, Congress prohibits assignments of coordinated party expenditure spending authority only from the political party committee making coordinated expenditures to a political party committee making or intending to make independent expenditures, and not in the other direction.

Proposed paragraph (c) of 11 CFR 109.35 would generally track the statutory language in 2 U.S.C. 441a(d)(4)(C), employing the terms defined in proposed section 109.35. It would prohibit transfers of funds and some assignments of authority to make coordinated party expenditures between political committees in different political party groups after the occurrence of two events: (1) A political committee within a political party group makes a coordinated party expenditure in connection with the general election campaign of a candidate, and (2) a political committee within another political party group makes an independent expenditure or declares its intention to do so with respect to the same candidate. After these two events take place, no political committee within one political party group would be able to make any transfers to, or receive any transfers from, any political committee within the other political party group during the remainder of the

election cycle. Also, after these two events take place, no political committee within a political party group electing to make coordinated party expenditures would be able to assign authority to make coordinated party expenditures in connection with the general election campaign of a candidate to any political committee within the political party group electing to make independent expenditures during the remainder of the election cycle. This proposed provision would not, however, prohibit transfers and assignments between committees *within* a given political party group.

The Commission seeks comment on the approach in proposed 11 CFR 109.35(c). Should the Commission set forth rules requiring party committees to keep track of the expenditure activities of other party committees, within the same or another political party group? *Cf.* proposed section 109.33, pre-BCRA 11 CFR 110.7(c), which places responsibility on the State committee to insure that the coordinated party expenditures of the entire party organization are within the limitations.

In proposed 11 CFR 109.35(c), the Commission would replace the statutory phrase “during the election cycle” in the statute with “during the remainder of the election cycle.” *See* 2 U.S.C. 441a(d)(4)(C). As noted above, the transfer prohibitions would only go into effect after the occurrence of the two specific events. Thus, the period during which the prohibitions would apply would start after the occurrence of both events and run until the end of the election cycle.

In contrast to the prohibition on a party committee making both independent and coordinated expenditures with respect to a candidate, that is expressly limited to the post-nomination period, the transfers and assignments provision does not include the same restriction and thus could apply prior to nomination as well as after nomination. *See* 2 U.S.C. 441a(d)(4)(A) and (C); proposed 11 CFR 109.34, which would be renumbered from 11 CFR 110.7(d) (party committees may make coordinated expenditures in connection with the general election campaign before their candidates have been nominated); *see also Colorado I* (involved pre-nomination independent expenditures by a State party committee). Indeed, the Commission’s proposed rules regarding “election cycle” would clarify that the prohibitions in proposed 11 CFR 109.35(c) could take effect prior to nomination. As noted above, “election cycle” begins on the first day following

the date of the previous general election, and may span a two, four, or six year period depending on the office sought, although in practice it would be unusual for the prohibitions of proposed 11 CFR 109.35(c) to go into effect far before the date of nomination. In addition, such prohibitions would only go into effect. After a committee within one political party group made a coordinated party expenditure with respect to the candidate and a committee within another political party group made or intended to make an independent expenditure with respect to the same candidate. *See* proposed 11 CFR 109.35(c).

Comment is sought on the distinction between the post-nomination application of proposed 11 CFR 109.35(b) and the pre- and post-nomination application of proposed 11 CFR 109.35(c). As an alternative approach, is there an interpretation of the transfers and assignments provision in the statute such that the prohibitions would only apply *after* nomination? *See* 2 U.S.C. 441a(d)(4)(C).

Comment is also sought on whether the prohibitions in proposed paragraph (c) should only go into effect after the occurrence of the two specified expenditures. Is there an interpretation of 2 U.S.C. 441a(d)(4)(C) that would restrict transfers and assignments *prior* to a political party group making coordinated expenditures with respect to a candidate and the other political party group making or intending to make independent expenditures with respect to the candidate?

Finally, the Commission notes that it is not at this time proposing specific rules to implement the statutory language “intends to make” an independent expenditure with respect to the candidate. 2 U.S.C. 441a(d)(4)(C). The Commission seeks comment on whether such rules are necessary, and if so, how would they implement the statutory language.

D. Impact of Political Party Committee Activity Carried Out Pursuant to Contribution Limits

2 U.S.C. 441a(d)(4) applies to coordinated party expenditures and to political party committee independent expenditures. Congress did not directly address political party committees’ monetary and in-kind contributions to candidates that are subject to the contribution limits under 2 U.S.C. 441a(a) and 441a(h). *See* 2 U.S.C. 441a(d)(1) (“*Notwithstanding any other provision of law with respect to . . . limitations on contributions*, [political party committees] may make expenditures in connection with the

general election campaign of candidates for Federal office, subject to the limitations contained [in this subsection]" [emphasis added]. See also proposed 11 CFR 109.30, 109.32.

Political party committees may make in-kind contributions to a candidate in the form of party coordinated communications, as addressed in proposed 11 CFR 109.37. The Commission notes that such coordination between political party committee and candidate may compromise the actual independence of any simultaneous or subsequent independent expenditures the political party committee may attempt with respect to that candidate. See *Buckley v. Valeo*, 424 U.S. at 47 (in striking down limits on independent expenditures, the Court described such expenditures as made "totally independently of the candidate and his campaign" [emphasis added]). Comment is sought on this analysis.

E. Transfers under 11 CFR 102.6(a)(1)(ii)

As a result of the enactment of 2 U.S.C. 441a(d)(4) and other provisions from BCRA affecting transfers between political party committees, the Commission proposes to revise 11 CFR 102.6(a)(1)(ii) to clarify the interaction of this section with certain provisions of BCRA. Before BCRA, the Commission permits unlimited transfers between or among national party committees, State party committees and/or any subordinate committees. See pre-BCRA 11 CFR 102.6(a)(1)(ii).

First, in BCRA, Congress provided that a national committee of a political party, including a national Congressional campaign committee of a political party, may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of FECA. 2 U.S.C. 441i(a); see *Explanation and Justification for 11 CFR 300.10(a)*, 67 FR 49122 (July 29, 2002).

Second, in the "Levin Amendment," Congress placed restrictions on how State, district, and local party committees raise "Levin funds" and prohibited certain transfers between political party committees. See 2 U.S.C. 441i(b)(2)(C)(i); *Explanation and Justification for 11 CFR 300.31*, 67 FR 49124 (July 29, 2002).

Third, also in the Levin Amendment, Congress provided that a State, district, or local committee of a political party that spends Federal funds and Levin funds for Federal election activity must raise those funds solely by itself. These

committees may not receive or use transferred funds in contravention of such requirements. 2 U.S.C.

441i(b)(2)(B)(iv); see *Explanation and Justification for 11 CFR 300.34(a) and (b)*, 67 FR 49127 (July 29, 2002).

Fourth, Congress provided in BCRA that a committee of a political party that makes coordinated party expenditures under 2 U.S.C. 441a(d) in connection with the general election campaign of a candidate shall not, during that election cycle, transfer any funds to, assign authority to make coordinated party expenditures under this subsection to, or receive a transfer from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate. 2 U.S.C. 441a(d)(4)(C); see proposed 11 CFR 109.35(c), discussed above.

The Commission proposes the addition of a new opening clause in paragraph (a)(1)(ii) of section 102.6 incorporating these restrictions by reference into the rules regarding the transfer of funds and the use of transferred funds.

VII. Proposed 11 CFR 109.36 Are There Additional Circumstances Under Which a Party Committee Is Prohibited From Making Independent Expenditures?

Prior to the enactment of BCRA, a national committee of a political party was prohibited from making independent expenditures in connection with the general election campaign of a candidate for President. See 11 CFR 110.7(a)(5). In *Colorado I*, the Supreme Court held that political party committees may make independent expenditures, but indicated that its decision involved only Congressional races, and did not address issues that might grow out of the public funding of presidential campaigns. 518 U.S. at 611–612. Of course, not all presidential campaigns are publicly-funded, thus raising an additional category of circumstances not addressed by the Court in *Colorado I*.

However, Congress may have effectively repealed the prohibition at 11 CFR 110.7(a)(5). See 2 U.S.C. 441a(d)(4). Under a new statutory provision, Congress prohibits political party committees from making both post-nomination independent expenditures and post-nomination coordinated expenditures in support of a candidate. See 2 U.S.C. 441a(d)(4)(A). A national party committee could thus make independent expenditures with respect to a candidate after nomination unless the committee had already made post-nomination coordinated

expenditures with respect to that candidate. Because this provision appears to equally apply to party committee expenditures in support of presidential or Congressional candidates, a national party committee would appear able to make independent expenditures with respect to a presidential candidate. Thus, Congress appears to have superseded 11 CFR 110.7(a)(5). Finally, this interpretation appears to apply regardless of whether a presidential candidate accepts public funding. The legislative history of BCRA does not appear to address the issue of prohibitions on independent expenditures by national party committees in connection with presidential elections.

Rather than completely delete the prohibition at 11 CFR 110.7(a)(5), however, the Commission proposes to limit its application to certain limited circumstances in which the national committee of a political party serves as the principal campaign committee or authorized committee of its presidential candidate, as permitted under 2 U.S.C. 432(e)(3)(A)(i) and 441a(d)(2). See 11 CFR 102.12(c)(1) and 9002.1(c). Such a prohibition would be consistent with proposed 11 CFR 100.16(b) (redesignated from pre-BCRA section 109.1(e)) providing that no expenditure by an authorized committee of a candidate on behalf of that candidate shall qualify as an independent expenditure.

Comments are sought on whether the prohibition at pre-BCRA 11 CFR 110.7(a)(5) should be limited to the circumstances identified in proposed 11 CFR 109.36 or whether the prohibition should be removed completely.

VIII. Proposed 11 CFR 109.37 What Is a "Party Coordinated Communication"?

In BCRA, Congress requires the Commission to promulgate new regulations on "coordinated communications" that are paid for by persons other than candidates, authorized committees of candidates, and party committees. Pub. L. 107–155, sec. 214(b), (c); see proposed 11 CFR 109.21 above. Although Congress did not specifically direct the Commission to address coordinated communications paid for by political party committees, the Commission proposes to do so to give clear guidance to those affected by BCRA.

Proposed section 109.37 would generally apply the same regulatory analysis to communications paid for by the political party committees that would be applied to communications paid for by other persons. See proposed 11 CFR 109.21(a) through (e). This

analysis would determine when communications paid for by a political party committee would be considered to be coordinated with a candidate, a candidate's authorized committee, or their agents. The Commission bases the proposed similarity of coordination standards on two Supreme Court cases, *Colorado I* and *Federal Election Commission v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) ("Colorado II"). In *Colorado I*, the Supreme Court in a plurality opinion concluded that political parties, like other persons paying for political communications, are capable of making independent expenditures on behalf of their candidates for Federal office, and that it would violate the First Amendment to subject such independent expenditures to the 2 U.S.C. 441a(d) expenditure limits. *Colorado I*, 518 U.S. at 615–616. Subsequently in *Colorado II*, the Supreme Court, in upholding the constitutionality of coordinated party expenditure limits at 2 U.S.C. 441a(d), stated that political parties are in the same position as other persons who have contribution limits potentially affected by coordination. *Colorado II*, 533 U.S. at 455.

Comment is sought on this approach. Should political party committee communications be subject to the same conduct standards at proposed 11 CFR 109.21(d) for coordination with candidates as are communications by other persons? Should the "content standards" at proposed 11 CFR 109.21(c) be the same for political party committee communications as for communications by other persons? If not, how should the standards vary? Would such variations be confusing? Are any of the possible content standards set forth at proposed 11 CFR 109.21(c)(4) alternatives (A) through (C) appropriate for political party committees? In light of the relationship between political party committees and candidates, should any of the conduct standards set forth at proposed 11 CFR 109.21(d) be excluded from application to political party committee communications? On the other hand, in light of such relationship, should there be additional or different conduct standards that would only apply to political party committees? Should any exceptions apply to party committee communications? Should the conduct standards set forth at proposed 11 CFR 109.21(d) vary depending on whether the party communication was made prior to nomination or after nomination? Finally, should the "content" standard of communications other than

electioneering communications vary depending on whether the political party communication was made prior to nomination or after nomination?

Following proposed 11 CFR 109.21(a), proposed section 109.37(a) would define the circumstances in which communications paid for by political party committees would be considered to be coordinated with a candidate, a candidate's authorized committee, or agents thereof. Under proposed 11 CFR 109.37(a)(1) through (3), such communications would be deemed to be "party coordinated communications" when they were paid for by a political party committee or its agent, satisfy at least one of the content standards in 11 CFR 109.21(c), and satisfy at least one of the conduct standards in 11 CFR 109.21(d).

For the content standards for party coordinated communications, in proposed paragraph (a)(2) of section 109.37, the Commission would refer to the content standards proposed in 11 CFR 109.21(c). The Commission also proposes a second sentence in proposed paragraph (a)(2) of section 109.37 indicating that the republication content standard of proposed 11 CFR 109.21(c)(2) is evaluated under the conduct standard in proposed 11 CFR 109.21(d)(6). See the discussion above of proposed 11 CFR 109.21(c).

For the conduct standards for party coordinated communications, in proposed paragraph (a)(3) of section 109.37, the Commission would refer to the conduct standards proposed in 11 CFR 109.21(d). As in proposed 11 CFR 109.21(d), agreement or formal collaboration would not be necessary for a finding that a communication is coordinated. See the discussion above of proposed 11 CFR 109.21(d) and (e). The Commission also proposes a second sentence in proposed paragraph (a)(3) of section 109.37 addressing circumstances in which the in-kind contribution results solely from conduct in 11 CFR 109.21(d)(4) or (d)(5). Under these circumstances, the candidate would not receive or accept an in-kind contribution. See the discussion above regarding proposed 11 CFR 109.21(b)(2).

Proposed 11 CFR 109.37(b) would explain the treatment of party coordinated communications. This paragraph would provide that political party committees must treat payments for communications coordinated with candidates as either in-kind contributions or coordinated party expenditures.

The Commission would except from proposed 11 CFR 109.37(b) such payments that are otherwise excepted from the definitions of "contribution"

and "expenditure" found at 11 CFR part 100 subparts C and E. For example, the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not a contribution or an expenditure. 11 CFR 100.80 and 100.140. Thus, if such communications were coordinated with candidates, the payments for such communications would not be treated as either in-kind contributions or as coordinated party expenditures.

For such a payment that a political party committee treats as an in-kind contribution, proposed paragraph (b)(1) of section 109.37 would state that it is made for the purpose of influencing a Federal election. See the discussion above regarding proposed 11 CFR 109.21(b).

For such a payment that a political party committee treats as a coordinated party expenditure, proposed paragraph (b)(2) of section 109.37 would state that such expenditure is made pursuant to coordinated party expenditure authority under proposed 11 CFR 109.32 in connection with the general election campaign of the candidate with whom it was coordinated.

Finally, proposed paragraphs (b)(1) and (b)(2) of section 109.37 would each refer to the reporting obligations flowing from party coordinated communications under 11 CFR part 104.

Additional Proposed Regulatory Changes

Proposed 11 CFR 100.57 Dissemination, Distribution, or Republication of Candidate Campaign Materials

The FECA categorizes a payment of the dissemination, distribution, or republication of campaign materials created by a candidate as an expenditure made by the person making the payment. See 2 U.S.C. 441a(7)(B)(iii) (redesignated from pre-BCRA 2 U.S.C. 441a(7)(B)(ii)). In addition, when such an expenditure is coordinated with a candidate, it is treated as an in-kind contribution received by the candidate with whom the communication was coordinated. See 2 U.S.C. 441a(7)(B)(i). Likewise, under BCRA, when such an expenditure is coordinated with a political party committee, it is also a contribution received by the political party committee with which it is coordinated. See 2 U.S.C. 441a(7)(B)(ii).

Under the pre-BCRA regulations at 11 CFR 109.1(d)(1), payments for the dissemination, distribution, or republication of the campaign material count against the contribution limits of the person financing the dissemination, distribution, or republication, and political committees and any other person who is otherwise required to report expenditures are required to report the payment in the same manner as other expenditures, regardless of whether coordination occurred. A candidate does not incur any reporting obligations regarding the dissemination, distribution, or republication of campaign material by another person in the absence of coordination.

The Commission's pre-BCRA regulation at 11 CFR 109.1(d)(1) would be moved to the definition of contribution at proposed 11 CFR 100.57 as part of the proposed reorganization of 11 CFR part 109. The Commission would make changes to reflect Congress's determination that dissemination, distribution, or republication of campaign material in coordination with a political party committee, as well as with a candidate, constitutes a contribution. In addition, the dissemination, distribution, or republication of campaign material would be coordinated if the dissemination, distribution, or republication satisfies the conduct standards set forth in proposed 11 CFR 109.21(d)(6). The only other substantive change would be the addition of several exceptions explained below. The Commission seeks comment on the proposed location of the new regulation (that is, whether the dissemination, distribution, or republication of campaign material should be made a part of the definition of "contribution"), and whether a corresponding provision should be added to the definition of an "expenditure" in 11 CFR part 100, subpart D, to maintain a parallel structure with the contribution definition. Alternatively, given that the pre-BCRA statute and BCRA categorize dissemination, distribution, or republication of campaign materials as "expenditures", 2 U.S.C. 441a(a)(7)(B)(iii), the Commission seeks comment on whether such dissemination, distribution, or republication should be considered a contribution by the person paying for the materials absent coordination with the campaign. Please note that this alternative is not included in the text of the draft regulations.

In addition, the Commission notes that 2 U.S.C. 441a(a)(7)(B)(iii) refers to "campaign materials prepared by the candidate, his campaign committees, or

their authorized agents," but does not include campaign materials prepared by political party committees. The Commission requests comment on whether the latter campaign materials should be included in light of the fact that Congress now considers coordination with a political party committee to result in a contribution. 2 U.S.C. 441a(a)(7)(B)(ii).

In proposed 11 CFR 100.57, the Commission would include new exceptions for different types of republication of campaign material so that they would not constitute contributions. In proposed 11 CFR 100.57(b)(1), the Commission would make it clear that candidates and political party committees are permitted to republish or disseminate their own materials without making a contribution. Proposed paragraph (b)(2) would exempt the use of material when it is used to advocate the defeat of the candidate or party who prepared the material. For example, Person A would not make a contribution to Candidate B if Person A incorporates part of Candidate B's campaign material into its own public communication that advocates the defeat of Candidate B. However, if the same public communication also urged the election of Candidate B's opponent, Candidate C, and incorporated a picture or quote that had been prepared by Candidate C's campaign, then the result would constitute a contribution to Candidate C.

A third exception in paragraph (b)(3) would make it clear that campaign material may be republished as part of a *bona fide* news story as provided in 11 CFR 100.73 or 11 CFR 100.132. In proposed paragraph (b)(4), the Commission would continue to allow a corporation or labor organization to make limited use of candidate materials in communications to its restricted class, as provided in 11 CFR 114.3(c)(1).

Finally, in proposed paragraph (b)(5), the Commission would recognize that a national, State, or subordinate committee of a political party would make a coordinated party expenditure rather than an in-kind contribution when it pays for the dissemination, distribution, or republication of campaign material using coordinated party expenditure authority under 11 CFR 109.32. This proposed rule is somewhat broader than pre-BCRA 11 CFR 109.1(d)(2), which provided that a State or subordinate party committee could engage in such dissemination, distribution, or republication as agents designated by a national committee pursuant to 11 CFR 110.7(a)(4).

The Commission seeks comments on whether any additional exceptions

should be added in proposed paragraph (b), such as an exception for the republication of campaign materials in a non-partisan voter guide, and whether the proposed exceptions are appropriate.

Contribution and Expenditure Limitations and Prohibitions

I. Proposed 11 CFR 110.1 and 110.2 Limits on Contributions Made to Political Committees Making Independent Expenditures

The Commission proposes to clarify that the section 110.1 and 110.2 limitations on contributions to political committees making independent expenditures would apply to contributions made by multicandidate committees and other persons to political party committees that make independent expenditures. *See* proposed 11 CFR 110.1(n) and 110.2(k). Paragraphs 110.1(n) and 110.2(k) would apply to contributions by multicandidate committees and contributions by persons other than multicandidate committees, respectively. These two proposed paragraphs would replace pre-BCRA paragraphs (d)(2) of sections 110.1 and 110.2 regarding the application of the contribution limits to contributions to committees that make independent expenditures.

These sections need to be updated because under pre-BCRA paragraphs (d)(2) of each section, the Commission recognized that political committees other than party committees may make independent expenditures, but did not contemplate party committees doing so. *See Colorado I*, 518 U.S. at 618. For example, national party committees may receive contributions aggregating \$20,000 per year from individuals, a contribution limit that Congress increased to \$25,000 for contributions made on or after January 1, 2003. *See* 2 U.S.C. 441a(a)(1)(B). Consequently, under the proposed new language, the \$20,000 (\$25,000) contribution limit would continue to apply when the recipient national party committee uses the contribution to make independent expenditures. The Commission notes that 11 CFR 110.1(h) regarding contributions to political committees supporting the same candidate, remains in effect and unchanged except to the extent that the support to candidates by political party committees may now include independent expenditures. The Commission requests comments on proposed new paragraph (n) of section 110.1 and new paragraph (k) of section 110.2.

Additional proposed changes to 11 CFR 110.1 and 110.2 are being addressed in a separate rulemaking on BCRA's increased contribution limits. See *Notice of Proposed Rulemaking*, 67 FR 54366 (August 22, 2002).

II. Proposed 11 CFR 110.7 Removed and Reserved

The pre-BCRA regulations at 11 CFR 110.7 contain the coordinated party expenditure limits and related provisions. As noted above, the Commission proposes to incorporate section 110.7, in amended form, into 11 CFR part 109, subpart D. Specifically, the provisions in section 110.7 would be revised and redesignated as follows: 11 CFR 110.7(a) and (b) to 11 CFR 109.32(a) and (b) and 109.36; section 110.7(c) to section 109.33; and section 110.7(d) to section 109.34.

Presidential Candidate Expenditure Limitations

Proposed 11 CFR 110.8 Presidential Candidate Expenditure Limitations

As in proposed 11 CFR 109.32(a) and (b) discussed above, the Commission would clarify that the expenditure limits for publicly funded Presidential candidates would be increased in accordance with 11 CFR 110.9(c). See proposed 11 CFR 110.8(a)(2). To accommodate this proposed new section 110.8(a)(2), the Commission proposes to re-designate pre-BCRA paragraphs (a)(1) and (a)(2) as (a)(1)(i) and (a)(1)(ii), respectively.

In proposed 11 CFR 110.8(a)(3), the Commission would reference the definition of "voting age population" at proposed 11 CFR 110.18. The voting age population is a factor in the calculation of expenditure limitations in 11 CFR 110.8(a). Finally, the Commission is proposing additional changes to 11 CFR 110.9(c) in a separate rulemaking. See *Notice of Proposed Rulemaking*, 67 FR 54366 (August 22, 2002). Comment is sought on these proposals.

Voting Age Population

Proposed 11 CFR 110.18 Voting Age Population

The Commission proposes a redesignation of pre-BCRA section 110.9(d) regarding voting age population ("VAP") to proposed 11 CFR 110.18 as part of a reorganization of section 110.9. This provision is referenced in proposed paragraphs 109.32(a) and (b) (coordinated party expenditure limits) and 110.8(a)(3) (presidential candidate expenditure limits) where the VAP is used as a factor in calculating the limits. Proposed section 110.18 would be revised from pre-BCRA section 110.9(d)

only by noting the fact of, rather than the Commission assuring, that the Secretary of Commerce shall each year certify to the Commission and publish in the **Federal Register** an estimate of the VAP pursuant to 2 U.S.C. 441a(e). Proposed changes to the other provisions of section 110.9, including section 110.9(c) as noted above, are included in a separate rulemaking. See *Notice of Proposed Rulemaking*, 67 FR 54366 (August 22, 2002). Comment is sought on this proposal.

Corporate and Labor Organization Activity

Proposed 11 CFR 114.4(c)(5) Voter Guides

Paragraph (c)(5) of section 114.4 pertains to voter guides paid for by corporations and labor organizations. The Commission proposes several changes to this paragraph to conform with other regulatory changes proposed in response to BCRA.

The pre-BCRA version of paragraphs (c)(5)(i) and (ii) of section 114.4 provides that a corporation or labor organization must not, among other things, "contact" a candidate in the preparation of a voter guide, except in writing. In this rulemaking, the Commission proposes coordination rules that would allow a person, such as a corporation or labor union, to contact a candidate to inquire about the candidate's positions on the issues without a subsequent communication paid for by that person being deemed coordinated with the candidate (assuming there was no other evidence of coordination). See 109.21(f).

Accordingly, proposed paragraphs (c)(5)(i) and (ii) of section 114.4 would be amended to delete the prohibition against any contact with a candidate in the preparation of a voter guide.

Pre-BCRA paragraph (c)(5)(ii) of section 114.4 provides that a corporation or a labor union preparing a voter guide may direct questions in writing to a candidate. In the coordination rules proposed in this rulemaking, a person, such as a corporation or labor union, may informally contact a candidate to inquire about the candidate's positions on the issues without a subsequent communication paid for by that person being deemed coordinated with the candidate (assuming there was no other evidence of coordination). See 109.21(f). That is, the inquiry would not need be in writing. Accordingly, proposed paragraph (c)(5)(ii) of section 114.4 would be amended to delete the requirement that contact with the candidate be in writing.

The Commission would also make several non-substantive changes to proposed paragraphs (c)(5)(i) and (ii) to conform these provisions to the statutory provisions on which they are based. Compare 2 U.S.C. 441a(a)(7)(B) with 11 CFR 114.5(c)(5)(i) and (ii).

The Commission notes that an appeals court in one circuit has invalidated portions of pre-BCRA 11 CFR 114.4(c)(5). See *Clifton v. Federal Election Commission*, 927 F.Supp. 493 (D. Me. 1996), *modified in part and remanded in part*, 114 F.3d 1309 (1st Cir. 1997), *cert. denied*, 522 U.S. 1108 (1998). Subsequently, in 1999, the Commission received a Petition for Rulemaking asking the Commission to repeal its voter guide regulation. The Commission published a Notice of Availability. See 64 FR 46319 (Aug. 25, 1999). The Commission's present rulemaking proposes changes necessitated by BCRA, and the Commission would reserve any additional changes to the voter guide regulations to a future rulemaking. Comment is sought on this approach.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

[Regulatory Flexibility Act]

The Commission certifies that the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the national, State, and local party committees of the two major political parties, and other political committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. Further, individual citizens operating under these rules are not small entities.

To the extent that any political committee may fall within the definition of "small entities," their numbers are not substantial, particularly the number that would coordinate expenditures with candidates or political party committees in connection with a Federal election.

In addition, the small entities to which the rules would apply would not be unduly burdened by the proposed rules because there is no significant extra cost involved, as independent expenditures must already be reported. Collectively, the differential costs will not exceed 100 million dollars per year. In addition, new reporting requirements would not significantly increase costs, as they only apply to those spending \$10,000 or more on independent expenditures, and the actual reporting requirements are the minimum

necessary to comply with the new statute enacted by Congress.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 105

Document filing.

11 CFR Part 109

Elections, reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, political committees and parties.

11 CFR Part 114

Business and industry, elections, labor.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS

1. The authority citation for part 100 would be revised to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.16 would be revised to read as follows:

§ 100.16 Independent expenditure (2 U.S.C. 431(17)).

(a) The term *independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents. A communication is "made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents" if it is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.

(b) No expenditure by an authorized committee of a candidate on behalf of

that candidate shall qualify as an independent expenditure.

3. In § 100.19, paragraphs (b) and (d) would be revised to read as follows:

§ 100.19 File, filed, or filing (2 U.S.C. 434(a)).

* * * * *

(b) *Timely filed. General rule.* A document other than those addressed in paragraphs (c) through (f) of this section is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time of the fifteenth day before the date of the election. Documents sent by first class mail must be received by the close of business on the prescribed filing date to be timely filed.

* * * * *

(d) 48-hour and 24-hour reports of independent expenditures.

(1) *48-hour reports of independent expenditures.* A 48-hour report of independent expenditures under 11 CFR 104.4(b) or 109.10(c) is timely filed when it is received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which independent expenditures aggregate \$10,000 or more in accordance with 11 CFR 104.4(f), any time during the calendar year up to and including the 20th day before an election.

(2) *24-hour reports of independent expenditures.* A 24-hour report of independent expenditures under 11 CFR 104.4(c) or 109.2(c) is timely filed when it is received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which independent expenditures aggregate at least \$1,000, in accordance with 11 CFR 104.4(f), during the period less than 20 days but more than 24 hours before an election.

(3) *Permissible means of filing.* In addition to other permissible means of filing, a 24-hour report or 48-hour report of independent expenditures may be filed using a facsimile machine or by electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18.

* * * * *

§ 100.23 [Removed and reserved]

4. Part 100 would be amended by removing and reserving § 100.23:

5. Part 100, subpart B would be revised by adding § 100.57 to read as follows:

§ 100.57 Dissemination, distribution, or republication of candidate campaign materials (2 U.S.C. 441a(a)(7)(B)(iii)).

(a) Except as provided in paragraph (b) of this section, a payment for the dissemination, distribution, or republication, in whole or in part, of any broadcast or of any written, graphic, or other form of campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing is a contribution to the candidate or political party committee if the dissemination, distribution, or republication of campaign materials satisfies any of the conduct standards set forth in 11 CFR 109.21(d)(6) with respect to any conduct other than the original preparation of campaign materials. If the dissemination, distribution, or republication of campaign materials is not coordinated with a candidate or political party committee, then the payment for such dissemination, distribution, or republication is a contribution by the person making the payment for the purposes of that person's contribution limits and reporting requirements. The candidate who prepared the campaign material does not receive or accept an in-kind contribution that results solely from the dissemination, distribution, or republication of campaign material originally prepared by that candidate, unless the dissemination, distribution, or republication of the campaign materials is coordinated with that candidate or a political party committee as a result of conduct other than the original preparation of campaign materials.

(b) The following uses of campaign materials do not constitute a contribution to the candidate who originally prepared the materials:

(1) The campaign material is disseminated, distributed, or republished by the candidate, the candidate's authorized committee, or an agent of either of the foregoing who prepared that material;

(2) The campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material;

(3) The campaign material is disseminated, distributed, or republished in a news story, commentary, or editorial exempted under 11 CFR 100.73 or 11 CFR 100.132;

(4) The campaign material used consists of a brief quote or portions of materials that demonstrate a candidate's

position as part of a corporation's or labor organization's expression of its own views to its restricted class under 11 CFR 114.3(c)(1); or

(5) A national political party committee or a State or subordinate political party committee pays for such dissemination, distribution, or republication of campaign materials using coordinated party expenditure authority under 11 CFR 109.32.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

6. The authority citation for Part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433 434(a)(11), 438(a)(8), and 441d.

7. Section 102.6(a)(1)(ii) would be revised to read as follows:

§ 102.6 Transfers of funds; collecting agents.

(a) * * *

(1) * * *

(ii) Subject to the restrictions set forth at 11 CFR 109.35(c), 300.10(a), 300.31, 300.34(a) and (b), transfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees under 11 CFR 100.5 and whether or not such committees are affiliated.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

8. The authority citation for part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), and 439a.

9. Section 104.4 would be revised to read as follows:

§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(b), (d), and (g)).

(a) *Regularly scheduled reporting.* Every political committee that makes independent expenditures must report all such independent expenditures on Schedule E in accordance with 11 CFR 104.3(b)(3)(vii). Every person other than a political committee must report independent expenditures in accordance with 11 CFR 109.10.

(b) *Reports of independent expenditures made at any time up to and including the 20th day before an election.*

(1) *Independent expenditures aggregating less than \$10,000 in a calendar year.* Political committees

must report on Schedule E of FEC Form 3X at the time of their regular reports in accordance with 11 CFR 104.3, 104.5 and 104.9, all independent expenditures aggregating less than \$10,000 with respect to a given election any time during the calendar year up to and including the 20th day before an election.

(2) *Independent expenditures aggregating \$10,000 or more in a calendar year.* Political committees must report on Schedule E of FEC Form 3X all independent expenditures aggregating \$10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election. Political committees must ensure that the Commission receives these reports no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional \$10,000 or more, the political committee must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. See 11 CFR 104.4(f) for aggregation. Each 48-hour report must contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. In addition to other permissible means of filing, a political committee may file the 48-hour reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(c) *Reports of independent expenditures made less than 20 days, but more than 24 hours before the day of an election.* Political committees must ensure that the Commission receives reports of independent expenditures aggregating \$1,000 or more with respect to a given election, after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election, no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate \$1,000 or more, the political committee must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. Each 24-hour report shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in

support of, or in opposition to, the candidate involved. Political committees may file reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(d) *Verification.* Political committees shall verify reports of independent expenditures filed under paragraph (b) or (c) of this section by one of the methods stated in paragraph (d)(1) or (2) of this section. Any report verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(1) For reports filed on paper (e.g., by hand delivery, U.S. Mail or facsimile machine), the treasurer of the political committee that made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(2) For reports filed by electronic mail, the treasurer of the political committee that made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(e) *Where to file.* Political committees must file reports of independent expenditures under this section and part 109 as set forth at paragraphs (c)(1) and (2) of this section.

(1) For independent expenditures in support of or in opposition to, a candidate for President or Vice President: with the Commission and the Secretary of State for the State in which the expenditure is made.

(2) For independent expenditures in support of, or in opposition to, a candidate for the Senate or the House of Representatives: with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(f) *Aggregating independent expenditures for reporting purposes.* For purposes of determining whether 24-hour and 48-hour reports must be filed in accordance with paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), aggregations of independent expenditures must be calculated as of the first date during the calendar year on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated, and as of the date that any such communication with respect to the same election is subsequently publicly distributed or otherwise publicly disseminated. Every

person must include in the aggregate total all disbursements for independent expenditures, and all enforceable contracts, either oral or written, obligating funds for disbursements for independent expenditures, made with respect to any communication that has been publicly distributed or otherwise publicly disseminated, during the calendar year, with respect to a given election for Federal office.

10. In §104.5, paragraph (g) would be revised to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(g) *Reports of independent expenditures.*

(1) *48-hour reports of independent expenditures.* Every person who or which must file a 48-hour report under 11 CFR 104.4(b) must ensure the Commission receives the report no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate \$10,000 or more, that person must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which the \$10,000 threshold is reached or exceeded. See 11 CFR 104.4(f) for aggregation.

(2) *24-hour report of independent expenditures.* Every person who or which must file a 24-hour report under 11 CFR 104.4(c) must ensure that the Commission receives the report no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate \$1,000 or more, that person must ensure that the Commission receives a 24-hour report of the subsequent independent expenditures no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which the \$1,000 threshold is reached or exceeded. See 11 CFR 104.4(f) for aggregation.

(3) Each 24-hour or 48-hour report of independent expenditures filed under

this section shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

(4) For purposes of this part, a communication that is mailed to its intended audience is publicly disseminated when it is relinquished to the U.S. Postal Service.

* * * * *

PART 105—DOCUMENT FILING (2 U.S.C. 432(g))

11. The authority citation for part 105 would be revised to read as follows:

Authority: 2 U.S.C. 432(g), 434, 438(a)(8).

12. Section 105.2 would be revised to read as follows:

§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (2 U.S.C. 432(g)(2), 434(g)(3)).

(a) *General Rule.* Except as provided in paragraph (b) of this section, all designations, statements, reports, and notices as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of United States Senator, by his or her principal campaign committee or by any other political committee(s) that supports only candidates for nomination for election or election to the Senate of the United States shall be filed in original form with, and received by, the Secretary of the Senate, as custodian for the Federal Election Commission.

(b) *Exceptions.* The following statements and reports must be filed with the Commission and not with the Secretary of the Senate, even if the communication refers to a Senatorial candidate:

- (1) 48-hour statements of electioneering communications; and
- (2) 24-hour and 48-hour reports of independent expenditures.

13. Part 109 would be revised to read as follows:

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a, Pub. L. 107–155 sec. 214(c) (March 27, 2002)).

Sec.

Subpart A—Scope and Definitions

- § 109.1 When will this part apply?
 § 109.2 [Reserved]
 § 109.3 Definitions.

Subpart B—Independent Expenditures

- § 109.10 How do political committees and other persons report independent expenditures?
 § 109.11 When is a “non-authorization notice” (disclaimer) required?

Subpart C—Coordination

- § 109.20 What does “coordinated” mean?
 § 109.21 What is a “coordinated communication”?
 § 109.22 Who is prohibited from making coordinated communications?

Subpart D—Special Provisions for Political Party Committees

- § 109.30 How are political party committees treated for purposes of independent expenditures and coordination?
 § 109.31 What is a “coordinated party expenditure”?
 § 109.32 What are the coordinated party expenditure limits?
 § 109.33 May a political party committee assign its coordinated party expenditure limit to another political party committee?
 § 109.34 When can a political party committee make coordinated party expenditures?
 § 109.35 What are the restrictions on a political party making both independent expenditures and coordinated party expenditures in connection with a candidate?
 § 109.36 Are there additional circumstances under which a political party committee is prohibited from making independent expenditures?
 § 109.37 What is a “party coordinated communication”?

Authority: 2 U.S.C. 431(17), 434(c), 441a; Pub. L. 155–107 214(c).

Subpart A—Scope and Definitions

§ 109.1 When will this part apply?

This part applies to expenditures that are made independently from a candidate, an authorized committee, a political party committee, or their agents, and to those payments that are made in coordination with a candidate, a political party committee, or their agents. The regulations in this part explain the differences between the two kinds of payments and state how each type of payment must be reported and who must report it. In addition, subpart D of part 109 describes procedures and limits that apply only to payments, transfers, and assignments made by political party committees.

§ 109.2 [Reserved]

§ 109.3 Definitions.

For the purposes of 11 CFR part 109 only, *agent* means any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of the specified persons:

(a) In the case of a national, State, district, or local committee of a political party, any one or more of the activities listed in paragraphs (a)(1) through (a)(5) of this section:

(1) To request or suggest that a communication be created, produced, or distributed.

(2) To make or authorize any communication described in 11 CFR 100.29(a)(1), or to make or authorize a public communication that meets the content standard set forth in 11 CFR 109.21(c).

(3) To create, produce, or distribute any communication at the request or suggestion of a candidate.

(4) To be materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience;

(iii) The specific media outlet used;

(iv) The timing or frequency of the communication;

(v) The size or prominence of a printed communication or duration of a communication on a television, radio, or cable station or by telephone; or,

(vi) The script of a telephone message.

(5) To make or direct a communication that is created, produced, or distributed with the use of material or information derived from a substantial discussion about the communication with a candidate.

(b) In the case of an individual who is a Federal candidate or an individual holding Federal office, any one or more of the activities listed in paragraphs (b)(1) through (b)(5) of this section:

(1) To request or suggest that a communication be created, produced, or distributed.

(2) To make or authorize any communication described in 11 CFR 100.29(a)(1), or to make or authorize a public communication that meets the content criteria set forth in 11 CFR 109.21(c).

(3) To request or suggest that any other person create, produce, or distribute any communication.

(4) To be materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience;

(iii) The specific media outlet used;

(iv) The timing or frequency of the communication;

(v) The size or prominence of a printed communication or duration of a communication on a television, radio, or cable station or by telephone; or,

(vi) The script of a telephone message.

(5) To provide material or information to assist another person in the creation, production, or distribution of any communication.

Subpart B—Independent Expenditures

§ 109.10 How do political committees and other persons report independent expenditures?

(a) Political committees, including political party committees, must report independent expenditures under 11 CFR 104.4.

(b) Every person, other than a political committee, who makes independent expenditures aggregating in excess of \$250 with respect to a given election in a calendar year shall file a verified statement, or report on FEC Form 5 with the Commission or Secretary of the Senate containing the information required by paragraph (e) of this section. Every person filing a report or statement under this section shall do so at the end of the reporting period during which any such independent expenditures that aggregate in excess of \$250 is made and in any reporting period thereafter in which additional independent expenditures are made.

(c) Every person, other than a political committee, who makes independent expenditures aggregating \$10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election, must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under 11 CFR 104.18. (See 11 CFR 104.4(f) for aggregation). The person making the independent expenditures aggregating \$10,000 or more must ensure that the Commission receives the report or statement no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional \$10,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. Each 48-hour report must contain the information required by paragraph (e)(1) of this section.

(d) Every person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of an election, independent expenditures aggregating \$1,000 or more with respect to a given election must report those independent expenditures and ensure that the Commission receives the report or signed statement no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which a communication is publicly distributed

or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate \$1,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. See 11 CFR 104.4(f) for aggregation. Such report or statement shall contain the information required by paragraph (e) of this section.

(e) *Verified statements.*

(1) *Contents of verified statement.* If a signed statement is submitted, the statement shall include:

(i) The reporting person's name, mailing address, occupation, and the name of his or her employer, if any;

(ii) The identification (name and mailing address) of the person to whom the expenditure was made;

(iii) The amount, date and purpose of each expenditure;

(iv) A statement that indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought;

(v) A verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents; and

(vi) The identification of each person who made a contribution in excess of \$200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.

(2) *Verification of independent expenditure statements and reports.* Every person shall verify reports of independent expenditures filed pursuant to the requirements of this section by one of the methods stated in paragraph (2)(i) or (ii) of this section. Any report verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(i) For reports filed on paper (e.g., by hand delivery, U.S. Mail or facsimile machine), the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by paragraph (e)(1)(v) of this section.

(ii) For reports filed by electronic mail, the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by

typing the treasurer's name immediately following the certification required by paragraph (e)(1)(v) of this section.

§ 109.11 When is a "non-authorization notice" (disclaimer) required?

Whenever any person makes an independent expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such person shall comply with the requirements of 11 CFR 110.11.

Subpart C—Coordination

§ 109.20 What does "coordinated" mean?

(a) *Coordinated* means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents.

(b) Any expenditure that is coordinated within the meaning of paragraph (a) of this section, but is not made for a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37, is an in-kind contribution or a coordinated party expenditure with respect to the candidate or political party committee with whom or with which it was coordinated, unless otherwise exempted under 11 CFR part 100, subparts C or E.

§ 109.21 What is a "coordinated communication"?

(a) *Definition.* A communication is coordinated with a candidate, an authorized committee, or their agents, or a political party committee or its agents when the communication:

- (1) Is paid for by a person other than that candidate, or an authorized committee, a political party committee, or agent of any of the foregoing;
- (2) Satisfies at least one of the content standards in paragraph (c) of this section; and
- (3) Satisfies at least one of the conduct standards in paragraph (d) of this section. For a communication that satisfies the content standard in paragraph (c)(2) of this section, the conduct standard in paragraph (d)(6) of this section must be satisfied for the communication to be deemed coordinated.

(b) *Treatment as an in-kind contribution; Reporting.*

(1) *General rule.* A payment for a communication that is coordinated with a candidate or political party committee is made for the purpose of influencing a Federal election, and is an in-kind contribution under 11 CFR 100.52(d) to the candidate or political party committee with whom or which it was

coordinated, unless excepted under 11 CFR part 100, subpart C.

(2) *In-kind contributions resulting from conduct described in paragraphs (d)(4) or (d)(5) of this section.* Notwithstanding paragraph (b)(1) of this section, the candidate, authorized committee, or political party committee with whom or which a communication is coordinated does not receive or accept an in-kind contribution that results from conduct described in paragraphs (d)(4) or (d)(5) of this section, unless the candidate, authorized committee, or political party committee engages in conduct described in paragraphs (d)(1) through (d)(3) of this section.

(3) *Reporting of coordinated communications.* A political committee, other than a political party committee, that makes a coordinated communication must report the payments for the communication as a contribution made to the candidate or political party committee with whom or which it was coordinated and as an expenditure in accordance with 11 CFR 104.3(b)(1)(v). A political party committee with which a communication paid for by another person is coordinated must report the usual and normal value of the communication as an in-kind contribution received and as an expenditure in accordance with 11 CFR 104.13.

(c) *Content standards.* Any one of the following types of content satisfies the content standard of this section:

- (1) The communication would otherwise be considered an electioneering communication under 11 CFR 100.29; or
- (2) The communication disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing, unless the dissemination, distribution, or republication is excepted under 11 CFR 100.57(b); or
- (3) The public communication expressly advocates the election or defeat of a clearly identified candidate for Federal office; or

Alternative A for Paragraph (c)(4)

(4) The communication is a public communication, as defined in 11 CFR 100.26, that refers to a clearly identified candidate for Federal office.

Alternative B for Paragraph (c)(4)

(4) The communication is a public communication, as defined in 11 CFR 100.26, that promotes or supports or attacks or opposes a clearly identified candidate for Federal office.

Alternative C for Paragraph (c)(4)

(4) The communication is a public communication, as defined in 11 CFR 100.26, and each of the following statements in paragraphs (c)(4)(i), (ii), and (iii) of this section are true.

(i) The public communication is made 120 days or fewer before a general, special, or runoff election, or 120 days or fewer before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate;

(ii) The public communication is directed to voters in the jurisdiction of the clearly identified candidate; and

(iii) The public communication makes express statements about the record or position or views on an issue, or the character, or the qualifications or fitness for office, or party affiliation, of a clearly identified Federal candidate.

(d) *Conduct standards.* Any one of the following types of conduct satisfies the conduct standard of this section whether or not there is agreement or formal collaboration, as defined in paragraph (e) of this section:

- (1) *Request or suggestion.*
- (i) The communication is created, produced, or distributed at the request or suggestion of a candidate or an authorized committee, political party committee, or agent of any of the foregoing; or
- (ii) The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, political party committee, or agent of any of the foregoing, assents to the suggestion.

(2) *Material involvement.* A candidate, an authorized committee, a political party committee, or an agent of any of the foregoing, is materially involved in decisions regarding:

- (i) The content of the communication;
- (ii) The intended audience for the communication;
- (iii) The means or mode of the communication;
- (iv) The specific media outlet used for the communication;
- (v) The timing or frequency of the communication; or
- (vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(3) *Substantial discussion.* The communication is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication, or the employees or agents of the person paying for the communication, and the candidate who

is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing. A discussion is substantial within the meaning of this paragraph if information about the plans, projects, activities, or needs of the candidate or political party committee is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.

(4) *Common vendor*. All of the following statements in paragraphs (d)(4)(i) through (d)(4)(iii) of this section are true:

(i) The person paying for the communication, or an agent of such person, contracts with or employs a commercial vendor to create, produce, or distribute the communication;

(ii) That commercial vendor, including any employee of the commercial vendor, has provided any of the following services to the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing, in the current election cycle:

- (A) Development of media strategy;
- (B) Selection of audiences;
- (C) Polling;
- (D) Fundraising;
- (E) Developing the content of a public communication;
- (F) Producing a public communication;
- (G) Identifying or developing voter lists, mailing lists, or donor lists;
- (H) Selecting personnel, contractors, or subcontractors; or
- (I) Consulting or otherwise providing political or media advice; and

(iii) That commercial vendor makes use of or conveys to the person paying for the communication:

(A) Material information about the plans, projects, activities, or needs of the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing; or

(B) Material information used previously by the commercial vendor in providing services to the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a

political party committee, or an agent of any of the foregoing.

(5) *Former employee or independent contractor*. Both of the following statements in paragraph (d)(5)(i) and (d)(5)(ii) of this section are true:

(i) The communication is paid for by a person, or by the employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing, during the current election cycle; and,

(ii) That former employee or independent contractor makes use of or conveys to the person paying for the communication:

(A) Material information about the plans, projects, activities, or needs of the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing; or

(B) Material information used by the former employee or independent contractor in providing services to the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing.

(6) *Conduct pertaining to communications that disseminate, distribute, or republish campaign material prepared by a candidate*. A communication that satisfies the content requirement of paragraph (c)(2) of this section shall only be considered to satisfy one or more of the conduct standards of this section if the candidate or authorized committee that initially prepared the campaign material engages in any of the conduct described in paragraphs (d)(1) through (d)(3) of this section with respect to the subsequent dissemination, distribution, or republication of the campaign materials.

(e) *Agreement or formal collaboration*. Agreement or formal collaboration between the person paying for the communication and the candidate clearly identified in the communication, his or her authorized committee, his or her opponent, or the opponent's authorized committee, a political party committee, or an agent of any of the foregoing, is not required for a communication to be considered a coordinated communication. *Agreement* means a mutual understanding or

meeting of the minds on all or any part of the material aspects of the communication or its dissemination. Formal collaboration means planned, or systematically organized, work on the communication.

§ 109.22 Who is prohibited from making coordinated communications?

Any person who is otherwise prohibited from making contributions or expenditures under any part of the Act or Commission regulations is prohibited from paying for a coordinated communication.

Subpart D—Special Provisions for Political Party Committees

§ 109.30 How are political party committees treated for purposes of coordinated and independent expenditures?

Political party committees may make independent expenditures subject to the provisions in this subpart. *See* 11 CFR 109.35 and 109.36. Political party committees may also make coordinated party expenditures in connection with the general election campaign of a candidate, subject to the limits and other provisions in this subpart. *See* 11 CFR 109.31 through 11 CFR 109.35.

§ 109.31 What is a “coordinated party expenditure”?

Coordinated party expenditures include payments made by a national committee of a political party, including a national Congressional campaign committee, or a State committee of a political party, including any subordinate committee of a State committee, under 2 U.S.C. 441a(d) for anything of value in connection with the general election campaign of a candidate, including party coordinated communications defined at 11 CFR 109.37.

§ 109.32 What are the coordinated party expenditure limits?

(a) *Coordinated party expenditures in presidential elections*.

(1) The national committee of a political party may make coordinated party expenditures in connection with the general election campaign of the party's candidate for President of the United States affiliated with the party.

(2) The coordinated party expenditures shall not exceed an amount equal to two cents multiplied by the voting age population of the United States. *See* 11 CFR 110.18. This limitation shall be increased in accordance with 11 CFR 110.17.

(3) Any coordinated party expenditure under paragraph (a) of this section shall be in addition to—

(i) Any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for President of the United States; and

(ii) Any contribution by the national committee to the candidate permissible under 11 CFR 110.1 or 110.2.

(4) Any coordinated party expenditures made by the national committee of a political party pursuant to paragraph (a) of this section, or made by any other party committee designated by a national committee of a political party under 11 CFR 109.33, on behalf of that party's presidential candidate shall not count against the candidate's expenditure limitations under 11 CFR 110.8.

(b) *Coordinated party expenditures in other Federal elections.*

(1) The national committee of a political party, and a State committee of a political party, including any subordinate committee of a State committee, may each make coordinated party expenditures in connection with the general election campaign of the party's candidate for Federal office in that State.

(2) The coordinated party expenditures shall not exceed:

(i) In the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(A) Two cents multiplied by the voting age population of the State (see 11 CFR 110.18); or

(B) Twenty thousand dollars.

(ii) In the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, \$10,000.

(3) The limitations in paragraph (b)(2) of this section shall be increased in accordance with 11 CFR 110.17(c).

(4) Any coordinated party expenditure under paragraph (b) of this section shall be in addition to any contribution by a political party committee to the candidate permissible under 11 CFR 110.1 or 110.2.

§ 109.33 May a political party committee assign its coordinated party expenditure limit to another political party committee?

(a) Except as provided in 11 CFR 109.35(c), the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may assign its authority to make coordinated party expenditures authorized in 11 CFR 109.32 to another political party committee, provided that before the coordinated party expenditure is made, the national or

State committee specifies in writing to the assigned political party committee the amount the assigned political party committee may spend.

(b) For purposes of the coordinated party expenditure limits, State committee includes a subordinate committee of a State committee and includes a district or local committee. State committees and subordinate State committees and district or local committees combined shall not exceed the coordinated party expenditure limits set forth in 11 CFR 109.32. The State committee shall administer the limitation in one of the following ways:

(1) The State committee shall be responsible for insuring that the coordinated party expenditures of the entire party organization are within the coordinated party expenditure limits, including receiving reports from any subordinate committee of a State committee or district or local committee making coordinated party expenditures under 11 CFR 109.32, and filing consolidated reports showing all coordinated party expenditures in the State with the Commission; or

(2) Any other method, submitted in advance and approved by the Commission, that permits control over coordinated party expenditures.

§ 109.34 When may a political party committee make coordinated party expenditures?

A political party committee authorized to make coordinated party expenditures may make such expenditures in connection with the general election campaign before or after its candidate has been nominated. All pre-nomination coordinated party expenditures shall be subject to the coordinated party expenditure limitations of this subpart, whether or not the candidate on whose behalf they are made receives the party's nomination.

§ 109.35 What are the restrictions on a political party committee making both independent expenditures and coordinated party expenditures in connection with the general election of a candidate?

(a) *Applicability.* For the purposes of this subpart:

(1) The national committee of a given political party, all Congressional campaign committees of that political party, and all political committees established, financed, maintained, or controlled by any of the foregoing, together comprise a *political party group*.

(2) The State committee of a given political party in a given State, all subordinate committees of that State committee, and all district or local

committees of that political party within that State that meet the definition of political committee under 11 CFR 100.5, together comprise a *political party group*. See 11 CFR 100.14.

(b) *Restrictions on certain expenditures.* On or after the date on which a political party nominates a candidate for election to Federal office, no political committee within a given political party group may do any of the following during the remainder of the election cycle:

(1) Make any coordinated party expenditure under 11 CFR 109.32 in connection with the general election campaign of that candidate at any time after any political committee within that political party group makes any independent expenditure with respect to that candidate; or

(2) Make any independent expenditure with respect to that candidate at any time after any political committee within that political party group makes any coordinated party expenditure under 11 CFR 109.32 in connection with the general election campaign of that candidate.

(c) *Restrictions on certain transfers and assignments.* On or after the date that a political committee within a political party group makes any coordinated party expenditure under 11 CFR 109.32 in connection with the general election campaign of a candidate, no political committee within that same political party group may do any of the following during the remainder of the election cycle:

(1) Transfer any funds to, or receive a transfer of any funds from, any political committee within another political party group if any political committee within that other political party group has made or intends to make an independent expenditure with respect to that candidate; or

(2) Assign all or any portion of its authority to make coordinated party expenditures under 11 CFR 109.32 in connection with the general election campaign of that candidate to any political committee within another political party group if any political committee within that other political party group has made or intends to make an independent expenditure with respect to that candidate. See 11 CFR 109.33.

(d) *Definitions.* For the purposes of this section:

(1) An independent expenditure made by a political party committee *with respect to* a candidate includes independent expenditures expressly advocating the election of that party's candidate, as well as independent expenditures expressly advocating the

defeat of any other candidate seeking nomination for election, or election, to the Federal office sought by that party's candidate.

(2) *Election cycle* has the meaning in 11 CFR 100.3(b), except that the election cycle ends on the date of the general election runoff, if any.

§ 109.36 Are there additional circumstances under which a political party committee is prohibited from making independent expenditures?

The national committee of a political party must not make independent expenditures in connection with the general election campaign of a candidate for President of the United States if the national committee of a political party is designated as the authorized committee of its presidential candidate pursuant to 11 CFR 9002.1(c).

§ 109.37 What is a "party coordinated communication"?

(a) *Definition.* A political party communication is coordinated with a candidate, a candidate's authorized committee, or their agents, when the communication satisfies the conditions set forth in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) The communication is paid for by a political party committee or its agent.

(2) The communication satisfies at least one of the content standards in 11 CFR 109.21(c). For a communication that satisfies the content standard in 11 CFR 109.21(c)(2), the conduct standard in 11 CFR 109.21(d)(6) must be satisfied before the communication shall be deemed coordinated.

(3) The communication satisfies at least one of the conduct standards in 11 CFR 109.21(d). Notwithstanding paragraph (b)(1) of this section, the candidate with whom a party coordinated communication is coordinated does not receive or accept an in-kind contribution that results from conduct described in 11 CFR 109.21(d)(4) or (d)(5), unless the candidate or authorized committee engages in conduct described in 11 CFR 109.21 (d)(1) through (d)(3).

(b) *Treatment of a party coordinated communication.* A payment by a political party committee for a communication that is coordinated with a candidate, and that is not otherwise exempted under 11 CFR part 100, subpart C or E, must be treated by the political party committee making the payment as either:

(1) An in-kind contribution for the purpose of influencing a Federal election under 11 CFR 100.52(d) to the candidate with whom it was coordinated, which must be reported under 11 CFR part 104; or

(2) A coordinated party expenditure pursuant to coordinated party expenditure authority under 11 CFR 109.32 in connection with the general election campaign of the candidate with whom it was coordinated, which must be reported under 11 CFR part 104.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

14. The authority citation for part 110 would be revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

15. In §110.1, paragraph (d) would be revised and paragraph (n) would be added to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees. (2 U.S.C. 441a(a)(2)).

* * * * *

(d) *Contributions to other political committees.* No person shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

* * * * *

(n) Contributions to committees making independent expenditures. The limitations on contributions of this section also apply to contributions made to political committees making independent expenditures under 11 CFR part 109.

16. In §110.2, paragraph (d) would be revised and paragraph (k) would be added to read as follows:

§ 110.2 Contributions by multicandidate political committees.

* * * * *

(d) *Contributions to other political committees.* No multicandidate political committee shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

* * * * *

(k) Contributions to multicandidate political committees making independent expenditures. The limitations on contributions of this section also apply to contributions made to multicandidate political committees making independent expenditures under 11 CFR part 109.

§ 110.7 [Removed and reserved]

17. Section 110.7 would be removed and reserved.

18. In §110.8, paragraph (a) would be amended as follows:

(a) The introductory text would be redesignated as paragraph (a)(1);

(b) Paragraph (a)(1) would be redesignated as paragraph (a)(1)(i);

(c) Paragraph (a)(2) would be redesignated as paragraph (a)(1)(ii);

(d) A new paragraph (a)(2) would be added to read as follows; and

(e) A paragraph (a)(3) would be added to read as follows:

§ 110.8 Presidential candidate expenditure limitations.

(a) * * *

(2) The expenditure limitations in paragraph (a)(1) of this section shall be increased in accordance with 11 CFR 110.9(c).

(3) Voting age population is defined at 11 CFR 110.18.

* * * * *

19. In part 110 §110.18 would be added to read as follows:

§ 110.18 Voting age population.

There is annually published by the Department of Commerce in the **Federal Register** an estimate of the voting age population based on an estimate of the voting age population of the United States, of each State, and of each Congressional district. The term *voting age population* means resident population, 18 years of age or older.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

20. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8), and 441b.

21. In section 114.4, paragraphs (c)(5)(i) and (c)(5)(ii)(A) would be revised to read as follows:

§ 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

* * *

(c) *Communications by a corporation or labor organization to the general public.*

* * *

(5) *Voter guides.*

* * *

(i) The corporation or labor organization must not act in cooperation, consultation, or concert with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide, and no portion of the voter guide may expressly advocate the election or defeat of one or more clearly identified candidate(s) or candidates of any clearly identified political party.

(ii) (A) The corporation or labor organization must not act in cooperation, consultation, or concert with or at the request or suggestion of the candidates, the candidates'

committees or agents regarding the

preparation, contents and distribution of
the voter guide;

* * * * *

Dated: September 13, 2002.

Scott E. Thomas,

Commissioner, Federal Election Commission.

[FR Doc. 02-23813 Filed 9-23-02; 8:45 am]

BILLING CODE 6715-01-P



Federal Register

**Tuesday,
September 24, 2002**

Part IV

Small Business Administration

**Small Business Innovation Research
Policy Directive; Notice**

SMALL BUSINESS ADMINISTRATION

RIN 3245-AE72

Small Business Innovation Research Program Policy Directive**AGENCY:** Small Business Administration.**ACTION:** Notice of final Policy Directive.

SUMMARY: This document revises the Small Business Innovation Research (SBIR) Program Policy Directive. This revised Policy Directive reflects statutory amendments to the SBIR Program and provides guidance to Federal agencies for the general conduct of the program.

DATES: This final Policy Directive is effective on September 24, 2002.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: In 1982, Congress enacted the Small Business Innovation Development Act of 1982 (SBIDA), Public Law 97-219 (codified at 15 U.S.C. 638), which established the Small Business Innovation Research Program (SBIR Program). The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in Federally-funded research and research and development (R/R&D). The SBIR Program is a phased process, uniform throughout the Federal Government, of soliciting proposals and awarding funding agreements for R/R&D to meet stated agency needs or missions. To stimulate and foster scientific and technological innovation, including increasing commercialization of Federal R/R&D, the program must follow a uniform competitive process of three phases: Phase I, Phase II, and Phase III.

SBIDA requires the U.S. Small Business Administration (SBA) to "issue Policy Directives for the general conduct of the SBIR programs within the Federal Government." 15 U.S.C. 638(j)(1). SBA published its first Policy Directive, Policy Directive No. 65-01, 19 years ago (47 FR 52966, Nov. 24, 1982). The last SBIR Policy Directive amendments were published 9 years ago (58 FR 6144-6158, Jan. 26, 1993).

In December of 2000, Congress enacted the Small Business Innovation Research Program Reauthorization Act of 2000 (Reauthorization Act), Public Law 106-554. The Reauthorization Act extends the SBIR Program through

September 30, 2008. In addition, the Reauthorization Act: (1) Requires SBA to clarify that the rights to data generated during the performance of an SBIR award apply to all SBIR awards, including Phase I, II, and III; (2) requires the establishment of SBIR Program Government-accessible and public-accessible databases; (3) requires that each application for a Phase II award contain a succinct commercialization plan; (4) requires agencies to report to SBA all instances in which the agency pursues research, development, or production of a technology developed by an SBIR Phase I or II awardee and determined that it was not practicable to enter into a follow-on Phase III award with that awardee; (5) clarifies when a Phase III award can be issued; (6) requires agencies with SBIR budgets over \$50,000,000 to enter into an agreement with the National Academy of Sciences for the National Research Council to conduct a review of their SBIR Program; (7) requires agencies to report to SBA annually on the calculations of the agency's extramural budget within 4 months of enactment of the agency's annual Appropriations Act; and (8) establishes the Federal and State Technology (FAST) Partnership Program to strengthen the technological competitiveness of SBCs in the United States.

To implement these statutory changes, and to streamline the current Directive, SBA published a proposed Policy Directive on May 18, 2001. See 66 FR 27721. The public comment period closed on June 18, 2001. However, SBA believed that SBCs needed more time to respond and therefore re-opened the comment period until July 23, 2001. 66 FR 33598 (June 22, 2001). SBA received over 200 comments from 30 different comment letters on the proposed Directive. This final Directive includes changes based on some of the comments received.

Summary of General Comments

SBA received several comments that were general in nature. One commenter noted that the Directive does not diminish the independence of participating agencies. SBA concurs. Section 9(j) of the Small Business Act (Act) requires that SBA issue an SBIR Program Policy Directive to provide guidance to the Federal agencies participating in the SBIR Program for the general conduct and operation of the Program. While the SBIR agencies are obligated to follow the guidance contained in the Policy Directive, each agency determines, in consultation with SBA, such items as the categories of research projects to be included in its

SBIR Program, the number of solicitations issued during a fiscal year, the dates for receipt of proposals, and the evaluation and selection procedures employed in making SBIR awards. Thus, the Policy Directive is designed to guide the SBIR agencies in the operation of their program.

Another commenter noted that this Directive might result in an increase in administrative costs in order to comply with all of the requirements and that its administrative money might come from outreach activities. In response to this comment, SBA reminds agencies that the Act prohibits SBIR agencies from using any of their SBIR allocated-funds for financing the administrative costs associated with the operation of the SBIR Program. The Act also requires that agencies increase their outreach efforts to increase the participation of socially and economically disadvantaged small business concerns and women-owned small business concerns in the SBIR Program, including in the commercialization phase (Phase III) of the Program. SBA is not permitted to offer any relief to the SBIR agencies regarding these provisions.

One commenter stated that there is a need to maximize topics, subtopics and descriptions. SBA believes that the Policy Directive addresses this concern when it states that each SBIR agency must "issue a program solicitation that sets forth a substantial number of R/R&D topics and subtopic areas consistent with stated agency needs or missions." Further, "each topic and subtopic must describe the needs in sufficient detail to assist in providing on-target responses, but cannot involve detailed specifications to prescribed solutions of the problems."

Another commenter noted that it is a good idea to make solicitations as uniform as possible. SBA notes that Appendix I of the Policy Directive contains instructions to the SBIR agencies designed to produce solicitations that are prepared in a standardized, easy-to-read, and easy-to-understand format.

Other commenters requested that SBA be consistent with using "Phase I," *etc.* as opposed to "phase one." SBA concurs that it is easier to read and has changed the Policy Directive to read "Phase I," "Phase II," and "Phase III," as appropriate throughout the document.

One comment letter questioned what happens to the 1993 Policy Directive when this one becomes final. SBA would like to make it clear that this is the final SBIR Program Policy Directive and upon its effective date it supersedes

any previously issued SBA Policy Directive, including the 1993 Directive.

SBA received several comments to the different sections of the Directive. In addition, SBA makes some clarifications and changes. The following is a section-by-section analysis of the final Directive, including comments received for each section and changes made.

Section-by-Section Analysis

Section 1 of the Policy Directive addresses the purpose of the program and Directive. SBA did not receive any comments on this section and made no substantive changes to it.

Section 2 of the Directive is a summary of pertinent legislative provisions. SBA received several comments on this section expressing concern that the Directive ignored the "Coordination of Technology Development Programs" which is a statutory requirement of the Reauthorization Act. Section 9(u) of the Act permits each agency that established a Technology Development Program to utilize that program in furtherance of its SBIR Program. The Policy Directive, in section 9, Responsibilities of SBIR Participating Agencies and Departments, now includes this provision.

Section 3 of the Directive contains pertinent definitions for the program. SBA made several amendments to this section and received several comments. SBA added a definition for "additionally eligible state," which is consistent with the statutory definition. SBA adds this term because it is referenced in the Coordination of Technology Development Programs. SBA amends the Policy Directive and addresses this program in section 9 of the Directive.

SBA received two comments on the definition of "funding agreement," and amends that definition in response to the comments. One commenter stated that the proposed definition recognizes "other transaction" as a type of SBIR award and to therefore make sure it is listed every time "contract, grant or cooperative agreement" is mentioned. Another commenter believed that the proposed definition of "funding agreement" should not refer to an "entity," should not include "other funding transactions," and has been expanded to include services, but not products. The commenter recommend deleting "other funding transaction" and "other entity," and revising the definition to include all phases of SBIR work scope envisioned by law (performance of experimental, developmental, research, services, or production of technology).

SBA concurs with this last commenter. The Small Business Act, in defining "funding agreement," identifies the following three award instruments only: contract, grant, and cooperative agreement. Therefore, the Policy Directive is changed to remove "other transaction" as a type of award allowable under the SBIR Program. In addition, the final definition no longer refers to "other entity," and only refers to "small businesses." Finally, SBA believes that the definition, which includes awards for the performance of "experimental, developmental, or research work" funded in whole or in part by the Government, includes services and products within its ambit. SBA has stated so in the Directive.

Two commenters requested amendments to the definition of "joint venture." One commenter stated that a joint venture should be an entity that exists as a particular and discrete unit under the law, has its own Employer Identification Number (EIN), and qualifies as a SBC for eligibility under this program. Another commenter did not believe that a joint venture should have to be a totally new and separate legal entity with its own EIN. SBA considered these comments and this issue and believes that for purposes of the SBIR Program, a joint venture is an association of concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. Further, for purposes of the SBIR Program, a joint venture is viewed as a business entity in determining power to control its management and is eligible under the SBIR Program provided that the entity created is small and each concern that is part of the joint venture qualifies as a SBC. This definition of joint venture is consistent with the definition of joint venture in the Federal Acquisition Regulations (FAR). SBA notes that joint ventures must meet the requirement that the principal investigator have his or her primary employment with the SBC at the time of a Phase I and II award and during the conduct of the SBIR project.

One commenter recommended changing the definition of "program solicitation" to a "formal solicitation of topics." SBA does not concur entirely with this comment, but has amended the definition of Program Solicitation to read: "A formal solicitation for proposals whereby a Federal agency notifies the small business community

of its R/R&D needs and interests in broad and selected areas, as appropriate to the agency, and requests proposals from SBCs in response to these needs and interests."

SBA adds definitions for the terms "SBIR Technical Data" and "SBIR Technical Data Rights" and deletes the term "data rights." SBA provides these definitions because it received many inquiries from SBCs concerning what data was actually protected under the SBIR Program, and what rights business concerns have regarding their SBIR developed technologies.

Two commenters expressed concern over the definition of "small business concern" because they believe the definition indicates that by simply paying taxes to the U.S., the requirement of a 51% U.S. ownership of the company securing the SBIR award has been met. This is not true. The definition of small business concern is a concern that is organized for profit, with a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor; has, including its affiliates, not more than 500 employees, and is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States.

SBA adds a definition for the term "Technology Development Program," which is consistent with the statutory definition. SBA adds this term because it has addressed this program in section 9 of the Directive.

Section 4 of the Directive addresses the competitively phased structure of the program. SBA received several comments on this section of the Directive and amends several provisions.

In section (b) of the proposed Policy Directive, SBA proposed a new policy that would allow participating Federal agencies to fund Phase II awards under their SBIR or Small Business Technology Transfer (STTR) Programs, which had its origin in either program. Under this proposal, agencies would continue to meet the statutory expenditure of the extramural budget of 2.5 percent for the SBIR program and .15 percent for the STTR program. Any award that would have been funded through this process would have been deemed an award of the program which provides the Phase II funding. The awardee would have been required to meet the eligibility requirements for the

program under which the Phase II award is funded.

SBA received several comments regarding this proposal. Most commenters believed that the SBIR and STTR Programs are based on distinct law, with distinct legislative history, goals and budgets, and are therefore not interchangeable programs. This proposal could, they stated, weaken each program. Commenters also believed that most STTR funds would be used to fund SBIR Phase I projects, and most SBIR funds would fund STTR Phase II projects. Commenters also believed that this proposal effectively reduces funding for SBIR Phase I awards and takes flexibility away from small businesses competing in the SBIR and STTR Programs.

One commenter, however, supported the idea because it allowed a project to be supported by a different program in Phase II and this could be important in a few cases. In addition, the commenter believed it provided flexibility to the agencies.

Upon review of the comments and the proposal, SBA agrees that the two programs are different and distinct and that the proposal could weaken each program. Therefore, SBA amends the Policy Directive and removes this proposal.

In addition, SBA received comments concerning awardees eligible to compete for a Phase II award. One commenter recommended adding a sentence to make it clear that awardees can change their principal investigator upon approval by the funding agency. The commenter believed this is necessary because principal investigators sometimes leave the SBIR company and SBA should ensure that the new principal investigator has the proper credentials to complete the project. Another commenter believes that SBA should keep the parenthetical that states Phase I awardees that are "novated" or "successors in interest" can receive a Phase II award. However, the commenter thought SBA should delete the requirement that the same key staff is needed because principal investigators and staff change or leave the company after a novation. Another commenter believes that a Phase II novation agreement should preclude eligibility for a Phase II award.

SBA retains the provision relating to novation and successor in interests. However, SBA amends section 4(b) to permit agencies "to require the original awardee to relinquish its rights and interests in an SBIR project in favor of another applicant as a condition for that applicant's eligibility to participate in the SBIR Program for that project." In

addition, all applicants and their proposed personnel, including the principal investigator and key supporting staff, must meet the eligibility and scientific and technical qualifications attendant to the SBIR Program. Furthermore, SBA notes that it amends section 6(a)(4) to permit agencies to approve a change in principal investigator. Finally, although novated funding agreements are discussed in the Policy Directive in the context of Phase II, the same applies to situations involving Phase I and III awards.

SBA received several comments on Phase III of the SBIR Program, including several on the scope of a Phase III award. One commenter stated that the term "derives from" should be deleted from the description of Phase III work because it is too broad. Along similar lines, one commenter asked that SBA clarify whether all contracts are automatically Phase III contracts where an agency makes a series of successive follow-on awards to the Phase III contractor further developing and producing the SBIR technology. The commenter is concerned that the Directive may be limiting an agency's flexibility in awarding Phase III contracts or even requiring Phase III awards for follow-on efforts to large businesses that developed technology many years ago. Another commenter requested clarification that a follow-on non-SBIR program funding agreement is a Phase III agreement only when the agency is contracting with the same business concern that was awarded the Phase II contract. One commenter recommended re-writing this paragraph to state that a Phase III award is one that has its origins in, extends, or is the logical conclusion of Phases I and II.

SBA believes that the statute and legislative intent dealing with Phase III awards is clear and includes work that "derives from" prior SBIR work. SBA amends section 4(c) of the Policy Directive to be clear in the definition, application, and status of Phase III awards. Accordingly, section 4(c) provides that "SBIR Phase III refers to work that derives from, extends, or logically concludes effort(s) performed under prior SBIR funding agreements." In addition, SBA has amended the Directive to state that an agency official may determine, using the Directive's guidance, whether a contract or other funding agreement is a Phase III award.

With respect to Phase III in general, one commenter stated that "work share" can be accomplished in Phase I and II, but questioned why it could not also be used for Phase III. Statutory provisions for the conduct of work with SBIR funds

relate to Phases I and II only. Arrangements for work to be accomplished in Phase III awards are matters of negotiation between agencies and awardees.

SBA received several comments on data rights for Phase III (which are discussed in other sections of the Directive, as well). One commenter suggested that an SBIR Phase III awardee should not have data rights where a competition is held. Another suggested that the Directive should clarify that intellectual property data rights protections on an SBIR Phase III award are afforded only to new technical data generated under the SBIR funding agreement. The commenter believes that any part of a technical data package on a Phase III funding agreement that includes data originally generated under prior SBIR funding agreements, where intellectual property protections have expired, should not be afforded the additional 4 years protection.

SBA believes that section 4(c)(2) of the Policy Directive clearly states that a "Phase III award is, by its nature, an SBIR award, has SBIR status, and must be accorded SBIR data rights." As provided in section 8(b)(2) of the Directive, data rights are protected by agencies for a period of not less than 4 years from delivery of the last deliverable under the Phase I, II, or III award. In addition, SBA believes that even if a competition is held, if the awardee was a Phase II SBIR awardee and the contract is for work that derives from, extends, or logically concludes that firm's work, the contract must have all SBIR Phase III status and data rights.

SBA also received comments regarding competition requirements for Phase III. Two commenters asked for clarification of Phase III "follow-on" requirements. One stated that the language "has been competitively selected using peer review or scientific review criteria" sounds like competition is necessary, and the other commenter asked whether an agency's technical review process under Phase I and Phase II meets the requirement for peer review or scientific review under Phase III. The statement that Phase III awards may be made using non-SBIR funding for the "continuation of R/R&D that has been competitively selected using peer review or scientific review criteria" means that competition is not necessary again, because competition via this peer review, etc. occurred for prior SBIR phases.

SBA also received several comments on the justification and approval (J&A) requirements for Phase III awards discussed in section 4(c)(3). One

commenter recommended that SBA specifically state that no J&A is needed in Phase III. The commenter stated that agencies believe J&As limit their authority to issue a sole source award in Phase III. In addition, agencies might also limit the scope of Phase III awards to the scope of the J&A. Two commenters stated that FAR 6.302-5 states that a J&A is not required when the statute expressly requires the procurement be made from a specific source but one is required when the statute only authorizes it. This commenter argued that the Small Business Act only authorizes, but does not require, that the procurement be made from the successful Phase II awardee. Another commenter recommended stating that issuance of a J&A does not change the SBIR status or limit data rights for Phase III awardees and requested that this amendment apply retroactively.

SBA amends the Policy Directive to address several of these comments. According to the Competition in Contracting Act, when awarding a contract pursuant to 10 U.S.C. 2304(b)(2), the procuring agency need not prepare a J&A. 10 U.S.C. 2304(b)(3); *see also* 41 U.S.C. 253(b)(3). Section 2304(b)(2) states that the head of an agency may provide for the procurement of property or services using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Act (15 U.S.C. 638, 644). 10 U.S.C. 2304(b)(2). Section 9 of the Small Business Act addresses the SBIR Program. Therefore, a procuring agency may restrict competition under the SBIR to small businesses or a small business (if that is all that can perform the award) and is not required by statute to prepare a J&A.

Consequently, SBA has revised the Directive to provide that a J&A is not required to fund an SBIR Phase III project, but if an agency wishes to prepare one, "it is sufficient to state for purposes of a Justification and Approval pursuant to FAR 6.302-5, that the project is an SBIR Phase III award that is derived from, extends, or logically concludes efforts performed under prior SBIR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 253(b)(2)." All provisions of this SBIR Program Policy Directive are effective upon publication in the **Federal Register** and supercede those contained in previously issued SBA Policy Directives concerning the SBIR Program, but are not retroactive.

One commenter requested clarification on section 4(c)(5), which states there is no limit on the number,

duration, or dollar value of Phase III awards made to a business concern. One commenter recommended such awards be cut off in time (perhaps after the period of protection of the SBIR data rights). SBA has reviewed these comments and believes the Directive is clear: "there is no limit on the number, duration, type, or dollar value of Phase III awards made to a business concern," or "on the time that may elapse between a Phase I or Phase II award and Phase III award, or between a Phase III award and any subsequent Phase III award."

SBA also received several comments on reporting requirements for Phase III. Two commenters stated that the Policy Directive implies that agencies must report every time they do not issue a Phase III award to a Phase II awardee. One commenter noted that the statute limits the reporting requirements to instances where the agency is pursuing technology developed under the SBIR program of that agency (as opposed to the technology developed under the SBIR program of another agency); the SBIR business concern remains a small business; and the agency makes the decision to pursue the technology from a source other than the SBIR business concern. One commenter recommended making it clear that agencies only have to report when they issue an award to a concern, other than the Phase II awardee, for a technology developed by the SBIR concern. Another commenter stated that the agency SBIR Program Manager would have no way of knowing whether or not a contract was not awarded to an SBIR Participant, so it will be difficult to give such data to SBA.

SBA believes that section 4(c)(7) (and 10(b)(13)) of the Policy Directive is clear that agencies are required to report only those instances where a follow-on award with non-SBIR funds was issued to a concern other than the SBIR awardee that developed the technology to be pursued under the follow-on award. In addition, SBA believes that the "notice" requirement in section 4(c)(7), as well as the "reporting" requirements in section 10(b)(13), require agency coordination of, at least, SBIR Program Managers/Coordinators and contracting activities. SBA does not believe that the reporting requirements are limited to instances where the SBIR business concern remains a small business. The statute and legislative history evidence that the intent of the program is to help small businesses grow through commercialization in Phase III. Therefore, when agencies make follow-on awards to a concern other than the one that received the

Phase I and II award, this should be reported to Congress.

SBA received several comments concerning the size of a Phase III awardee. One commenter stated that there is a contradiction between sections 4(c)(7) and 6(a)(1) of the Policy Directive. Section 4 states that Phase III awardees need not be eligible as an SBC, but section 6 states that each awardee under the SBIR Program must qualify as an SBC. Several commenters asked for clarification on the size of a Phase III awardee. Two commenters thought other than small businesses should not qualify for Phase III because it is inconsistent with the intent of the SBIR Program. One commenter appeared to support the position that Phase III awardees need not be eligible as an SBC.

SBA reviewed these comments, as well as congressional intent and the purpose of the SBIR Program, and determines that Phase III awardees do not have to qualify as SBCs. The intent of Congress is that SBIR firms should be encouraged in Phase III to develop and expand business applications of their SBIR research with the desired outcome that new employment and income are generated. The purpose of Phase III is to commercialize the innovation and help the SBC grow. Restricting Phase III to only SBCs might hinder the growth of SBIR Participants. Section 4(c)(6) of the Policy Directive is clear that the small business size limits do not apply to Phase III awards. Thus status as an SBC is required only for receipt of Phase I and Phase II awards.

One commenter noted that section 4(c)(7) of the Policy Directive states that it is the intent of Congress that agencies give special acquisition preference, including sole source awards, to the SBIR awardee that developed the technology. The commenter asked for clarification of this preference and to state that the preference is not mandatory. Another commenter stated its support for the special acquisition preference for Phase III.

SBA concurs and believes the Policy Directive is clear that this is a preference and is not mandatory. However, there is a statutory requirement that SBA establish procedures to "ensure" that an agency that issues a follow-on award for technology developed by an SBIR awardee, executes that follow-on award with that SBIR awardee (*see* Section 4(c)(8) of the Policy Directive) and "reports" instances where the award was issued to other than that SBIR awardee (*see* Section 9(a)(12)). It is clear that Congress intends, to the greatest extent practicable, that agencies issue

Phase III awards to the SBIR awardees that developed the technology.

Section 5 of the Policy Directive provides guidance on the program solicitation process. SBA did not make substantive changes to this section. In addition, SBA received few comments on this section. One commenter stated its support for the concept of uniform applications and standards. SBA notes that the Policy Directive provides instructions designed to achieve the maximum consistency practicable among the SBIR agencies.

Another commenter stated that electronic commerce techniques may be utilized for soliciting, receiving, evaluating and awarding SBIR contracts and the Policy Directive should address this. SBA notes that the Policy Directive leaves the identification of and instructions for compliance with these techniques to each agency in the presentation of its solicitation.

Section 6 of the Policy Directive sets forth the eligibility and application requirements. SBA also received several comments on this section.

One commenter requested that SBA include language in section 6(a)(1) outlining when a wholly-owned subsidiary can participate in the SBIR Program. SBA notes that this issue is addressed in the Policy Directive's definition section and in its size regulations (13 CFR 121.702). Both provide that a concern eligible for an SBIR award must be at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. SBA notes that this issue was also addressed in an Office of Hearings and Appeals (OHA) ruling, *Size Appeal of CBR Laboratories, Inc.*, SBA No. SIZ 4423 (Jan. 10, 2001). In that appeal, OHA ruled that a firm that is otherwise eligible for an SBIR award is disqualified because it is wholly-owned by another entity. At this time, SBA is considering this issue and if SBA determines that a change in the regulation is necessary, it will issue a proposed regulation pursuant to Notice and Comment rulemaking. If there is a change in the regulation, the Directive will be changed accordingly.

One commenter suggested that some reference should be made in section 6(a) addressing restrictions on the employment of foreign nationals to work on SBIR contracts because there are International Traffic in Arms Regulations (ITAR), which need to be considered when allowing foreign nationals to work on contracts involving technology. SBA declines to include this reference because it believes that the qualifications of individuals

performing under SBIR awards are agency determinations.

One commenter asked for clarification as to whether the subcontracting limitation in sections 6(a)(2) and (3) of the Policy Directive is defined by dollar value or quantity of work. SBA believes that agencies are in the best position to make this determination, which may depend on project requirements set by the agency.

Another commenter noted that Professional Employer Organizations (PEO) are referenced in section 6(a)(4) of the Policy Directive, but not defined. At this time, SBA is considering a definition that could be used for the SBIR Program and for its size regulations, but notes that it generally considers a PEO to be an organization that provides an integrated approach to the management and administration of the human resources and employer risk of its clients, by contractually assuming substantial employer rights, responsibilities, and risk, through the establishment and maintenance of an employer relationship with the workers assigned to its clients.

One commenter expressed support for section 6(a)(5) of the Policy Directive, which allows a grantee to conduct part of the R&D effort outside the United States (e.g., proposal may be to develop ways to market American Agricultural products overseas so it may be necessary to go overseas to conduct some R&D). Another commenter stated that the Policy Directive should allow concerns to perform R/R&D outside of the United States if there is a special consultant or instrumentation that they need. SBA believes that in rare and unique circumstances, agencies may approve a portion of the project to be conducted or obtained outside of the United States. The Policy Directive provision providing for this is designed to increase the likelihood of success in achieving the goals and objectives of the research project.

SBA received a few comments concerning commercialization plans, which are discussed in section 6(b) of the Policy Directive. One commenter expressed its support for the commercialization plan because it will help agencies select Phase II winners with the best chance of commercialization. SBA agrees that the statutory requirement for the inclusion of a succinct commercialization plan with each Phase II proposal moving toward commercialization will enhance significantly the likelihood of project success in the marketplace and the ability of the agency to identify Phase II participants with the best chance of commercialization.

Another commenter stated that SBA should distinguish between a commercialization plan and a business plan in the Policy Directive, that there should be a page limit on the commercialization plan and that it should not be included in the page limit for the application. The Policy Directive prescribes page limits on Phase I proposals only. Each agency establishes a Phase II proposal package according to its agency-specific requirements. In addition, SBA believes that it has provided sufficient guidance in the Policy Directive on what must be included in the commercialization plan, and this guidance distinguishes a commercialization plan from a business plan.

One commenter asked for clarification on section 6(b)(1), which provides that Phase I proposers with more than 15 Phase II awards must "document" their Phase III funding efforts. In response to this comment, SBA notes that an ultimate goal of the SBIR Program is to commercialize the subject of the research project. Phase I applicants that have received more than 15 Phase II awards in the last 5 fiscal years are obligated to "document the extent to which it was able to secure Phase III funding to develop concepts resulting from previous Phase II SBIR awards." The form of such documentation may include letters requesting funding from individuals, financial institutions, etc. and the responses received, as well as other items or approaches deemed appropriate by agencies in their evaluation of this requirement.

Section 7 of the Policy Directive outlines the SBIR funding process. SBA received several comments to this section. SBA received a few comments on section 7(a)(1)(iii). One commenter stated that agencies must provide SBA and each SBIR agency a list of Phase I and Phase II awardees and suggested that it be sent only to SBA for inclusion in Tech-Net so that all agencies can access it. SBA concurs. The Tech-Net Database System, as described in Section 11(e) of the Policy Directive, is developed and designed to accomplish this objective.

SBA received two comments on funding essentially equivalent work, addressed in section 7(a)(1)(iii) of the Policy Directive. One commenter thinks it is a good idea for applicants to indicate if proposals for essentially equivalent work were made or anticipated to be made to prevent duplicative awards. Another commenter noted problems that arise with duplicate funding. SBA recognizes that applicants may propose essentially equivalent work to more than one agency. The

requirement is that applicants must inform each agency of a duplicate proposal submission to more than one agency. In addition, SBA notes that the Policy Directive requires that each agency provide to SBA and to each SBIR agency a listing of awardees, including their address and title of each project. This information will be uploaded into the SBA Tech-Net database, which can then be searched by all SBIR agencies in real-time before the issuance of an award for duplicative funding (as described in Section 11(e) of the Policy Directive). In addition, agency solicitations are required to contain a warning that applicants may not receive more than one award for essentially equivalent work.

SBA received a few comments on reviewing and awarding Phase I awards set forth in sections 7(a), (b), and (c) of the Policy Directive. One commenter expressed support for external peer review with lots of ad hoc reviewers in addition to panel reviewers. The commenter felt that this is the best way to ensure a thorough and fair review. The commenter noted that outside peer reviews take longer and so also supports allowing Phase I to take up to 12 months, based on agency needs. Another commenter stated that section 7(a)(1) refers to 6 months for the time by which Phase I awards should be made after solicitation closing date. However, some agencies use less time. The commenter questioned whether this was appropriate. Another commenter agreed that notifying Phase I awardees within 6 months of a solicitation closing date is realistic, although some agencies may be doing this in a shorter amount of time.

SBA recognizes that agencies may have requirements, such as external peer review, that may make it difficult to achieve the desired time of 6 months from solicitation to award. SBA notes that although 6 months from the closing date of the solicitation to award is the routine "benchmark," agencies are encouraged to reduce that time frame wherever practicable. The Policy Directive provides that, based on agency needs, agencies are permitted to extend that period up to 12 months. Although one commenter believes this length of time may place a burden on small businesses, SBA disagrees and believes there is a strong need for a thorough and fair process.

One commenter suggested that section 7(c)(1) should state that in addition to the basic proposal evaluation criteria, secondary considerations might include program balance or critical agency requirements. SBA agrees and believes that all proposal evaluation

considerations should be identified clearly in each agency's solicitation. SBA amends the Directive accordingly.

Several commenters stated that the Directive addresses profit in section 7(f), but does not address indirect cost recovery. These commenters believe that different indirect cost policies among the agencies often cause SBCs to effectively subsidize SBIR projects, which is an unintended consequence. Therefore, these commenters recommended that SBA provide an indirect cost policy that is uniform across all the agencies. SBA does not agree that the Policy Directive should address this issue. Each agency has an indirect cost policy designed to accommodate the request for recovery of most applicants. Those applicants that demonstrate exceptional need should address that need to the agency.

The majority of the comments received on this section concerned the funding amounts for Phases I and II. In its proposed Directive, in section 7(h), SBA stated that agencies could award SBIR funding agreements that exceeded the guideline of \$100,000 for Phase I and \$750,000 for Phase II. Some commenters believed that allowing agencies to exceed the Phase I and II guidelines of \$100,000 and \$750,000, respectively, provides too much discretion to the agencies and is inconsistent with the statute. These commenters argued that if agencies were allowed to award larger funding agreements, less awards would be made to small businesses. Other commenters stated that SBA should ensure that agencies comply with the funding award guidelines in all but limited circumstances and ensure that award amounts are not substantially greater than the \$100,000 and \$750,000 amounts. One commenter supported granting awards in excess of the \$100,000 and \$750,000 limitations. Finally, two commenters noted that there was an inconsistency in the proposed Directive between sections 7(h)(2) and 10(b)(7) with respect to when an agency must report Phase I awards to SBA.

SBA has clarified the Policy Directive to identify \$100,000 in Phase I and \$750,000 in Phase II as award amounts that generally may not be exceeded. Agencies may exceed these dollar levels where appropriate for a particular project, but must provide justification to SBA for doing so. SBA believes that this is consistent with the statute and legislative history and that flexibility is necessary to achieve success in projects that most likely would not be successful otherwise, for example, drug discovery.

Along similar lines, two commenters stated that there should be provisions

for adjusting the amount of awards for inflation. SBA concurs and is currently reviewing the matter. In the meantime, agencies may exceed statutory levels where appropriate for a particular project, but must provide a written justification to SBA.

Section 8 of the Policy Directive sets forth the terms of agreement under SBIR awards. SBA received several comments on this section. Specifically, SBA received numerous comments concerning section 8(b), which addresses data rights for Phases I, II and III awards. Two commenters suggested that SBA state that the removal or inclusion of the SBIR data rights clause is non-negotiable and that the data rights clause is automatically inserted into the Phase III award notwithstanding an agency's failure or refusal to do so. The commenter also wanted these changes to apply retroactively. Another commenter thought that agencies should be allowed to negotiate for these rights prior to award.

Several commenters thought this section, addressing the period of data rights protection, should be clarified. One commenter believed that as set forth in the proposed rule, the clause means that for projects that receive both a Phase I and Phase II award, the 4 year protection period begins at the end of Phase I and ends four years later. This would mean that data rights from Phase II would only be protected for approximately two years following completion of the Phase II project. Another comment recommended that SBA should ensure in the Directive that agencies know they have to protect all SBIR technical data from all prior phases for a period of not less than 4 years from completion of the last phase of the SBIR Program. Similarly, one commenter stated that the Directive is unclear on protecting rights for Phase III work that does not immediately follow a Phase II. For example, the proposed Directive stated that the four year protection period starts at the end of Phase II, then when a Phase III starts, protection is granted during the duration of the Phase III and a new four year protection period starts when the Phase III ends. The commenter asked what happens if the Phase III does not start until after the first four-year clock has run out. Finally, one commenter recommended SBA amend the Directive to state that data rights apply to subcontracts.

SBA amends the Policy Directive to clarify that agencies are required by statute to protect SBIR data rights developed from Phases I, II, and III awards, including subcontracts to such

awards, for a period of at least 4 years from the last deliverable under that award. In addition, SBA amends the Directive to emphasize that agencies cannot condition a Phase III award on a concern giving up its SBIR data rights. Likewise, the Policy Directive clarifies that SBIR data rights can not be negotiated or diminished by the funding agency. The Policy Directive prohibits the negotiation for SBIR data rights before awarding an SBIR funding agreement. Negotiations with the SBIR awardee must be via a separate agreement, made without pressure or coercion by the agency or any other party.

The Policy Directive also clarifies that any data developed under a Phase III funding agreement must be protected by SBIR data rights. Any data developed under Phase I, II, or III continues to be protected for a period of at least 4 years from delivery of the last deliverable under that award. The Policy Directive clarifies that although agencies are released from obligation to protect SBIR data upon expiration of the protection period, any such data that is also protected and referenced under a subsequent SBIR award must remain protected through the protection period of that subsequent SBIR award. For example, if a Phase III award that is issued within the Phase II data rights protection period refers to and protects the data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period.

SBA received one comment on patents and copyrights. The comment stated that SBA should clarify the data rights because neither the statute nor the SBA Directive establish separate rights of the parties respecting patents or copyrights. SBA believes that these subjects are covered adequately in the instructions to agencies for preparation of SBIR Program solicitations (Appendix I).

SBA received one comment requesting that the Policy Directive address the selling of licenses or technical data language and the Government purchasing such data from SBIR awardees. SBA believes that agencies or their prime contractors, Government-owned, contractor-operated facilities, or Federally-funded research and development centers should negotiate the purchase or licensed use of SBIR funded technology directly with the SBIR awardee. This should be done through the agencies' routine acquisition and procurement procedures and should not be a condition of the SBIR funding agreement.

Section 9 of the Policy Directive outlines the responsibilities of SBIR Participating Agencies and Departments. One commenter stated that it is not realistic for agencies to provide a report to SBA within 4 months of receiving their appropriations, as required by section 9(a)(1). SBA can not change this requirement or time period and notes that the Small Business Act specifically prescribes this time period.

SBA received several comments on reporting requirements of SBIR agencies. Two commenters queried whether, pursuant to section 9(a)(12) of the Policy Directive, participating agencies must report every Phase II effort that does not result in a Phase III award. Both commenters thought that the requirement was too broad and should be narrowed. A separate commenter supported this reporting requirement. Two commenters argued that SBIR Program Managers do not know when such a contract may have been issued to a non-SBIR awardee.

Another commenter stated that it interprets the reporting requirements of the Policy Directive to apply to cases where an agency wants to use the SBC's data/technology but does not want to use the original SBC. If the SBIR awardee is still in the four-year protection umbrella, the agency cannot release the data/technology. The Policy Directive is clear that agencies are required to report only those instances where a follow-on award with non-SBIR funds was issued to a concern other than the SBIR awardee that developed the technology to be pursued under that follow-on award. Finally, SBA believes that the satisfaction of this requirement calls for agency coordination of, at least, SBIR Program Managers/Coordinators with contracting activities.

SBA received one comment on section 9(a)(13). The commenter questioned who in the agency does the agency's annual performance plan and how different that report is from the annual data report. The Act requires each agency participating in the SBIR program to submit to SBA an annual report on the conduct of its SBIR Program. This is different from the Act's requirement that each agency also include a section on its SBIR Program as part of its annual performance plan required by 31 U.S.C. 1115(a) & (b), and must submit such section to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business.

SBA received several comments on the "Coordination of Technology Development Programs," and concern

that it was not addressed in the proposed Directive. Section 9(u) of the Small Business Act permits each agency that has established a Technology Development Program to utilize that program in furtherance of its SBIR Program. Specifically, the Act permits an agency that has established a Technology Development Program to review for funding under that program, in each fiscal year, any proposal to provide outreach and assistance to 1 or more SBCs interested in participating in the SBIR Program. This includes any proposal to make a grant or loan to a company to pay a portion or all of the cost of developing an SBIR proposal, from an entity, organization, or individual located in—(1) a State that is eligible to participate in that technology development program; or (2) an Additionally Eligible State. This also includes any meritorious proposal for an SBIR Phase I award that is not funded through the SBIR Program for that fiscal year due to funding constraints, from an SBC located in a state identified in (1) or (2) immediately above. The Policy Directive, in section 9(b), now includes this provision.

SBA received two comments seeking clarification on discretionary technical assistance. One commenter stated that this section suggests that the \$4,000 of technical assistance will be in addition to the award and will count as part of the agency's SBIR funding. SBA has amended section 9(c)(1) of the Policy Directive to provide further guidance regarding discretionary technical assistance. The Act allows discretionary technical assistance to Phase I and II awardees. Agencies may provide up to \$4,000 in Phase I for such assistance, in addition to the award amount. Each agency may allow Phase II awardees to expend up to \$4,000 per year for such assistance, using funds available from the previously determined award amount. Statutory funding guidelines are not altered by this provision.

SBA received comments noting the "gaps," or length of time between SBIR awards. SBA adds a provision addressing gap funding. According to section 9(d) of the Policy Directive, agencies are encouraged to develop programs to reduce the time period between the issuance of SBIR Phase I and Phase II awards. As appropriate, agencies should develop accelerated proposal and evaluation procedures designed to address the gap in funding these competitive awards.

SBA adds a provision at section 9(f) that states that each SBIR agency must expend 2.5 percent of its extramural budget on awards made to SBCs. Agencies may not make available for the

purpose of meeting the 2.5 percent an amount of its extramural budget for basic research that exceeds 2.5 percent. Funding agreements with SBCs for R/R&D that result from competitive or single source selections other than an SBIR Program will not be considered to meet any portion of the 2.5 percent. This is a statutory requirement that agencies have been required to follow for several years, and although the extramural budget is discussed in section 2 of the Policy Directive, SBA believes it should be set forth in full in this section.

One commenter claimed that although section 9 of the Policy Directive bars use of any SBIR budget for administrative costs, there are agencies that do this. The Act and the Policy Directive, at section 9(f)(2), explicitly prohibit any agency from using any portion of its SBIR budget for administrative purposes. Any agency that is in violation should cease this practice immediately. SBA will monitor the allocations of the agencies SBIR budgets more closely in the future, and use the report submitted to SBA for calculating their extramural R/R&D budgets to determine the actual annual SBIR expenditures each should allocate. SBA will report to Congress any agency that fails to meet the required annual expenditure.

SBA removes the provision that would have allowed agencies to subcontract portions of the SBIR funding agreement back to the issuing agency in all instances. SBA received several comments stating that agencies should not be allowed to subcontract portions of the SBIR funding agreements back to the funding agency or another agency because it creates a serious conflict of interest as the awarding agency would benefit directly from a proposal it may award. Some commenters believed this takes flexibility away from SBCs. One commenter thought this provision was a good idea because some of the best scientists work for the Government and SBA should not restrict SBIR awardees from working with them.

SBA amends the Policy Directive at section 9(f)(3) to specifically state that an agency must not be allowed to subcontract any portion of the SBIR award back to the issuing agency or to any other Federal governmental unit unless SBA determines, based upon information provided by the agency, that it would be helpful to the small business and it would not create a conflict of interest.

Similarly, SBA received two comments on this issue concerning Cooperative Research and Development

Agreements (CRADAs). One commenter stated that it does not think that the subcontracting section should apply to CRADAs. Another commenter stated that collaboration between agencies and SBCs is possible without the transfer of funds through CRADAs. SBA believes that the prohibition on subcontracting should be interpreted to mean that no portion of an award financed under the SBIR Program may be returned to the issuing agency or to any other Governmental unit, unless approved by SBA. This, however, does not interfere with the use of a CRADA, or any other collaborative mechanism that does not have SBIR funds attached to it, in the performance of an SBIR project.

SBA received two comments on whether or not a Phase II can be funded by an agency that did not fund the Phase I award. One commenter thought SBA should not allow Phase II awards to be funded by a different agency because it encourages firms to shop a turned down Phase II. The other commenter thought SBA should allow a Phase II to be funded by another agency as long as there are uniform practices. SBA believes that allowing a different agency to fund a Phase II award will increase the likelihood of success for meritorious Phase II projects that would not receive funding otherwise. It is important to note that the SBIR Program has allowed the funding of Phase II proposals within an agency (for example, Department of Defense and its components, Department of Health and Human Services and its components, including the National Institutes of Health and its components, *etc.*) since the inception of the Program. In addition, SBA believes that the guidance provided for such transfers between agencies assures uniform practice.

Section 10 of the Policy Directive describes in detail the annual report each participating agency must submit to SBA on the SBIR Program. One commenter stated that section 10(b)(7) seems to conflict with an earlier statement in the Directive that states agencies must report only cases in which the cumulative Phase I and Phase II guideline of \$850,000 are exceeded. Another commenter argued that agencies should not have to report this. The Directive is clear that agencies are required to report and justify any Phase I award exceeding \$100,000 and any Phase II award exceeding \$750,000. Although the Directive permits agencies to exceed these dollar levels where appropriate for a particular project, these instances must be reported and justified to monitor the program and ensure there is no abuse.

Two commenters questioned why agencies have to, pursuant to section 10(b)(8), report when a Phase I process exceeds 6 months, especially since the Policy Directive permits the process to take up to one year. While SBA recognizes that an agency may not be able to meet the 6 months from solicitation to award period in all cases, that time frame remains as the standard that all agencies should work toward. SBA requires this information because it is charged with monitoring the program, including ensuring the solicitation and award process is performed in a timely and fair manner.

Section 10(b)(9) of the Policy Directive states that the agency must instruct a Phase III awardee to provide the name, address, project title, and dollar amount obligated. One commenter questioned whether the agency has such authority and another stated that the agency already has this information. SBA amended this section to require each agency to provide this data.

Section 10(b)(10) requires the agency to report when only one proposal is received. One commenter believed this is unnecessary and a burden on the agencies. The commenter believes that it may encourage agencies to reduce, rather than maximize, the number of topics and subtopics. SBA disagrees. In order to maintain the competitive nature of the SBIR Program, agencies should assess the number of proposals received for a given topic or subtopic and use this information to determine if they should continue funding this technology in future SBIR solicitations. In addition, the Policy Directive requires each agency's annual report to contain justification for any award made under a topic or subtopic where the agency received only one proposal. Collection of this information on a quarterly basis, and updated in the agency's annual report, is necessary to meet informational requests quickly.

One commenter stated that agencies should report the duration of the SBIR-funded tasking prior to Phase III award and the lapsed time to award for Phase III. The commenter stated that in some cases, Phase II awards exceed five years to award date from close of the solicitation, but SBIR provided about 30 months of funded effort. SBA believes that agencies should ensure that the time period between Phase I and Phase II, and between Phase II and Phase III, are kept to the absolute minimum, based on agency needs and requirements.

One commenter argued that it is unnecessary for agencies to report when companies receive more than 15 Phase II awards. SBA notes that this

requirement, set forth in section 10(b)(11) of the Policy Directive, is a corollary to the requirement in the Act that an SBC that has received more than 15 SBIR Phase II awards in the last 5 fiscal years must, in its Phase I proposal, provide certain data, including the current commercialization status of each Phase II award. Therefore, it is not an unnecessary requirement.

Section 11 of the Policy Directive sets forth the SBA's responsibilities with respect to the SBIR Program. Two commenters questioned how SBA will determine whether follow-on funding non-federal commitments were properly considered in the evaluation of Phase II proposals as set forth in section 11(c)(3). SBA plans to request information from agencies as necessary to meet its monitoring responsibilities.

SBA received several comments about its SBIR database, set forth in section 11(e) of the Policy Directive. There were several general comments about the database. Two comments supported the database and stated that capabilities afforded SBA with Tech Net should improve the ability of participating agencies to best implement the SBIR Program. One comment expressed concern over the data collection from SBCs, believing it may discourage them from wanting to participate in the SBIR Program. In contrast, one commenter stated it does not believe the Policy Directive sets forth an approach to creating the Government database that is responsive to the reauthorization legislation. This commenter believes that the database should track commercialization and account for outcomes that result in savings to the Government, as well as capture the company outcomes like initial public offerings and mergers and acquisitions. Yet another commenter recommended that the requirements and format for Tech-net commercialization and sales data be standardized and uniform for all agencies.

SBA agrees that the database and its capabilities will improve the ability of participating agencies to best implement the SBIR Program and allow SBA to evaluate the program as it relates to outcomes and outputs. In addition, SBA believes it has developed the data collection items to meet the requirements of the Act. The format for the Tech-Net commercialization data will be standardized and uniform across agencies.

One commenter stated that because the technical abstract is important for the peer review and internal reviews, it should be at least 200 words, but no more than 400. SBA disagrees and believes that a limit of 200 words, as set

forth in section 11(e)(2) of the Policy Directive, is sufficient for the technical abstract of the project.

There were also comments concerning specific aspects of the database. Several commenters did not feel that Tech Net should include information about applicants that do not receive a Phase I award because it is too time consuming and useless information. In response, SBA notes that the Act requires specific data to be collected for the Government database regarding each applicant that does not receive a Phase I or Phase II award.

Two commenters stated that the Policy Directive should provide that Federal agencies are not responsible for submitting or verifying the information submitted by the awardees. These commenters also stated that SBA should provide detailed guidelines and instructions to the Phase II firms on the specific information that SBA wants submitted and make allowance for the many ways that companies might try to develop revenue. Another commenter noted that it will be difficult to get valid revenue and investment information from each Phase II awardee. SBA notes that agencies are required to prepare their Phase II proposal packages to meet the requirements of the Policy Directive. This does not include verification of the information concerning revenue and other related information resulting from SBIR awards.

One commenter questioned how funding agreement officers will be able to verify actual awards from other agencies and use the database to view the abstract and determine overlap. SBA is currently considering mechanisms to enable Tech-Net to be used in this way.

One commenter expressed concern about the privacy and security of the confidential information in the database. SBA concurs and has therefore developed the Government Tech-Net Database with security of the data as its prime objective. Similarly, one commenter asked how far the Freedom of Information Act (FOIA) exemption extends with respect to the database. According to the Act, information provided pursuant to the Government Tech-Net Database is considered privileged and confidential and not subject to disclosure pursuant to the FOIA.

One commenter suggested that SBA remove the requirement in section 11(e)(9) that requires the Public Tech-Net database to include abstracts for funded projects and replace them with the requirement to include the title of the proposed project and the name, address, telephone number of the official signing for the applicant. SBA

disagrees with this suggestion because abstracts are essential to understanding the importance of the projects selected for funding.

One commenter stated that Tech-Net should not replace the current state-by-state detailed listing maintained currently by SBA because it is useful to state economic development agencies. Tech-Net would require states to re-key this information to make specific data requests to SBA, which would not be productive. SBA agrees and will continue to post the state-by-state listing of awards on its website. Similarly, one commenter stated that the Federal Government should share the database with state economic development entities that enter into a use and nondisclosure agreement with the Government regarding the database. SBA concurs. In fact, the Policy Directive provides for such an arrangement.

Another commenter noted that the key word search in Tech-Net has not been helpful so far and that new data fields should be incorporated. SBA agrees that the keyword search can be improved and plans to develop new data fields.

One commenter requested that agencies collecting the data manage all data collection and then provide it to SBA. This commenter does not think it is good to introduce another agency (SBA) that the SBC must deal with. SBA disagrees with this suggestion. Awardees will not need to interact with SBA. Awardees will complete the Tech-Net questions as part of each agency's application procedures.

One commenter stated that the relationship between Pro-Net and Tech Net is not clear. In response to this comment, SBA amends the Policy Directive to remove any reference to Pro-Net, as Tech-Net has been enhanced to provide a seamless link to Pro-Net.

Section 12 of the Policy Directive establishes guidance for the Federal and State Technology (FAST) Program and Outreach Program. SBA notes that although the Policy Directive contains guidance on this program, Pub. L. 107-50 requires SBA to promulgate regulations establishing standards for the consideration of proposals under FAST, including standards regarding each of the considerations identified in the statute. SBA is currently drafting these regulations.

Another comment on FAST stated that there should be a reduced match to encourage outreach to low-income areas of states, even if those states were high-volume states in terms of SBIR awards. There is no mention of low-income states in the proposed Policy Directive.

SBA notes that although this item is not included in the Policy Directive, it is specifically addressed in SBA's annual FAST Program Announcement, which may be found at www.sba.gov/sbir/indexprograms.html.

Appendix I of the Directive contains the instructions for SBIR Program solicitation preparation. One commenter believed SBA should highlight the part on eligibility in section 1(c) of the Appendix and possibly make it a separate section. Although SBA agrees that this is an important issue to the program, SBA also believes that eligibility is covered adequately in the Appendix I instructions.

SBA received a few comments on the proposal requirements. One commenter asked that SBA make sure the proposal requirements and technical and commercialization reporting requirements are uniform. SBA believes that the Policy Directive accomplishes these suggestions.

SBA received a comment that the font size should be at least 11 point because reviewers often complain when it is smaller. SBA notes that the Policy Directive, at 3(a)(1), provides that a 10-point font type is the minimum. An agency may specify a larger point font to satisfy its needs.

One commenter stated that SBA should modify section 4(b)(1)(i-iv) of the Appendix to state that agencies may use their own wording for the evaluation criteria. SBA believes that the Policy Directive states the evaluation criteria contained in the Policy Directive are the minimum to be developed by each agency. Exact wording is not required, as long as these minimum criteria are maintained in the evaluation process.

SBA received a few comments on cost sharing as set forth in section 5(e) of the Appendix. One commenter stated that some agencies use cost sharing as an evaluation factor while another stated that cost sharing should be allowed, but it should not be a factor in the review and selection process because larger small firms could provide it and it would have an unfair advantage over startup firms. SBA amends the Policy Directive to state clearly that cost sharing cannot be an evaluation factor.

One commenter stated that the Directive needs to give consideration to proposals containing non-monetary aspects that are key elements of carrying out research—advancing science through publications, presentation and patents, training graduate students through collaborations. SBA disagrees, as these are not item considerations expressed in the Act.

One comment stated that the disclosure permission statement in 3(b)(11) of the Appendix, which asks whether the Government may disclose the title, technical abstract page of the proposed project if the proposal is not awarded, is not consistent with the current requirement that the Government Tech-Net database information be collected. SBA disagrees. The disclosure permission statement is discretionary and is designed to permit agencies to respond to requests from the public for certain information regarding unfunded proposals. It is executed on a case-by-case basis as a potential opportunity for the unfunded applicant, whereas the Government Tech-Net Database is an all-inclusive requirement of the Act.

Appendix II of the Directive shows the Tech-Net Data Fields for the Public Database. SBA did not make any substantive changes to and received no comments on this section.

SBA has determined that this rule imposes additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. Specifically, the Reauthorization Act amended the Small Business Act to require the creation of a public and Government database on the SBIR and STTR Programs. According to the statute, the public database will include the name, size, location and an identifying number of each SBC that has received a Phase I or II SBIR award from a Federal agency; a description of each Phase I or II award received by that SBC, including an abstract, the name of the Federal agency making the award, and the date and amount of the award; the identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR award is made; and information regarding mentors and Mentoring Networks. In addition, the Small Business Act now requires the creation of a Government database that will contain the following information for each Phase II award: information on revenue from the sale of new products or services resulting from the research conducted under the award; information on additional investment from any source, other than Phase I or II SBIR or STTR awards, to further the research and development conducted under the award; and any other information received in connection with the award that the Administrator and SBIR program managers considers relevant and appropriate. The Government database will also include narrative information that a SBC receiving a Phase II award voluntarily submits to

further describe the outputs and outcomes of its awards and for each applicant that does not receive a Phase II award, the name, size and location of the applicant, an abstract of the project and the Federal agency to which the application was made. Finally, the Government database may also include any other data collected by or available to any Federal agency that such agency considers useful for SBIR program evaluation purposes.

In response to this statutory requirement, in § 9(a)(6), the Directive requires Federal agencies to collect or maintain this information from awardees and provide it to SBA. In addition, as required by the statute, the Directive requires a SBC receiving a Phase II award to update information in the database concerning that award. Further, as also required by statute, the SBC receiving a Phase II award shall be requested to voluntarily update such information annually for a period of five years.

Thus, the Directive outlines the information SBA is required to collect from the SBIR agencies, who in turn collect some of this data from Phase I and II awardees (some of the data is already available to the agencies). Although the statute requires the collection of certain information from the agencies and SBIR Phase I and II awardees, it also provides discretion to collect data SBA and the agencies deem relevant. SBA is currently in the process of developing the Tech Net databases, which will house this information, and determining what information not prescribed specifically by statute may be relevant to the program.

Notice of Final Policy Directive; Small Business Innovation Research Program

To: The Small Business Innovation Research Program Directors.

Subject: Small Business Reauthorization Act of 2000 (Reauthorization Act)—Amendments to the Small Business Innovation Research Program.

1. *Purpose.* Section 9(j)(3) of the Small Business Act (15 U.S.C. 638(j)(3)) (as amended by Public Law 106-554) requires the Administrator of the U.S. Small Business Administration (SBA) to modify its Small Business Innovation Research (SBIR) Program Policy Directive, issued for the general conduct of the SBIR Program.

2. *Authority.* This Policy Directive is issued pursuant to 15 U.S.C. 638(j).

3. *Procurement Regulations.* It is recognized that the Federal Acquisition Regulations may need to be modified to conform to the requirements of the Reauthorization Act and the final Policy

Directive. SBA's Administrator or designee must review and concur with any regulatory provisions that pertain to areas of SBA responsibility. SBA's Office of Technology coordinates such regulatory actions.

4. *Personnel Concerned.* This Policy Directive serves as guidance for all federal government personnel who are involved in the administration of the SBIR Program, issuance and management of funding agreements or contracts pursuant to the SBIR Program, and the establishment of goals for small business concerns in research or research and development acquisition or grants.

5. *Originator.* SBA's Office of Technology.

6. *Date.* This Policy Directive is effective upon publication in the **Federal Register**.

Luz Hopewell,

Associate Administrator for Business Development, Government Contracting/ Business Development, Small Business Administration.

Hector V. Barreto,

Administrator, Small Business Administration.

Small Business Innovation Research (SBIR) Program Final Policy Directive

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1. Purpose

(a) Section 9(j) of the Small Business Act (Act) requires that the Small Business Administration (SBA) issue an SBIR Program Policy Directive for the general conduct of the SBIR Program within the Federal Government.

(b) This Policy Directive fulfills SBA's statutory obligation to provide guidance to the participating Federal agencies for the general operation of the SBIR Program. Additional or modified

instructions may be issued by the SBA as a result of public comment or experience.

(c) The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in Federally-funded research or research and development (R/R&D). Specific program purposes are to: (1) Stimulate technological innovation; (2) use small business to meet Federal R/R&D needs; (3) foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51 percent owned and controlled by women, in technological innovation; and (4) increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity and economic growth.

(d) Federal agencies participating in the SBIR Program (SBIR agencies) are obligated to follow the guidance provided by this Policy Directive. Each agency is required to review its rules, policies, and guidance on the SBIR Program to ensure consistency with this Policy Directive and to make any necessary changes in accordance with each agency's normal procedures. This is consistent with the statutory authority provided to the SBA concerning the SBIR Program.

2. Summary of Legislative Provisions

(a) The Small Business Innovation Research Program Reauthorization Act of 2000, Public Law 106-554, amended section 9 of the Act (15 U.S.C. 638).

(1) The amendments:

(i) Continue the SBIR Program through September 30, 2008;

(ii) Clarify data rights pertaining to SBIR Phase I, Phase II, and Federally-funded Phase III awards.

(iii) Establish databases—one for the public and one for Government use—to collect and maintain in a common format information that is necessary to assist SBCs and assess the SBIR Program.

(iv) Require agencies with an SBIR budget of over \$50,000,000 for fiscal year 1999 to enter into an agreement with the National Academy of Sciences for the National Research Council to conduct a review of each agency's SBIR Program.

(v) Require SBIR agencies to report to SBA on the calculation of the agency's extramural budget within 4 months of enactment of each agency's annual Appropriations Act.

(vi) Establish the Federal and State Technology (FAST) Partnership Program to strengthen the technological competitiveness of SBCs.

(vii) Extend the Rural Outreach Program through September 30, 2005.

(b) Each Federal agency with an extramural budget for R/R&D in excess of \$100,000,000 must participate in the SBIR Program.

(c) The statutory requirements establish a uniform, simplified process for the operation of the SBIR Program while allowing the SBIR agencies flexibility in the operation of their individual SBIR Program. This Policy Directive fulfills the Congressional intent to minimize regulatory burden in the conduct of this program.

(d) Each SBIR agency must establish an SBIR Program by reserving, in each fiscal year, not less than 2.5 percent of its extramural budget for awards to SBCs for R/R&D through the following uniform, three-phase process:

(1) Phases I and II. These phases help SBIR agencies meet R/R&D and commercialization objectives through funding agreements.

(2) Phase III. This phase, where appropriate, helps Federal agencies participating in the SBIR Program by:

(i) providing Federal agencies the benefits of commercial applications derived from Government-funded R/R&D which stimulates technological innovation and enhances the national return on investment from R/R&D,

(ii) providing SBIR awardees access to the Federal market through non-SBIR funding agreements; and

(iii) providing SBIR awardees access to private sector markets to stimulate economic growth and create jobs.

(e) The Act directs each SBIR agency to report annually to SBA. The Act also requires SBA to obtain annual reports and monitor each agency's SBIR Program and to report these findings annually to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business.

(f) The competition requirements of the Armed Services Procurement Act of 1947 (10 U.S.C. 2302 *et seq.*) and the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 *et seq.*) must be read in conjunction with the procurement notice publication requirements of section 8(e) of the Small Business Act (15 U.S.C. 637(e)). The following notice publication requirements of section 8(e) of the Small Business Act apply to SBIR agencies using contracts as a SBIR funding agreement.

(1) Any Federal executive agency intending to solicit a proposal to contract for property or services valued above \$25,000 must transmit a notice of the impending solicitation to the Governmentwide point of entry (GPE)

for access by interested sources. See FAR 5.201. The GPE, located at <http://www.fedbizopps.gov>, is the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. In addition, no agency must issue its solicitation for at least 15 days from the date of the publication of the GPE. The agency may not establish a deadline for submission of proposals in response to a solicitation earlier than 30 days after the date on which the solicitation was issued.

(2) The contracting officer must generally make available through the GPE those solicitations synopsized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. See FAR 5.102.

(3) Any executive agency awarding a contract for property or services valued at more than \$25,000 must submit a synopsis of the award through the GPE if a subcontract is likely to result from such contract. See FAR 5.301.

(4) The following are exemptions from the notice publication requirements:

(i) In the case of agencies intending to solicit Phase I proposals for contracts in excess of \$25,000, the head of the agency may exempt a particular solicitation from the notice publication requirements if that official makes a written determination, after consulting with the Administrator of the Office of Federal Procurement Policy and the SBA Administrator, that it is inappropriate or unreasonable to publish a notice before issuing a solicitation.

(ii) The SBIR Phase II award process is exempt.

(iii) The SBIR Phase III award process is exempt.

3. Definitions

(a) *Act*. The Small Business Act (15 U.S.C. 631 *et seq.*), as amended.

(b) *Additionally Eligible State*. A State in which the total value of funding agreements awarded to SBCs (as defined in this section) under all agency SBIR Programs is less than the total value of funding agreements awarded to SBCs in a majority of other States, as determined by SBA's Administrator in biennial fiscal years and based on the most recent statistics compiled by the Administrator.

(c) *Applicant*. The organizational entity that, at the time of award, will qualify as an SBC and that submits a contract proposal or a grant application for a funding agreement under the SBIR Program.

(d) *Affiliate*. This term has the same meaning as set forth in 13 CFR part 121—Small Business Size Regulations, § 121.103, What is affiliation?

(e) *Awardee*. The organizational entity receiving an SBIR Phase I, Phase II, or Phase III award.

(f) *Commercialization*. The process of developing marketable products or services and producing and delivering products or services for sale (whether by the originating party or by others) to Government or commercial markets.

(g) *Cooperative Agreement*. A financial assistance mechanism used when substantial Federal programmatic involvement with the awardee during performance is anticipated by the issuing agency. The Cooperative Agreement contains the responsibilities and respective obligations of the parties.

(h) *Eligible State*. A State: (1) where the total value of SBIR and Small Business Technology Transfer (STTR) Program awards made to recipient businesses in the State during fiscal year 1995 was less than \$5,000,000 (as reflected in SBA's database of fiscal year 1995 awards), and (2) that certifies to SBA's Administrator that it will, upon receipt of assistance, provide matching funds from non-Federal sources in an amount that is not less than 50 percent of the amount of assistance provided.

(i) *Essentially Equivalent Work*. This occurs when (1) substantially the same research is proposed for funding in more than one contract proposal or grant application submitted to the same Federal agency; (2) substantially the same research is submitted to two or more different Federal agencies for review and funding consideration; or (3) a specific research objective and the research design for accomplishing an objective are the same or closely related in two or more proposals or awards, regardless of the funding source.

(j) *Extramural Budget*. The sum of the total obligations for R/R&D minus amounts obligated for R/R&D activities by employees of a Federal agency in or through Government-owned, Government-operated facilities. For the Agency for International Development, the "extramural budget" must not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries. For the Department of Energy, the "extramural budget" must not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs. (Also see Section 7(i) of this Policy Directive for additional exemptions related to national security.)

(k) *Feasibility*. The practical extent to which a project can be performed successfully.

(l) *Federal Agency*. An executive agency as defined in 5 U.S.C. 105, or a military department as defined in 5 U.S.C. 102, except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, Section 3.4(f), or its successor orders.

(m) *Funding Agreement*. Any contract, grant, or cooperative agreement entered into between any Federal agency and any SBC for the performance of experimental, developmental, or research work, including products or services, funded in whole or in part by the Federal Government.

(n) *Funding Agreement Officer*. A contracting officer, a grants officer, or a cooperative agreement officer.

(o) *Grant*. A financial assistance mechanism providing money, property, or both to an eligible entity to carry out an approved project or activity. A grant is used whenever the Federal agency anticipates no substantial programmatic involvement with the awardee during performance.

(p) *Innovation*. Something new or improved, having marketable potential, including (1) development of new technologies, (2) refinement of existing technologies, or (3) development of new applications for existing technologies.

(q) *Intellectual Property*. The separate and distinct types of intangible property that are referred to collectively as "intellectual property," including but not limited to: patents, trademarks, copyrights, trade secrets, SBIR technical data (as defined in this section), ideas, designs, know-how, business, technical and research methods, other types of intangible business assets, and all types of intangible assets either proposed or generated by an SBC as a result of its participation in the SBIR Program.

(r) *Joint Venture*. An association of concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(s) *Outcomes*. The measures of long-term, eventual, program impact.

(t) *Outputs*. The measures of near-term program impact.

(u) *Principal Investigator/Project Manager*. The one individual designated

by the applicant to provide the scientific and technical direction to a project supported by the funding agreement.

(v) *Program Solicitation*. A formal solicitation for proposals whereby a Federal agency notifies the small business community of its R/R&D needs and interests in broad and selected areas, as appropriate to the agency, and requests proposals from SBCs in response to these needs and interests. Announcements in the **Federal Register** or the GPE are not considered an SBIR Program solicitation.

(w) *Prototype*. A model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices.

(x) *Research or Research and Development (R/R&D)*. Any activity that is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

(y) *Small Business Concern*. A concern that, on the date of award for both Phase I and Phase II funding agreements:

(1) is organized for profit, with a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor;

(2) is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture, there can be no more than 49 percent participation by foreign business entities in the joint venture;

(3) is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity to the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and

(4) has, including its affiliates, not more than 500 employees.

(z) *Socially and Economically Disadvantaged SBC*. See 13 CFR part

124-8(A) Business Development/Small Disadvantaged Business Status Determinations, §§ 124.103 (Who is socially disadvantaged?) and 124.104 (Who is economically disadvantaged?).

(aa) *SBIR Participants*. Business concerns that have received SBIR awards or that have submitted SBIR proposals/applications.

(bb) *SBIR Technical Data*. All data generated during the performance of an SBIR award.

(cc) *SBIR Technical Data rights*. The rights an SBC obtains in data generated during the performance of any SBIR Phase I, Phase II, or Phase III award that an awardee delivers to the Government during or upon completion of a Federally-funded project, and to which the Government receives a license.

(dd) *Subcontract*. Any agreement, other than one involving an employer-employee relationship, entered into by an awardee of a funding agreement calling for supplies or services for the performance of the original funding agreement.

(ee) *Technology Development Program*.

(1) the Experimental Program to Stimulate Competitive Research of the National Science Foundation as established under 42 U.S.C. 1862g;

(2) the Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;

(3) the Experimental Program to Stimulate Competitive Research of the Department of Energy;

(4) the Experimental Program to Stimulate Competitive Research of the Environmental Protection Agency;

(5) the Experimental Program to Stimulate Competitive Research of the National Aeronautics and Space Administration;

(6) the Institutional Development Award Program of the National Institutes of Health; and

(7) the National Research Initiative Competitive Grants Program of the Department of Agriculture.

(ff) *United States*. Means the 50 states, the territories and possessions of the Federal Government, the Commonwealth of Puerto Rico, the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(gg) *Women-Owned SBC*. An SBC that is at least 51 percent owned by one or more women, or in the case of any publicly owned business, at least 51 percent of the stock is owned by women, and women control the management and daily business operations.

4. Competitively Phased Structure of the Program

The SBIR Program is a phased process, uniform throughout the Federal Government, of soliciting proposals and awarding funding agreements for R/R&D, production, services, or any combination, to meet stated agency needs or missions. In order to stimulate and foster scientific and technological innovation, including increasing commercialization of Federal R/R&D, the program must follow a uniform competitive process of the following three phases:

(a) *Phase I*. Phase I involves a solicitation of contract proposals or grant applications (hereinafter referred to as proposals) to conduct feasibility-related experimental or theoretical R/R&D related to described agency requirements. These requirements, as defined by agency topics contained in a solicitation, may be general or narrow in scope, depending on the needs of the agency. The object of this phase is to determine the scientific and technical merit and feasibility of the proposed effort and the quality of performance of the SBC with a relatively small agency investment before consideration of further Federal support in Phase II.

(1) Several different proposed solutions to a given problem may be funded.

(2) Proposals will be evaluated on a competitive basis. Agency criteria used to evaluate SBIR proposals must give consideration to the scientific and technical merit and feasibility of the proposal along with its potential for commercialization. Considerations may also include program balance or critical agency requirements.

(3) Agencies may require the submission of a Phase II proposal as a deliverable item under Phase I.

(b) *Phase II*. The object of Phase II is to continue the R/R&D effort from the completed Phase I. Only SBIR awardees in Phase I are eligible to participate in Phases II and III. This includes those awardees identified via a "novated" or "successor in interest" or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number. Agencies may require the original awardee to relinquish its rights and interests in an SBIR project in favor of another applicant as a condition for that applicant's eligibility to participate in the SBIR Program for that project.

(1) Funding must be based upon the results of Phase I and the scientific and technical merit and commercial

potential of the Phase II proposal. Phase II awards may not necessarily complete the total research and development that may be required to satisfy commercial or Federal needs beyond the SBIR Program. The Phase II funding agreement with the awardee may, at the discretion of the awarding agency, establish the procedures applicable to Phase III agreements. The Government is not obligated to fund any specific Phase II proposal.

(2) The SBIR Phase II award decision process requires, among other things, consideration of a proposal's commercial potential. Commercial potential includes the potential to transition the technology to private sector applications, Government applications, or Government contractor applications. Commercial potential in a Phase II proposal may be evidenced by:

- (i) the SBC's record of successfully commercializing SBIR or other research;
- (ii) the existence of Phase II funding commitments from private sector or other non-SBIR funding sources;
- (iii) the existence of Phase III, follow-on commitments for the subject of the research; and
- (iv) other indicators of commercial potential of the idea.

(c) *Phase III.* SBIR Phase III refers to work that derives from, extends, or logically concludes effort(s) performed under prior SBIR funding agreements, but is funded by sources other than the SBIR Program. Phase III work is typically oriented towards commercialization of SBIR research or technology.

(1) Each of the following types of activity constitutes SBIR Phase III work:

(i) commercial application of SBIR-funded R/R&D financed by non-Federal sources of capital (**Note:** The guidance in this Policy Directive regarding SBIR Phase III pertains to the non-SBIR federally-funded work described in (ii) and (iii) below. It does not address the nature of private agreements the SBIR firm may make in the commercialization of its technology.);

(ii) SBIR-derived products or services intended for use by the Federal Government, funded by non-SBIR sources of Federal funding;

(iii) continuation of R/R&D that has been competitively selected using peer review or scientific review criteria, funded by non-SBIR Federal funding sources.

(2) A Phase III award is, by its nature, an SBIR award, has SBIR status, and must be accorded SBIR data rights. (See Section 8(b)(2) regarding the protection period for data rights.) If an SBIR awardee wins a competition for work that derives from, extends, or logically

concludes that firm's work under a prior SBIR funding agreement, then the funding agreement for the new, competed work must have all SBIR Phase III status and data rights. A Federal agency may enter into a Phase III SBIR agreement at any time with a Phase II awardee. Similarly, a Federal agency may enter into a Phase III SBIR agreement at any time with a Phase I awardee. An agency official may determine, using the criteria set forth in the Directive as guidance, whether a contract or agreement is a Phase III award.

(3) The competition for SBIR Phase I and Phase II awards satisfies any competition requirement of the Armed Services Procurement Act, the Federal Property and Administrative Services Act, and the Competition in Contracting Act. Therefore, an agency that wishes to fund an SBIR Phase III project is not required to conduct another competition in order to satisfy those statutory provisions. As a result, in conducting actions relative to a Phase III SBIR award, it is sufficient to state for purposes of a Justification and Approval pursuant to FAR 6.302-5, that the project is a SBIR Phase III award that is derived from, extends, or logically concludes efforts performed under prior SBIR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 253(b)(2).

(4) Phase III work may be for products, production, services, R/R&D, or any combination thereof.

(5) There is no limit on the number, duration, type, or dollar value of Phase III awards made to a business concern. There is no limit on the time that may elapse between a Phase I or Phase II award and Phase III award, or between a Phase III award and any subsequent Phase III award.

(6) The small business size limits for Phase I and Phase II awards do not apply to Phase III awards.

(7) For Phase III, Congress intends that agencies or their Government-owned, contractor-operated facilities, Federally-funded research and development centers, or Government prime contractors that pursue R/R&D or production developed under the SBIR Program, give preference, including sole source awards, to the awardee that developed the technology. In fact, the Act requires reporting to SBA of all instances in which an agency pursues research, development, or production of a technology developed by an SBIR awardee, with a concern other than the one that developed the SBIR technology. (See Section 4(c)(7) immediately below for agency notification to SBA prior to award of such a funding agreement and

Section 9(a)(12) regarding agency reporting of the issuance of such award.) SBA will report such instances, including those discovered independently by SBA, to Congress.

(8) For Phase III, agencies, their Government-owned, contractor-operated facilities, or Federally-funded research and development centers, that intend to pursue R/R&D, production, services, or any combination thereof of a technology developed by an SBIR awardee of that agency, with an entity other than that SBIR awardee, must notify SBA in writing prior to such an award. This notice requirement also applies to technologies of SBIR awardees with SBIR funding from two or more agencies where one of the agencies determines to pursue the technology with an entity other than that awardee. This notification must include, at a minimum: (a) The reasons why the follow-on funding agreement with the SBIR awardee is not practicable; (b) the identity of the entity with which the agency intends to make an award to perform research, development, or production; and (c) a description of the type of funding award under which the research, development, or production will be obtained. SBA may appeal the decision to the head of the contracting activity. If SBA decides to appeal the decision, it must file a notice of intent to appeal with the contracting officer no later than 5 business days after receiving the agency's notice of intent to make award. Upon receipt of SBA's notice of intent to appeal, the contracting officer must suspend further action on the acquisition until the head of the contracting activity issues a written decision on the appeal. The contracting officer may proceed with award if he or she determines in writing that the award must be made to protect the public interest. The contracting officer must include a statement of the facts justifying that determination and provide a copy of its determination to SBA. Within 30 days of receiving SBA's appeal, the head of the contracting activity must render a written decision setting forth the basis of his or her determination.

5. Program Solicitation Process

(a) At least annually, each agency must issue a program solicitation that sets forth a substantial number of R/R&D topics and subtopic areas consistent with stated agency needs or missions. Both the list of topics and the description of the topics and subtopics must be sufficiently comprehensive to provide a wide range of opportunities for SBCs to participate in the agency R&D programs. Topics and subtopics

must emphasize the need for proposals with advanced concepts to meet specific agency R/R&D needs. Each topic and subtopic must describe the needs in sufficient detail to assist in providing on-target responses, but cannot involve detailed specifications to prescribed solutions of the problems.

(b) The Act requires issuance of SBIR (Phase I) Program solicitations in accordance with a Master Schedule coordinated between SBA and the SBIR agency. The SBA office responsible for coordination is: Office of Technology, Office of Government Contracting, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416. Phone: (202) 205-6450. Fax: (202) 205-7754. E-mail: technology@sba.gov. Internet site: www.sba.gov/sbir.

(c) For maximum participation by interested SBCs, it is important that the planning, scheduling and coordination of agency program solicitation release dates be completed as early as practicable to coincide with the commencement of the fiscal year on October 1. Bunching of agency program solicitation release and closing dates may prohibit SBCs from preparation and timely submission of proposals for more than one SBIR project. SBA's coordination of agency schedules minimizes the bunching of proposed release and closing dates. Participating agencies may elect to publish multiple program solicitations within a given fiscal year to facilitate in-house agency proposal review and evaluation scheduling.

(d) *Master Schedule*

SBA posts an electronic Master Schedule of release dates of program solicitations with links to Internet web sites of agency solicitations. Agencies must post on their Internet web sites the following information regarding each program solicitation:

- (1) The list of topics upon which R/R&D proposals will be sought.
 - (2) Agency address, phone number, or email address from which SBIR Program solicitations can be requested or obtained, especially through electronic means.
 - (3) Names, addresses, and phone numbers of agency contact points where SBIR-related inquiries may be directed.
 - (4) Release date(s) of program solicitation(s).
 - (5) Closing date(s) for receipt of proposals.
 - (6) Estimated number and average dollar amounts of Phase I awards to be made under the solicitation.
- (e) On or before August 1, each agency representative must notify SBA in

writing or by e-mail of its proposed program solicitation release and proposal due dates for the next fiscal year. SBA and the agency representatives will coordinate the resolution of any conflicting agency solicitation dates by the second week of August. In all cases, SBA will make final decisions.

(f) For those agencies that use both general topic and more specific subtopic designations in their SBIR solicitations, the topic data should accurately describe the research solicited. For example, rather than just announcing topic information characterized as "Chemistry" or "Aerodynamics," the SBIR agency should summarize the subtopic statements and, where appropriate, utilize National Critical Technologies.

(g) *Simplified, Standardized, and Timely SBIR Program Solicitations*

(1) The Act requires " * * * simplified, standardized and timely SBIR solicitations" and for SBIR agencies to use a "uniform process" minimizing the regulatory burden for SBCs. Therefore, the instructions in Appendix I to this Policy Directive purposely depart from normal Government solicitation format and requirements. SBIR Program solicitations must be prepared according to Appendix I.

(2) Agencies must provide SBA's Office of Technology with two hard copies or an e-mail version of each solicitation and any modifications no later than the date of release of the solicitation or modification to the public. Agencies that issue program solicitations in electronic format only must provide the Internet site at which the program solicitation may be accessed no later than the date of posting at that site of the program solicitation.

(3) SBA does not intend that the SBIR Program solicitation replace or be used as a substitute for unsolicited proposals for R/R&D awards to SBCs. In addition, the SBIR Program solicitation procedures do not prohibit other agency R/R&D actions with SBCs that are carried on in accordance with applicable statutory or regulatory authorizations.

6. Eligibility and Application (Proposal) Requirements

- (a) *Eligibility Requirements:*
- (1) To receive SBIR funds, each awardee of a SBIR Phase I or Phase II award must qualify as an SBC.
 - (2) For Phase I, a minimum of two-thirds of the research or analytical effort must be performed by the awardee. Occasionally, deviations from this requirement may occur, and must be

approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator.

(3) For Phase II, a minimum of one-half of the research or analytical effort must be performed by the awardee. Occasionally, deviations from this requirement may occur, and must be approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator.

(4) For both Phase I and Phase II, the primary employment of the principal investigator must be with the SBC at the time of award and during the conduct of the proposed project. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC. This precludes full-time employment with another organization. Occasionally, deviations from this requirement may occur, and must be approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator. Further, an SBC may replace the principal investigator on an SBIR Phase I or Phase II award, subject to approval in writing by the funding agreement officer. For purposes of the SBIR Program, personnel obtained through a Professional Employer Organization or other similar personnel leasing company may be considered employees of the awardee. This is consistent with SBA's size regulations, 13 CFR 121.106—Small Business Size Regulations.

(5) For both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, agencies may approve a particular portion of the R/R&D work to be performed or obtained in a country outside of the United States, for example, if a supply or material or other item or project requirement is not available in the United States. The funding agreement officer must approve each such specific condition in writing.

(b) *Proposal Requirements:*

(1) *Documentation of commercialization record of firms with multiple Phase II awards.* An SBC submitting a proposal for a funding agreement for Phase I of an SBIR Program that has received more than 15 Phase II SBIR awards during the preceding 5 fiscal years must document the extent to which it was able to secure Phase III funding to develop concepts resulting from previous Phase II SBIR awards.

(2) *Commercialization Plan.* A succinct commercialization plan must

be included with each proposal for an SBIR Phase II award moving toward commercialization. Elements of a commercialization plan may include the following:

(i) *Company information*: Focused objectives/core competencies; size; specialization area(s); products with significant sales; and history of previous Federal and non-Federal funding, regulatory experience, and subsequent commercialization.

(ii) *Customer and Competition*: Clear description of key technology objectives, current competition, and advantages compared to competing products or services; description of hurdles to acceptance of the innovation.

(iii) *Market*: Milestones, target dates, analyses of market size, and estimated market share after first year sales and after 5 years; explanation of plan to obtain market share.

(iv) *Intellectual Property*: Patent status, technology lead, trade secrets or other demonstration of a plan to achieve sufficient protection to realize the commercialization stage and attain at least a temporal competitive advantage.

(v) *Financing*: Plans for securing necessary funding in Phase III.

(vi) *Assistance and mentoring*: Plans for securing needed technical or business assistance through mentoring, partnering, or through arrangements with state assistance programs, SBDCs, Federally-funded research laboratories, Manufacturing Extension Partnership centers, or other assistance providers.

(3) *Data Collection*: Each Phase II applicant will be required to provide information to the Tech-Net Database System (<http://technet.sba.gov>). See Appendix I, Section 3(c), "Data Collection Requirement," for additional information.

7. SBIR Funding Process

Because the Act requires a "simplified, standardized funding process," specific attention must be given to the following areas of SBIR Program administration:

(a) *Timely Receipt and Review of Proposals*.

(1) Participating agencies must establish appropriate dates and formats for review of proposals.

(i) All activities related to Phase I proposal reviews must normally be completed and awards made within 6 months from the closing date of the program solicitation. However, agencies may extend that period up to 12 months based on agency needs.

(ii) Program solicitations must establish proposal submission dates for Phase I and may establish proposal submission dates for Phase II. However,

agencies may also negotiate mutually acceptable Phase II proposal submission dates with individual Phase I awardees, accomplish proposal reviews expeditiously, and proceed with Phase II awards. While recognizing that Phase II arrangements between the agency and applicant may require more detailed negotiation to establish terms acceptable to both parties, agencies must not sacrifice the R/R&D momentum created under Phase I by engaging in unnecessarily protracted Phase II proceedings.

(iii) SBIR participants often submit duplicate or similar proposals to more than one soliciting agency when the work projects appear to involve similar topics or requirements, which are within the expertise and capability levels of the applicant. To the extent feasible, more than one agency should not fund "essentially equivalent work" under the SBIR or other Federal programs. For this purpose, the standardized program solicitation will require applicants to indicate the name and address of the agencies to which essentially equivalent work proposals were made, or anticipated to be made, and to identify by subject the projects for which the proposal was submitted and the dates submitted. The same information will be required for any previous Federal Government awards. To assist in avoiding duplicate funding, each agency must provide to SBA and to each SBIR agency a listing of Phase I and Phase II awardees, their complete address, and the title of each SBIR project. This information should be distributed no later than release of the funding agreement award information to the public.

(b) *Review of SBIR Proposals*. SBA encourages SBIR agencies to use their routine review processes for SBIR proposals whether internal or external evaluation is used. A more limited review process may be used for Phase I due to the larger number of proposals anticipated. Where appropriate, "peer" reviews external to the agency are authorized by the Act. SBA cautions SBIR agencies that all review procedures must be designed to minimize any possible conflict of interest as it pertains to applicant proprietary data. The standardized SBIR solicitation advises potential applicants that proposals may be subject to an established external review process and that the applicant may include company designated proprietary information in its proposal.

(c) *Selection of Awardees*. Normally, SBIR agencies must establish a proposal review cycle wherein successful and unsuccessful applicants will be notified

of final award decisions within 6-months of the agency's Phase I proposal closing date. However, agencies may extend that period up to 12 months based on agency needs.

(1) The standardized SBIR Program solicitation must:

(i) Advise Phase I applicants that additional information may be requested by the awarding agency to evidence awardee responsibility for project completion.

(ii) Advise applicants of the proposal evaluation criteria for Phase I and Phase II.

(2) The SBIR agency and each Phase I awardee considered for a Phase II award must arrange to manage Phase II proposal submissions, reviews, and selections.

(d) *Cost Sharing*. Cost sharing can serve the mutual interests of the SBIR agencies and certain SBIR awardees by assuring the efficient use of available resources. However, cost sharing on SBIR projects is not required, although it may be encouraged. Therefore, cost sharing cannot be an evaluation factor in the review of proposals. The standardized SBIR Program solicitation (Appendix I) will provide information to prospective SBIR applicants concerning cost sharing.

(e) *Payment Schedules and Cost Principles*.

(1) SBIR awardees may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitized price and payment schedule. Advance payments are optional and may be made under appropriate law. In all cases, agencies must make payment to recipients under SBIR funding agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of the funding agreement requirements.

(2) All SBIR funding agreements must use, as appropriate, current cost principles and procedures authorized for use by the SBIR agencies. At the time of award, agencies must inform each SBIR awardee, to the extent possible, of the applicable Federal regulations and procedures that refer to the costs that, generally, are allowable under funding agreements.

(f) *Funding Agreement Types and Fee or Profit*. Statutory requirements for uniformity and standardization require consistency in application of SBIR Program provisions among SBIR agencies. However, consistency must allow for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to SBIR Programs in the

agencies. The following instructions meet all of these requirements:

(1) *Funding Agreement.* The type of funding agreement (contract, grant, or cooperative agreement) is determined by the awarding agency, but must be consistent with 31 U.S.C. 6301–6308.

(2) *Fee or Profit.* Except as expressly excluded or limited by statute, awarding agencies must provide for a reasonable fee or profit on SBIR funding agreements, consistent with normal profit margins provided to profit-making firms for R/R&D work.

(g) *Periods of Performance and Extensions.*

(1) In keeping with the legislative intent to make a large number of relatively small awards, modification of funding agreements to extend periods of performance, to increase the scope of work, or to increase the dollar amount should be kept to a minimum, except for options in original Phase I or II awards.

(2) *Phase I.* Period of performance normally should not exceed 6 months. However, agencies may provide a longer performance period where appropriate for a particular project.

(3) *Phase II.* Period of performance under Phase II is a subject of negotiation between the awardee and the issuing agency. The duration of Phase II normally should not exceed 2 years. However, agencies may provide a longer performance period where appropriate for a particular project.

(h) *Dollar Value of Awards.*

(1) Generally, a Phase I award may not exceed \$100,000 and a Phase II award may not exceed \$750,000. SBA may adjust these amounts once every 5 years to reflect economic adjustments and programmatic considerations. There is no dollar level associated with Phase III SBIR awards.

(2) An awarding agency may exceed those award values where appropriate for a particular project. After award of any funding agreement exceeding \$100,000 for Phase I or \$750,000 for Phase II, the agency's SBIR representative must provide SBA with written justification of such action. This justification must be submitted with the agency's Annual Report data. Similar justification is required for any modification to a funding agreement that would bring the cumulative dollar amount to a total in excess of the amounts set forth above.

(i) *National Security Exemption.* The Act provides for exemptions related to the simplified standardized funding process “* * * if national security or intelligence functions clearly would be jeopardized.” This exemption should not be interpreted as a blanket exemption or prohibition of SBIR

participation related to the acquisition of effort on national security or intelligence functions except as specifically defined under section 9(e)(2) of the Act, 15 U.S.C. 638(e)(2). Agency technology managers directing R/R&D projects under the SBIR Program, where the project subject matter may be affected by this exemption, must first make a determination on which, if any, of the standardized proceedings clearly place national security and intelligence functions in jeopardy, and then proceed with an acceptable modified process to complete the SBIR action. SBA's SBIR Program monitoring activities, except where prohibited by security considerations, must include a review of nonconforming SBIR actions justified under this public law provision.

8. Terms of Agreement Under SBIR Awards

(a) *Proprietary Information Contained in Proposals.* The standardized SBIR Program solicitation will include provisions requiring the confidential treatment of any proprietary information to the extent permitted by law. Agencies will discourage SBCs from submitting information considered proprietary unless the information is deemed essential for proper evaluation of the proposal. The solicitation will require that all proprietary information be identified clearly and marked with a prescribed legend. Agencies may elect to require SBCs to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text. The Government, except for proposal review purposes, protects all proprietary information, regardless of type, submitted in a contract proposal or grant application for a funding agreement under the SBIR Program, from disclosure.

(b) *Rights in Data Developed Under SBIR Funding Agreement.* The Act provides for “retention by an SBC of the rights to data generated by the concern in the performance of an SBIR award.”

(1) Each agency must refrain from disclosing SBIR technical data to outside the Government (except reviewers) and especially to competitors of the SBC, or from using the information to produce future technical procurement specifications that could harm the SBC that discovered and developed the innovation.

(2) SBIR agencies must protect from disclosure and non-governmental use all SBIR technical data developed from work performed under an SBIR funding agreement for a period of not less than four years from delivery of the last deliverable under that agreement (either

Phase I, Phase II, or Federally-funded SBIR Phase III) unless, subject to (b)(3) of this section, the agency obtains permission to disclose such SBIR technical data from the awardee or SBIR applicant. Agencies are released from obligation to protect SBIR data upon expiration of the protection period except that any such data that is also protected and referenced under a subsequent SBIR award must remain protected through the protection period of that subsequent SBIR award. For example, if a Phase III award is issued within or after the Phase II data rights protection period and the Phase III award refers to and protects data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period. Agencies have discretion to adopt a protection period longer than four years. The Government retains a royalty-free license for Government use of any technical data delivered under an SBIR award, whether patented or not. This section does not apply to program evaluation.

(3) SBIR technical data rights apply to all SBIR awards, including subcontracts to such awards, that fall within the statutory definition of Phase I, II, or III of the SBIR Program, as described in Section 4 of this Policy Directive. The scope and extent of the SBIR technical data rights applicable to Federally-funded Phase III awards is identical to the SBIR data rights applicable to Phases I and II SBIR awards. The data rights protection period lapses only: (i) Upon expiration of the protection period applicable to the SBIR award, or (ii) by agreement between the awardee and the agency.

(4) Agencies must insert the provisions of (b)(1), (2), and (3) immediately above as SBIR data rights clauses into all SBIR Phase I, Phase II, and Phase III awards. These data rights clauses are non-negotiable and must not be the subject of negotiations pertaining to an SBIR Phase III award, or diminished or removed during award administration. An agency must not, in any way, make issuance of an SBIR Phase III award conditional on data rights. If the SBIR awardee wishes to transfer its SBIR data rights to the awarding agency or to a third party, it must do so in writing under a separate agreement. A decision by the awardee to relinquish, transfer, or modify in any way its SBIR data rights must be made without pressure or coercion by the agency or any other party. Following issuance of an SBIR Phase III award, the awardee may enter into an agreement with the awarding agency to transfer or

modify the data rights contained in that SBIR Phase III award. Such a bilateral data rights agreement must be entered into only after the SBIR Phase III award, which includes the appropriate SBIR data rights clause, has been signed. SBA must immediately report to the Congress any attempt or action by an agency to condition an SBIR award on data rights, to exclude the appropriate data rights clause from the award, or to diminish such rights.

(c) *Title Transfer of Agency-Provided Property.* Under the Act, the Government may transfer title to equipment provided by the SBIR agency to the awardee where such transfer would be more cost effective than recovery of the property.

(d) *Continued Use of Government Equipment.* The Act directs that an agency allow an SBIR awardee participating in the third phase of the SBIR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the SBIR Program.

(e) *Grant Authority.* The Act does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.

(f) *Conflicts of Interest.* SBA cautions SBIR agencies that awards made to SBCs owned by or employing current or previous Federal Government employees may create conflicts of interest in violation of FAR Part 3 and the Ethics in Government Act of 1978, as amended. Each SBIR agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.

(g) *American-Made Equipment and Products.* Congress intends that the awardee of a funding agreement under the SBIR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible, in keeping with the overall purposes of this program. Each SBIR agency must provide to each awardee a notice of this requirement.

9. Responsibilities of SBIR Participating Agencies and Departments

(a) The Act requires each agency participating in the SBIR Program to:

(1) Submit to SBA's Administrator, not later than 4 months after the date of enactment of its annual Appropriations

Act, a report describing the methodology used for calculating the amount of its extramural budget. The report must also include an itemization of each research program excluded from the calculation of its extramural budget and a brief explanation of why it is excluded.

(2) Unilaterally determine the categories of projects to be included in its SBIR Program, giving special consideration to broad research topics and to topics that further one or more critical technologies, as identified by:

(i) the National Critical Technologies panel (or its successor) in reports required under 42 U.S.C. 6683, or

(ii) the Secretary of Defense in accordance with 10 U.S.C. 2522.

(3) Release SBIR solicitations in accordance with the SBA master schedule.

(4) Unilaterally receive and evaluate proposals resulting from program solicitations, select awardees, issue funding agreements, and inform each awardee under such agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement.

(5) Require a succinct commercialization plan with each proposal submitted for a Phase II award.

(6) Collect and maintain information from awardees and provide it to SBA to develop and maintain the Tech-Net Database, as identified in Section 11(e) of this policy Directive.

(7) Administer its own SBIR funding agreements or delegate such administration to another agency.

(8) Include provisions in each SBIR funding agreement setting forth the respective rights of the United States and the awardee with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(9) Ensure that the rights in data developed under each Federally-funded SBIR Phase I, Phase II, and Phase III award are protected properly.

(10) Make payments to awardees of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements and in all cases make payment to awardees under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.

(11) Provide an annual report on the SBIR Program to SBA. See Section 10 of this Policy Directive.

(12) Report at least annually to SBA's Office of Technology all instances in which an agency pursued research, development, production, or any such combination of a technology developed

by an SBC using an award made under the SBIR Program of that agency, where the agency determined that it was not practicable to enter into a follow-on non-SBIR Program funding agreement with that concern. The report must include, at a minimum:

(i) the reasons why the follow-on funding agreement with the concern was not practicable;

(ii) the identity of the entity with which the agency contracted to perform the research, development, or production; and

(iii) a description of the type of funding agreement under which the research, development, or production was obtained.

(13) Include in its annual performance plan required by 31 U.S.C. 1115(a) and (b) a section on its SBIR Program, and submit such section to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business.

(b) The Act permits an agency that has established a Technology Development Program to review for funding under that program, in each fiscal year:

(1) any proposal to provide outreach and assistance to 1 or more SBCs interested in participating in the SBIR Program, including any proposal to make a grant or loan to a company to pay a portion or all of the cost of developing an SBIR proposal, from an entity, organization, or individual located in—

(i) a State that is eligible to participate in that technology development program; or

(ii) an Additionally Eligible State.

(2) any meritorious proposal for an SBIR Phase I award that is not funded through the SBIR Program for that fiscal year due to funding constraints, from an SBC located in a state identified in (i) or (ii) immediately above.

(c) The Act allows discretionary technical assistance to SBIR awardees.

(1) Agencies may enter into agreements with vendors to provide technical assistance to SBIR awardees, which may include access to a network of scientists and engineers engaged in a wide range of technologies or access to technical and business literature available through on-line data bases. Each agency may select a vendor for a term not to exceed 3 years. The vendor must be selected using competitive and merit-based criteria. The purpose of this technical assistance is to assist SBIR awardees in:

(i) making better technical decisions on SBIR projects;

(ii) solving technical problems that arise during SBIR projects;

(iii) minimizing technical risks associated with SBIR projects; and
 (iv) commercializing the SBIR product or process.

(2) Phase I awards: Each agency may provide up to \$4,000 of SBIR funds for the technical assistance described above in (c)(1). The amount will be in addition to the award and will count as part of the agency's SBIR funding.

(3) Phase II awards: Each agency may allow awardees to expend up to \$4,000 of SBIR funds per year, using funds available from the SBIR award, for the technical assistance described above in (c)(1).

(d) Agencies are encouraged to develop programs to reduce the time period between the issuance of SBIR Phase I and Phase II awards. As appropriate, agencies should adopt accelerated proposal, evaluation, and selection procedures designed to address the gap in funding these competitive awards.

(e) Interagency actions.

(1) *Joint funding.* An SBIR project may be financed by more than one Federal agency. Joint funding is not required but can be an effective arrangement for some projects.

(2) *Phase II awards.* An SBIR Phase II award may be issued by a Federal agency other than the one that made the Phase I award. The Phase I and Phase II agencies should document their files appropriately, providing clear rationale for the transfer of the Phase II proposal to, and award by, the funding Federal agency.

(3) *Timely notification of awards.* In order to avoid duplicate funding of an SBIR project, agencies must promptly search the Tech-Net Database System for awards for essentially equivalent work. Discussion among agencies receiving similar proposals is strongly encouraged before an SBIR award is made.

(4) *Participation by women-owned SBCs and socially and economically disadvantaged SBCs in the SBIR Program.* In order to meet statutory requirements for greater inclusion, SBA and the Federal participating agencies must conduct outreach efforts to find and place innovative women-owned SBCs and socially and economically disadvantaged SBCs in the SBIR Program information system. These SBCs will be required to compete for SBIR awards on the same basis as all other SBCs. However, participating agencies are encouraged to work independently and cooperatively with SBA to develop methods to encourage qualified women-owned SBCs and socially and economically disadvantaged SBCs to participate in the SBIR Program.

(f) Limitation of participation and use of funds.

(1) Each SBIR agency must expend 2.5 percent of its extramural budget on awards made to SBCs. Agencies may not make available for the purpose of meeting the 2.5 percent an amount of its extramural budget for basic research that exceeds 2.5 percent. Funding agreements with SBCs for R/R&D that result from competitive or single source selections other than an SBIR Program must not be considered to meet any portion of the 2.5 percent.

(2) An agency must not use any of its SBIR budget for the purpose of funding administrative costs of the program, including costs associated with program operations, employee salaries, and other associated expenses.

(3) An agency must not issue an SBIR funding agreement that includes a provision for subcontracting any portion of that agreement back to the issuing agency, to any other Federal Government agency, or to other units of the Federal Government. SBA may issue a case-by-case waiver to this provision after review of an agency's written justification that includes the following information:

(i) An explanation of why the SBIR research project requires the use of the Federal facility or personnel, including data that verifies the absence of non-federal facilities or personnel capable of supporting the research effort.

(ii) Why the Agency will not and can not fund the use of the federal facility or personnel for the SBIR project with non-SBIR money.

(iii) The concurrence of the SBC's chief business official to use the federal facility or personnel.

(4) No agency, at its own discretion, may unilaterally cease participation in the SBIR Program. R/R&D agency budgets may cause fluctuations and trends that must be reviewed in light of SBIR Program purposes. An agency may be considered by SBA for a phased withdrawal from participation in the SBIR Program over a period of time sufficient in duration to minimize any adverse impact on SBCs. However, the SBA decision concerning such a withdrawal will be made on a case-by-case basis and will depend on significant changes to extramural R/R&D 3-year forecasts as found in the annual Budget of the United States Government and National Science Foundation breakdowns of total R/R&D obligations as published in the Federal Funds for Research and Development. Any withdrawal of an SBIR Federal participating agency from the SBIR Program will be accomplished in a standardized and orderly manner in

compliance with these statutorily mandated procedures.

(5) Federal agencies not otherwise qualified for the SBIR Program may participate on a voluntary basis. Federal agencies seeking to participate in the SBIR Program must first submit their written requests to SBA. Voluntary participation requires the written approval of SBA.

10. Annual Report to the Small Business Administration

The Act requires a "simplified, standardized and timely annual report" from the SBIR agencies. The following paragraphs explain more about this requirement, including the due date, the kinds of information to be included, and the number of copies to be submitted to SBA.

(a) *Annual Report Due Date and Number of Copies.* Reporting must be on an annual basis and will be for the period ending September 30 of each fiscal year. A single, hard copy report is due to SBA by March 15 of each year. For example, the report for FY 2002 (October 1, 2001—September 30, 2002) must be submitted to SBA by March 15, 2003. SBA encourages agencies to submit their annual report before the March 15 due date. The report should be sent to the address noted in Section 5(b). However, if agencies choose to send an electronic version, it should be sent to technology@sba.gov.

(b) *Annual Report Content*

(1) Agency total fiscal year, extramural R/R&D total obligations as reported to the National Science Foundation pursuant to the annual Budget of the United States Government.

(2) SBIR Program total fiscal year dollars derived by applying the statutory percentum to the agency's extramural R/R&D total obligations.

(3) SBIR Program fiscal year dollars obligated through SBIR Program funding agreements for Phase I and Phase II.

(4) Number of topics and subtopics contained in each program solicitation.

(5) Number of proposals received by the agency for each topic and subtopic in each program solicitation. Identify the number of proposals received from HUBZone SBCs.

(6) For both Phase I and Phase II, the awardee's name and address, solicitation topic and subtopic, solicitation number, project title, and total dollar amount of funding agreement. Identify women-owned SBCs, economically and socially disadvantaged SBCs, HUBZone SBCs, and Phase II awardees with follow-on funding commitments.

(7) Justification for the award of any funding agreement exceeding \$100,000 for Phase I or \$750,000 for Phase II.

(8) The number of awardees for whom the Phase I process exceeded 6 months, starting from the closing date of the SBIR solicitation to award of the funding agreement.

(9) For an agency Phase III award using non-SBIR Federal funds to continue a Phase II project, the agency must provide the name, address, project title, and dollar amount obligated.

(10) Justification for awards made under a topic or subtopic where the agency received only one proposal. Agencies must also provide the awardee's name and address, the topic or subtopic, and the dollar amount of award. Information must be collected quarterly, but updated in the agency's annual reports.

(11) An accounting of Phase I awards made to SBCs that have received more than 15 Phase II awards from all agencies in the preceding 5 fiscal years. Each agency must report: name of awardee; Phase I funding agreement number and date of award; Phase I topic or subtopic title; amount and date of previous Phase II funding; and commercialization status for each prior Phase II award.

(12) If applicable, report the number of National Critical Technology topic or subtopic funding agreements issued, including an identification of the specific critical technology topics, and the percentage by number and dollar amount of the agency's total SBIR awards to such National Critical Technologies topics.

(13) Report all instances in which an agency pursued R/R&D, services, production, or any combination of a technology developed by an SBIR awardee and determined that it was not practicable to enter into a follow-on funding agreement with non-SBIR funds with that concern. See Section 9(a)(12) for minimum reporting requirements.

(14) Report the number and dollar value of each SBIR and non-SBIR award over \$10,000 and compare the number and amount of SBIR awards with awards to other than SBCs.

11. Responsibilities of SBA

(a) SBA's Office of Technology will annually obtain available information on the current critical technologies from the National Critical Technologies panel (or its successor) and the Secretary of Defense and provide such information to the SBIR agencies.

(b) SBA will request this information in June of each year. The data received will be submitted to each of the participating Federal agencies and will

also be published in the September issue of the SBIR Pre-Solicitation Announcement.

(c) Examples of SBIR Areas to be Monitored by SBA.

(1) *SBIR Funding Allocations.* The magnitude and source of each SBIR agency's annual allocation reserved for SBIR awards are critical to the success of the SBIR Program. The Act defines the SBIR effort (R/R&D), the source of the funds for financing the SBIR Program (extramural budget), and the percentage of such funds to be reserved for the SBIR Program (2.5 percent). The Act requires that SBA monitor these annual allocations.

(2) *SBIR Program Solicitation and Award Status.* The accomplishment of scheduled SBIR events, such as SBIR Program solicitation releases and the issuance of funding agreements, is critical to meeting statutory mandates and to operating an effective, useful program. SBA monitors these and other operational features of the SBIR Program. SBA does not plan to monitor administration of the awards except in instances where SBA assistance is requested and is related to a specific SBIR project or funding agreement.

(3) *Follow-on Funding Commitments.* SBA will monitor whether follow-on non-Federal funding commitments obtained by Phase II awardees for Phase III were considered in the evaluation of Phase II proposals as required by the Act.

(4) *Agency Rules and Regulations.* It is essential that no policy, rule, regulation, or interpretation be promulgated by the SBIR agencies that are inconsistent with the Act or this Policy Directive. SBA's monitoring activity will include review of policies, rules, regulations, interpretations, and procedures generated to facilitate intra- and interagency SBIR Program implementation.

(d) SBA develops, participates in, and, when appropriate and feasible, sponsors seminars for innovative women-owned SBCs and socially and economically disadvantaged SBCs to inform them of the SBIR Program and Federal and commercial assistance and services available for potential SBIR Program participants.

(e) Standardized Collection of Data—"Technology Resources Access Network" (Tech-Net) Database System Overview

(1) SBA's Office of Technology, as functional program manager for the SBIR and the STTR Programs, is required to collect and report to the Congress, information regarding awards made to SBCs by each Federal agency participating in these programs.

(2) The Office of Technology maintains an internal database of awards and uses the system to report on technology and demographical statistics regarding the SBIR and the STTR Programs. The system also stores the 200-word technical abstract for each SBIR and STTR award that is prepared by the awardee summarizing the research effort that has been supported by the Federal Government. The system also provides the Office of Technology with the ability to perform keyword searches in many areas, including any part of the name, address, and technical abstract of the awardee. The system produces many reports that are used in the conduct of audits performed by the General Accounting Office (GAO) and to expose potential duplication of research and development efforts funded by the SBIR agencies.

(3) The Office of Technology, in a joint effort with SBA's Office of the Chief Information Officer, has redesigned the Office of Technology's internal awards database system to operate on the Internet. The Internet system is titled the "Technology Resources Network," or Tech-Net.

(4) Tech-Net offers a vast array of user-friendly capabilities, and is accessible by the public at no charge. Tech-Net allows for the online submission of SBIR/STTR awards data from all SBIR agencies. Tech-Net also allows any end-user to perform keyword searches and create formatted reports of SBIR/STTR awards information. Tech-Net will allow for potential research partners to view research and development efforts that are ongoing in the SBIR and the STTR Programs, increasing the investment opportunities of the SBIR/STTR SBCs in the high tech arena. Tech-Net serves as an excellent marketing tool for the small, high tech business community, allowing investors to view first-hand the technical capabilities of SBIR/STTR awardees. This will ultimately produce investments, partnerships, and strategic alliances resulting in commercialization of SBIR/STTR research.

(5) Tech-Net also houses legislatively mandated information on all SBIR and STTR awards, as well as confidential outcome and output information that will be relevant to measuring the effectiveness and success of the programs.

(6) Awardees can update their information and add project commercialization and sales data with user names and passwords. User name and passwords will be assigned only to awardees to provide access to their respective awards information maintained in the Tech-Net system.

Award and commercialization data maintained in the Tech-Net database can be changed only by the awardee, SBA, or the awarding SBIR /STTR Federal agency.

(7) Project commercialization and sales data can only be viewed by Congress, GAO, agencies participating in the SBIR and the STTR Programs, Office of Management and Budget (OMB), Office of Science and Technology Policy (OSTP), Office of Federal Procurement Policy (OFPP), and other authorized persons (for example, authorized contractors) who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database.

(8) To use the Tech-Net database system, visit the Web site <http://tech-net.sba.gov>. Online help is available.

(9) *Public Tech-Net Database* (See Appendix II for Data Fields). The public Tech-Net Database is a searchable, up-to-date, electronic database that includes:

(i) the name, size, location, funding agreement number, and identifying number assigned by the Administrator of each SBC that has received an SBIR or STTR Phase I or Phase II award from a Federal agency;

(ii) a description of each SBIR or STTR Phase I or Phase II award received by the SBC including:

(A) an abstract of the project funded by the award, excluding any proprietary information so identified by the awardee;

(B) the Federal agency making the award; and

(C) the date and amount of the award.

(iii) an identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR or STTR award is made; and

(iv) information regarding mentors and Mentoring Networks, as required in the Federal and State Technology (FAST) Partnership Program described in Section 12 of this Policy Directive.

(10) *Government Tech-Net Database*. SBA, in consultation with the Federal agencies participating in the SBIR and the STTR Programs, develops and maintains a secure database that:

(i) contains, for each Phase II award:

(A) information on revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(B) information on additional investment from any source, other than Phase I or Phase II SBIR or STTR awards, to further the research and development conducted under each Phase II award; and

(C) any other information received in connection with the award that the Administrator, in conjunction with the SBIR program managers of the participating agencies, considers relevant and appropriate;

(ii) includes any narrative information that a Phase II awardee voluntarily submits to further describe the outputs and outcomes of its awards;

(iii) includes for each applicant that does not receive a Phase I or Phase II award:

(A) the name, size, location, and identifying number assigned by SBA; (B) an abstract of the project; and (C) the Federal agency to which the application was made;

(iv) includes any other data collected by or available to any Federal agency that such agency considers to be useful for SBIR program evaluation; and

(v) is available for use solely for program evaluation purposes by the Federal Government or, in accordance with Policy Directives issued by SBA, by other authorized persons who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database

(11) *Data Collection for Government Tech-Net Database*

(i) Each SBC applying for a Phase II award is required to update the appropriate information in the Tech-Net database for any of its prior Phase II awards. In meeting this requirement, the SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(ii) Each Phase II awardee is required to update the appropriate information in the Tech-Net database on that award upon completion of the last deliverable under the funding agreement. In addition, the awardee is requested to voluntarily update the appropriate information on that award in the Tech-Net database annually thereafter for a minimum period of 5 years.

(iii) Pursuant to 15 U.S.C. 638(k)(4), information provided to the Government Tech-Net Database is privileged and confidential and not subject to disclosure pursuant to 5 U.S.C. 552 (Government Organization and Employees); nor must it be considered to be publication for purposes of 35 U.S.C. 102 (a) or (b).

(iv) SBA will minimize the data reporting requirements of SBCs, make updating available electronically, and provide standardized procedures.

12. Federal and State Technology (FAST) Partnership Program and Outreach Program

(a) *Federal and State Technology Partnership Program* The Small Business Innovation Research Program Reauthorization Act of 2000, Public Law 106-554, established the Federal and State Technology Partnership Program (FAST Program) to strengthen the technological competitiveness of SBCs in the United States. Congress found that programs that foster economic development among small high-technology firms vary widely among the States. Thus, the purpose of the FAST Program is to improve the participation of small technology firms in the innovation and commercialization of new technology, thereby ensuring that the United States remains on the cutting-edge of research and development in the highly competitive arena of science and technology. SBA administers the FAST Program. Additional and detailed information regarding this program is available at www.sba.gov/SBIR.

(b) *Rural Outreach Program*

(1) The Rural Outreach Program is authorized by section 9(s) of the Small Business Act, 15 U.S.C. 638(s). The Small Business Innovation Research Program Reauthorization Act of 2000, Public Law 106-554, extends the program through September 30, 2005.

(2) Historically, SBCs located in a relatively small number of states have been highly successful in securing awards under the SBIR Program. To expand competition under the SBIR and STTR Programs, and to encourage the maximum number of SBCs to submit proposals and succeed in winning awards, SBA provides Federal assistance to support statewide outreach to small high-technology businesses located in states that are underrepresented in SBIR/STTR awards. Cooperative agreements to "Eligible States" are made on a matching funds basis. The awards will be made in a ratio of Federal dollars to non-Federal dollars of 2:1, with a maximum Federal contribution of \$100,000. Assistance provided to an Eligible State under this program announcement must be used by the State, in consultation with State and local departments and agencies, for programs and activities to increase the participation of SBCs located in the State in the SBIR and STTR Programs.

(3) Only Eligible States may submit proposals for the Rural Outreach Program.

(4) SBA has determined that there are 25 "Eligible States": Alaska, Arkansas,

Delaware, District of Columbia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Puerto Rico, Rhode Island, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming.

Appendix I: Instructions for SBIR Program Solicitation Preparation

a. *General.* Section 9(j) of the Small Business Act (15 U.S.C. 638(j)) requires “. . . simplified, standardized and timely SBIR solicitations” and for SBIR agencies to utilize a “uniform process” minimizing the regulatory burden of participation. Therefore, the following instructions purposely depart from normal Government solicitation formats and requirements. SBIR solicitations must be prepared and issued as program solicitations in accordance with the following instructions.

b. *Limitation in Size of Solicitation.* In the interest of meeting the requirement for simplified and standardized solicitations, while also recognizing that the Internet has become the main vehicle for distribution, each agency should structure its entire SBIR solicitation to produce the least number of pages (electronic and printed), consistent with the procurement/assistance standing operating procedures and statutory requirements of the participating Federal agencies.

c. *Format.* SBIR Program solicitations must be prepared in a simple, standardized, easy-to-read, and easy-to-understand format. It must include a cover sheet, a table of contents, and the following sections in the order listed.

1. Program Description
2. Definitions
3. Proposal Preparation Instructions and Requirements
4. Method of Selection and Evaluation Criteria
5. Considerations
6. Submission of Proposals
7. Scientific and Technical Information Sources
8. Submission Forms and Certifications
9. Research Topics

d. *Cover Sheet.* The cover sheet of an SBIR Program solicitation must clearly identify the solicitation as a SBIR solicitation, identify the agency releasing the solicitation, specify date(s) on which contract proposals or grant applications (proposals) are due under the solicitation, and state the solicitation number or year.

Instructions for Preparation of SBIR Program Solicitation

Sections 1 through 9

1. *Program Description.* (a) Summarize in narrative form the invitation to submit proposals and the objectives of the SBIR Program.

(b) Describe in narrative form the agency's SBIR Program including a description of the three phases. Note in your description that the solicitation is for Phase I proposals only.

(c) Describe program eligibility, as follows:

Eligibility. Each concern submitting a proposal must qualify as an SBC for R/R&D purposes at the time of award. In addition, the primary employment of the principal investigator must be with the SBC at the time of award and during the conduct of the proposed research, unless otherwise approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator. Also, for both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, for example, a supply or material or other item or project requirement that is *not available* in the United States, agencies may allow that particular portion of the R/R&D work to be performed or obtained in a country outside of the United States. Approval by the funding agreement officer for each such specific condition must be in writing. Phase II proposals may be submitted only by Phase I awardees.

(d) List the name, address and telephone number of agency contacts for general information on the SBIR Program solicitation.

2. *Definitions.* Whenever terms are used that are unique to the SBIR Program, a specific SBIR solicitation or a portion of a solicitation, they will be defined in a separate section entitled “Definitions.” At a minimum, the definitions of “funding agreement,” “R/R&D,” “SBC,” “SBIR technical data,” “SBIR technical data rights,” “subcontract,” and “women-owned SBC,” as stated in this Policy Directive, must be included.

3. *Proposal Preparation Instructions and Requirements.* The purpose of this section is to inform the applicant on what to include in the proposal and to set forth limits on what may be included. It should also provide guidance to assist applicants, particularly those that may not have previous Government experience, in improving the quality and acceptance of proposals.

(a) *Limitations on Length of Proposal.* Include at least the following information:

(1) SBIR Phase I proposals must not exceed a total of 25 pages, including cover page, budget, and all enclosures or attachments, unless stated otherwise in the agency solicitation. Pages should be of standard size (8½” × 11”; 21.6 cm × 27.9 cm) and should conform to the standard formatting instructions. Margins should be 2.5 cm and type at least 10 point font.

(2) A notice that no additional attachments, appendices, or references beyond the 25-page limitation shall be considered in proposal evaluation (unless specifically solicited by an agency) and that proposals in excess of the page limitation shall not be considered for review or award.

(b) *Proposal Cover Sheet.* Every applicant is required to include at least the following information on the first page of proposals. Items 8 and 9 are for statistical purposes only.

- (1) Agency and solicitation number or year.
- (2) Topic Number or Letter.
- (3) Subtopic Number or Letter.
- (4) Topic Area.
- (5) Project Title.
- (6) Name and Complete Address of Firm.
- (7) Small Business Certification (by statement or checkbox) as follows: “The

above concern certifies that it is an SBC and meets the definition as stated in this solicitation or that it will meet that definition at time of award.”

(8) Socially and Economically Disadvantaged SBC Certification (by statement or checkbox) as follows:

“The above concern certifies that _____ it does _____ does not qualify as a socially and economically disadvantaged SBC as defined in this solicitation.”

(9) Women-owned SBC Certification (by statement or checkbox) as follows: “The above concern certifies that it _____ does _____ does not qualify as a women-owned SBC as defined in this solicitation.”

(10) An information statement regarding duplicate research as follows: “The applicant and/or Principal Investigator _____ has _____ has not submitted proposals for essentially equivalent work under other Federal program solicitations or _____ has _____ has not received other Federal awards for essentially equivalent work.” (Identify proposals/awards in Section 3(e)(10), “Similar Proposals and Awards.”)

(11) Disclosure permission (by statement or checkbox), such as follows, may be included at the discretion of the funding agency: “Will you permit the Government to disclose the title and technical abstract page of your proposed project, plus the name, address, and telephone number of the corporate official of your concern, if your proposal does not result in an award, to concerns that may be interested in contacting you for further information? Yes No _____”

(12) Signature of a company official of the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.

(13) Signature of Principal Investigator or Project Manager within the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.

(14) Legend for proprietary information as described in the “Considerations” section of this program solicitation if appropriate. May also be noted by asterisks in the margins on proposal pages.

(c) *Data Collection Requirement*

(1) Each Phase II applicant is required to provide information for the Tech-Net Database System (<http://technet.sba.gov>). The following are examples of the data to be entered by applicants into Tech-Net:

(i) Any business concern or subsidiary established for the commercial application of a product or service for which an SBIR award is made.

(ii) Revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(iii) Additional investment from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award.

(iv) Update the information in the Tech-Net database for any prior Phase II award received by the SBC. The SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(2) Each Phase II awardee is required to update the appropriate information on the award in the Tech-Net database upon completion of the last deliverable under the funding agreement and is requested to voluntarily update the information in the Tech-Net database annually thereafter for a minimum period of 5 years.

(d) *Abstract or Summary.* Applicants will be required to include a one-page project summary of the proposed R/R&D including at least the following:

(1) Name and address of SBC.
(2) Name and title of principal investigator or project manager.

(3) Agency name, solicitation number, solicitation topic, and subtopic.

(4) Title of project.

(5) Technical abstract limited to two hundred words.

(6) Summary of the anticipated results and implications of the approach (both Phases I and II) and the potential commercial applications of the research.

(e) *Technical Content.* SBIR Program solicitations must require, as a minimum, the following to be included in proposals submitted thereunder:

(1) *Identification and Significance of the Problem or Opportunity.* A clear statement of the specific technical problem or opportunity addressed.

(2) *Phase I Technical Objectives.* State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

(3) *Phase I Work Plan.* Include a detailed description of the Phase I R/R&D plan. The plan should indicate what will be done, where it will be done, and how the R/R&D will be carried out. Phase I R/R&D should address the objectives and the questions cited in (e)(2) immediately above. The methods planned to achieve each objective or task should be discussed in detail.

(4) *Related R/R&D.* Describe significant R/R&D that is directly related to the proposal including any conducted by the project manager/principal investigator or by the proposing SBC. Describe how it relates to the proposed effort, and any planned coordination with outside sources. The applicant must persuade reviewers of his or her awareness of key, recent R/R&D conducted by others in the specific topic area.

(5) *Key Personnel and Bibliography of Directly Related Work.* Identify key personnel involved in Phase I including their directly-related education, experience, and bibliographic information. Where vitae are extensive, summaries that focus on the most relevant experience or publications are desired and may be necessary to meet proposal size limitation.

(6) *Relationship with Future R/R&D.*

(i) State the anticipated results of the proposed approach if the project is successful (Phase I and II).

(ii) Discuss the significance of the Phase I effort in providing a foundation for the Phase II R/R&D effort.

(7) *Facilities.* A detailed description, availability and location of instrumentation and physical facilities proposed for Phase I should be provided.

(8) *Consultants.* Involvement of consultants in the planning and research stages of the project is permitted. If such involvement is intended, it should be described in detail.

(9) *Potential Post Applications.* Briefly describe:

(i) Whether and by what means the proposed project appears to have potential commercial application.

(ii) Whether and by what means the proposed project appears to have potential use by the Federal Government.

(10) *Similar Proposals or Awards.*

WARNING—While it is permissible with proposal notification to submit identical proposals or proposals containing a significant amount of essentially equivalent work for consideration under numerous Federal program solicitations, it is unlawful to enter into funding agreements requiring essentially equivalent work. If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award. If an applicant elects to submit identical proposals or proposals containing a significant amount of essentially equivalent work under other Federal program solicitations, a statement must be included in each such proposal indicating:

(i) The name and address of the agencies to which proposals were submitted or from which awards were received.

(ii) Date of proposal submission or date of award.

(iii) Title, number, and date of solicitations under which proposals were submitted or awards received.

(iv) The specific applicable research topics for each proposal submitted or award received.

(v) Titles of research projects.

(vi) Name and title of principal investigator or project manager for each proposal submitted or award received.

(11) *Prior SBIR Phase II Awards.* If the SBC has received more than 15 Phase II awards in the prior 5 fiscal years, the SBC must submit in its Phase I proposal: name of the awarding agency; date of award; funding agreement number; amount of award; topic or subtopic title; follow-on agreement amount; source and date of commitment; and current commercialization status for each Phase II award. (This required proposal information will not be counted toward the proposal pages limitation.)

(f) *Cost Breakdown/Proposed Budget.* The solicitation will require the submission of simplified cost or budget data.

4. *Method of Selection and Evaluation*

Criteria. (a) *Standard Statement.* Essentially, the following statement must be included in all SBIR Program solicitations:

“All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The Agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or

none of the proposed approaches to the same topic or subtopic.”

(b) *Evaluation Criteria.*

(1) The SBIR agency must develop a standardized method in its evaluation process that will consider, at a minimum, the following factors:

(i) The technical approach and the anticipated agency and commercial benefits that may be derived from the research.

(ii) The adequacy of the proposed effort and its relationship to the fulfillment of requirements of the research topic or subtopics.

(iii) The soundness and technical merit of the proposed approach and its incremental progress toward topic or subtopic solution.

(iv) Qualifications of the proposed principal/key investigators, supporting staff, and consultants.

(v) Evaluations of proposals require, among other things, consideration of a proposal's commercial potential as evidenced by:

(A) the SBC's record of commercializing SBIR or other research,

(B) the existence of second phase funding commitments from private sector or non-SBIR funding sources,

(C) the existence of third phase follow-on commitments for the subject of the research, and,

(D) the presence of other indicators of the commercial potential of the idea.

(2) The factors in (b)(1) above and other appropriate evaluation criteria, if any, must be specified in the “Method of Selection” section of SBIR Program solicitations.

(c) *Peer Review.* The program solicitation must indicate if the SBIR agency contemplates that as a part of the SBIR proposal evaluation, it will use external peer review.

(d) *Release of Proposal Review Information.* After final award decisions have been announced, the technical evaluations of the applicant's proposal may be provided to the applicant. The identity of the reviewer must not be disclosed.

5. *Considerations.* This section must include, as a minimum, the following information:

(a) *Awards.* Indicate the estimated number and type of awards anticipated under the particular SBIR Program solicitation in question, including:

(i) Approximate number of Phase I awards expected to be made.

(ii) Type of funding agreement, that is, contract, grant, or cooperative agreement.

(iii) Whether fee or profit will be allowed.

(iv) Cost basis of funding agreement, for example, firm-fixed-price, cost reimbursement, or cost-plus-fixed fee.

(v) Information on the approximate average dollar value of awards for Phase I and Phase II.

(b) *Reports.* Describe the frequency and nature of reports that will be required under Phase I funding agreements. Interim reports should be brief letter reports.

(c) *Payment Schedule.* Specify the method and frequency of progress and final payment under Phase I and II agreements.

(d) *Innovations, Inventions and Patents.*

(1) *Limited Rights Information and Data.*

(i) *Proprietary Information*. Essentially, the following statement must be included in all SBIR solicitations:

"Information contained in unsuccessful proposals will remain the property of the applicant. The Government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements. If proprietary information is provided by an applicant in a proposal, which constitutes a trade secret, proprietary commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law. This information must be clearly marked by the applicant with the term "confidential proprietary information" and the following legend must appear on the title page of the proposal: "These data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal. If a funding agreement is awarded to this applicant as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement and pursuant to applicable law. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages _____ of this proposal."

Any other legend may be unacceptable to the Government and may constitute grounds for removing the proposal from further consideration, without assuming any liability for inadvertent disclosure. The Government will limit dissemination of such information to within official channels."

(ii) *Alternative To Minimize Proprietary Information*. Agencies may elect to instruct applicants to:

(A) Limit proprietary information to only that absolutely essential to their proposal.

(B) Provide proprietary information on a separate page with a numbering system to key it to the appropriate place in the proposal.

(iii) *Rights in Data Developed Under SBIR Funding Agreements*. Agencies should insert essentially the following statement in their SBIR Program solicitations to notify SBCs of the necessity to mark SBIR technical data before delivering it to the Agency:

"To preserve the SBIR data rights of the awardee, the legend (or statements) used in the SBIR Data Rights clause included in the SBIR award must be affixed to any submissions of technical data developed under that SBIR award. If no Data Rights clause is included in the SBIR award, the following legend, at a minimum, should be affixed to any data submissions under that award.

These SBIR data are furnished with SBIR rights under Funding Agreement No. _____ (and subcontract No. _____ if appropriate), Awardee Name _____, Address, Expiration Period of SBIR Data Rights _____. The Government may not use, modify, reproduce,

release, perform, display, or disclose technical data or computer software marked with this legend for (choose four (4) or five (5) years). After expiration of the (4-or 5-year period), the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties, except that any such data that is also protected and referenced under a subsequent SBIR award shall remain protected through the protection period of that subsequent SBIR award. Reproductions of these data or software must include this legend."

(iv) *Copyrights*. Include an appropriate statement concerning copyrights and publications; for example:

"With prior written permission of the contracting officer, the awardee normally may copyright and publish (consistent with appropriate national security considerations, if any) material developed with (agency name) support. (Agency name) receives a royalty-free license for the Federal Government and requires that each publication contain an appropriate acknowledgement and disclaimer statement."

(v) *Patents*. Include an appropriate statement concerning patents. For example:

"Small business concerns normally may retain the principal worldwide patent rights to any invention developed with Government support. The Government receives a royalty-free license for Federal Government use, reserves the right to require the patent holder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, the Government will not make public any information disclosing a Government-supported invention for a minimum 4-year period (that may be extended by subsequent SBIR funding agreements) to allow the awardee a reasonable time to pursue a patent."

(vi) *Invention Reporting*. Include requirements for reporting inventions. Include appropriate information concerning the reporting of inventions, for example:

"SBIR awardees must report inventions to the awarding agency within 2 months of the inventor's report to the awardee. The reporting of inventions may be accomplished by submitting paper documentation, including fax."

Note: Some agencies provide electronic reporting of inventions through the NIH Edison Invention Reporting System (Edison System). Use of the Edison System satisfies all invention reporting requirements mandated by 37 CFR part 401, with particular emphasis on the Standard Patent Rights Clauses, 37 CFR 401.14. Access to the system is through a secure interactive Internet site, <http://www.iedison.gov>, to ensure that all information submitted is protected. All agencies are encouraged to use the Edison System. In addition to fulfilling reporting requirements, the Edison System notifies the user of future time sensitive deadlines with enough lead-time to avoid the

possibility of loss of patent rights due to administrative oversight.

(e) *Cost-Sharing*. Include a statement essentially as follows:

"Cost-sharing is permitted for proposals under this program solicitation; however, cost-sharing is not required. Cost-sharing will not be an evaluation factor in consideration of your Phase I proposal."

(f) *Profit or Fee*. Include a statement on the payment of profit or fee on awards made under the SBIR Program solicitation.

(g) *Joint Ventures or Limited Partnerships*. Include essentially the following language:

"Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business concern as defined in this program solicitation."

(h) *Research and Analytical Work*. Include essentially the following statement:

(1) "For *Phase I* a minimum of *two-thirds* of the research and/or analytical effort must be performed by the proposing small business concern unless otherwise approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator.

(2) For *Phase II* a minimum of *one-half* of the research and/or analytical effort must be performed by the proposing small business concern unless otherwise approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator."

(i) *Awardee Commitments*. To meet the legislative requirement that SBIR solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in SBIR funding agreements must not be included in full or by reference in SBIR Program solicitations. Rather, applicants must be advised that they will be required to make certain legal commitments at the time of execution of funding agreements resulting from SBIR Program solicitations. Essentially, the following statement must be included in the "Considerations" section of SBIR Program solicitations:

"Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous clauses in Phase I funding agreements. The outline that follows is illustrative of the types of clauses to which the contractor would be committed. This list is not a complete list of clauses to be included in Phase I funding agreements, and is not the specific wording of such clauses. Copies of complete terms and conditions are available upon request."

(j) *Summary Statements*. The following are illustrative of the type of summary statements to be included immediately following the statement in subparagraph (i). These statements are examples only and may vary depending upon the type of funding agreement used.

(1) *Standards of Work*. Work performed under the funding agreement must conform to high professional standards.

(2) *Inspection*. Work performed under the funding agreement is subject to Government inspection and evaluation at all times.

(3) *Examination of Records.* The Comptroller General (or a duly authorized representative) must have the right to examine any pertinent records of the awardee involving transactions related to this funding agreement.

(4) *Default.* The Government may terminate the funding agreement if the contractor fails to perform the work contracted.

(5) *Termination for Convenience.* The funding agreement may be terminated at any time by the Government if it deems termination to be in its best interest, in which case the awardee will be compensated for work performed and for reasonable termination costs.

(6) *Disputes.* Any dispute concerning the funding agreement that cannot be resolved by agreement must be decided by the contracting officer with right of appeal.

(7) *Contract Work Hours.* The awardee may not require an employee to work more than 8 hours a day or 40 hours a week unless the employee is compensated accordingly (for example, overtime pay).

(8) *Equal Opportunity.* The awardee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(9) *Affirmative Action for Veterans.* The awardee will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era.

(10) *Affirmative Action for Handicapped.* The awardee will not discriminate against any employee or applicant for employment because he or she is physically or mentally handicapped.

(11) *Officials Not To Benefit.* No Government official must benefit personally from the SBIR funding agreement.

(12) *Covenant Against Contingent Fees.* No person or agency has been employed to solicit or secure the funding agreement upon an understanding for compensation except bonafide employees or commercial agencies maintained by the awardee for the purpose of securing business.

(13) *Gratuities.* The funding agreement may be terminated by the Government if any gratuities have been offered to any representative of the Government to secure the award.

(14) *Patent Infringement.* The awardee must report each notice or claim of patent

infringement based on the performance of the funding agreement.

(15) *American Made Equipment and Products.* When purchasing equipment or a product under the SBIR funding agreement, purchase only American-made items whenever possible.

(k) *Additional Information.* Information pertinent to an understanding of the administration requirements of SBIR proposals and funding agreements not included elsewhere must be included in this section. As a minimum, statements essentially as follows must be included under "Additional Information" in SBIR Program solicitations:

(1) This program solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting SBIR funding agreement, the terms of the funding agreement are controlling.

(2) Before award of an SBIR funding agreement, the Government may request the applicant to submit certain organizational, management, personnel, and financial information to assure responsibility of the applicant.

(3) The Government is not responsible for any monies expended by the applicant before award of any funding agreement.

(4) This program solicitation is not an offer by the Government and does not obligate the Government to make any specific number of awards. Also, awards under the SBIR Program are contingent upon the availability of funds.

(5) The SBIR Program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals must not be accepted under the SBIR Program in either Phase I or Phase II.

(6) If an award is made pursuant to a proposal submitted under this SBIR Program solicitation, a representative of the contractor or grantee or party to a cooperative agreement will be required to certify that the concern has not previously been, nor is currently being, paid for essentially equivalent work by any Federal agency.

6. *Submission of Proposals.*

(a) This section must clearly specify the closing date on which all proposals are due to be received.

(b) This section must specify the number of copies of the proposal that are to be submitted.

(c) This section must clearly set forth the complete mailing and/or delivery address(es) where proposals are to be submitted.

(d) This section may include other instructions such as the following:

(1) *Bindings.* Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.

(2) *Packaging.* All copies of a proposal should be sent in the same package.

7. *Scientific and Technical Information Sources.* Wherever descriptions of research topics or subtopics include reference to publications, information on where such publications will normally be available must be included in a separate section of the solicitation entitled "Scientific and Technical Information Sources."

8. *Research Topics.* Describe sufficiently the R/R&D topics and subtopics for which proposals are being solicited to inform the applicant of technical details of what is desired. Allow flexibility in order to obtain the greatest degree of creativity and innovation consistent with the overall objectives of the SBIR Program.

9. *Submission Forms and Certifications.* Multiple copies of proposal preparation forms necessary to the contracting and granting process may be required. This section may include Proposal Summary, Proposal Cover, Budget, Checklist, and other forms the sole purpose of which is to meet the mandate of law or regulation and simplify the submission of proposals. This section may also include certifying forms required by legislation, regulation or standing operating procedures, to be submitted by the applicant to the contracting or granting agency. This would include certifying forms such as those for the protection of human and animal subjects.

Appendix II: Tech-Net Data Fields for Public Database

The following are the data fields for the Public Tech-Net DataBase described in Section 11(e)(9) of this Policy Directive.

(a) *For all Agency SBIR/STTR Annual Data Submissions to the SBA*

Field name	Type	Width	Description
Program Identification	Numeric	1	SBIR/STTR Award Program Identifier* (see below).
Company	Char	80	Company Name*.
Street1	Char	80	Street Address1*.
Street2	Char	80	Street Address 2.
City	Char	40	City*.
State	Char	2	State*.
Zip	Numeric	5	Zip*.
Zip4	Numeric	4	Zip + 4.
Minority Code	Numeric	1	Minority code indicator 0 = yes 1 = no*.
Women	Numeric	1	Women-owned company indicator 0 = yes 1 = no*.
Contact First	Char	40	Company Official contact first name.
Contact Last	Char	40	Contact last name.
Contact Middle Init	Char	1	Contact middle initial.
Contact Title	Char	40	Contact Official title.
Contact Phone	Char	10	Contact Official phone.

Field name	Type	Width	Description
Contact Email Address	Char	50	Contact email address.
Employees	Numeric	5	Number of employees.
Agency Code	Numeric	2	Awarding agency name (ex. DOD)* (see below).
Branch	Number	1	Awarding DOD branch name (ex. Navy) (see below).
Phase	Numeric	1	Phase number 1 or 2*.
Award Year	Numeric	4	Phase award year*.
Award Amount	Numeric	10	Phase award amount*.
PI First	Char	40	Principal Investigator First Name*.
PI Last	Char	40	Principal Investigator Last Name*.
PI Middle Init	Char	1	Principal Investigator middle initial.
PI Title	Char	40	Principal Investigator Title.
PI Phone	Char	10	Principal Investigator phone.
PI Email Address	Char	50	Principal Investigator email address.
Topic Code	Char	15	Agency Solicitation Topic Number*.
RI TYPE	Numeric	1	Type of research institution (see below).
RI Name	Char	80	Research institution.
RI Street 1	Char	80	Research institution address.
RI Street 2	Char	80	Research institution address.
RI City	Char	40	Research institution city.
RI State	Char	2	Research institution State.
RI Zip	Numeric	5	Research institution Zip.
RI Zip4	Numeric	4	Research institution Zip + 4.
RI Official First	Char	40	Research institution Official First Name.
RI Official Last	Char	40	Research institution Official Last Name.
RI Official Initial	Char	1	Research institution Official Middle Initial.
RI Official Phone	Char	10	
Tracking Number	Char	20	Agency key identifier (Internal number scheme)*.
TIN/EIN	Char	10	Taxpayer/Employer Identification number*. Prefix with 1 for EIN 2 for Social Security Number.
Contract/Grant Number	Char	20	Agency award contract/grant number.
Solicitation Number	Char	20	Solicitation Number.
Solicitation Year	Numeric	4	Year of the Solicitation.
Project Initiator	Char	1	Initiator of STTR collaborative effort.
Technology Used (Y/N)	Char	1	SBC or RI originate any technology used in the STTR project.
Time to establish license agreement (months)	Numeric	2	Time duration to establish any STTR license agreement.
STTR Proceeds Distribution to SBC (%)	Numeric	3	Allocation of proceeds from sale of STTR technology.
STTR Proceeds Distribution to RI (%)	Numeric	3	Allocation of proceeds from sale of STTR technology.

From this point each data element should be sent as a separate file.

TITLE	Char	800	Title of research project*.
Tracking Number	Char	20	Agency key identifier (Internal number scheme)*.
Abstract	Char	1500	Technical abstract (500 words).
Tracking Number	Char	20	Agency key identifier (Internal number scheme)*.
Abstract SeqNmb	Numeric	1	
Results	Char	1000	—Project anticipated results.
Tracking Number	Char	20	Agency key identifier (Internal number scheme)*.
COMMENTS	Char	1000	—Project comments.
Tracking Number	Char	20	Agency key identifier (Internal number scheme)*.
Industry Share Amount	Numeric	10	ATP Program Cost Share Amount.
Cost Share Tracking Number	Char	20	ATP Cost Share Tracking Number.

Note: Those fields denoted with an *asterisk* are deemed mandatory in all agency submissions. It is understood that all agencies will not have data for each data field listed above. Each agency must ensure that data submissions to the SBA include all of the data fields above, even if they are empty.

Code Research Institution Types

- 1 Nonprofit college or university
- 2 Domestic nonprofit research organization
- 3 Federally-funded research and development center (FFRDC)

(b) Codes

(1) *Program Identification Code*

- 0 STTR (Small Business Technology Transfer)
- 1 SBIR (Small Business Innovation Research)
- 2 ATP (Advanced Technology Program)

(2) *Agency Codes*

- 1 DOD (Department of Defense)
- 2 DOE (Department of Energy)
- 3 NASA (National Aeronautics and Space Administration)
- 4 HHS (Health and Human Services)
- 5 NSF (National Science Foundation)
- 6 DOT (Department of Transportation)

7 EPA (Environmental Protection Agency)

- 8 ED (Department of Education)
- 9 DOA (Department of Agriculture)
- 10 DOC (Department of Commerce)
- 11 NIST (National Institute of Standards and Technology)

(3) *Branch Codes*

- 1 AF (Department of the Air Force)
- 2 ARMY (Department of the Army)
- 3 MDA (Missile Defense Agency)
- 4 DARPA (Defense Advanced Research Projects Agency)

5 DSWA (Defense Special Weapons Agency)
6 NAVY (Department of the Navy)
7 OSD (Office of the Secretary of Defense)

8 SOCO (Special Operations Command)
9 NIMA (National Imaging and Mapping Agency)

(4) If any new codes, please advise the Office of Technology.

[FR Doc. 02-24026 Filed 9-23-02; 8:45 am]

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ELECTRONIC RESEARCH

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H.R. 5012/P.L. 107-224

John F. Kennedy Center Plaza Authorization Act of 2002 (Sept. 18, 2002; 116 Stat. 1340)

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